NEW THREATS AND THE USE OF FORCE

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Chapter 2

Preventive Use of Force and the New Threats: Necessity and Feasibility

The prospects of unilateral and unauthorised use of preventive force against the new threats is seen by critics as a serious threat to international law, peace and stability. Proponents regard it as a just and necessary instrument to counter the new threats emanating from the spread of weapons of mass destruction (WMD), transnational mass casualty terrorism and failing states. This chapter approaches this debate by asking how often preventive military action is likely to be taken against the new threats without a UN mandate? The necessity and feasibility of such action will determine the frequency of its use, which in turn will influence the prospects for building an international consensus that would enable the Security Council to authorise preventive use against new threats, thereby reducing the need for unauthorised action.

The analysis is divided into seven parts. The rise of the new threats is described first. The second part presents an overview of the principal non-military measures taken by the international community to counter the new threats. The third part describes the debate over pre-emption and prevention, outlining areas of international agreement and disagreement respectively. The fourth part analyses the prospects of deterring "rogue" states and terrorists from using WMD in order to establish the need to use force preventively. Part five examines the record of past attempts to take preventive military action against WMD targets to determine the feasibility of this option. Part six uses this analysis as a basis for assessing how often military prevention is likely to be employed in practice against the new threats. The main conclusions are summed up in a conclusion at the end.

1. The new threats: what has changed?

The new threats did not suddenly appear out of nowhere. The new terrorism, with its global reach, the proliferation of WMD and failed or

weak states, were recognised as threats before the attacks on the World Trade Center and the Pentagon, but they were not accorded greater priority than a host of other threats, such as transnational organised crime, internal conflicts and international conflicts. September 11th changed all that. Since then these three threats have served as a compass guiding strategic thinking and practice in much the same way as the struggle between communism and capitalism during the Cold War. The sense of strategic confusion that had followed the fall of the Berlin Wall was replaced by clarity and a new sense of direction. Thus, the US National Security Strategy (NSS), the EU's Security Strategy (ESS) and the report from the UN Secretary General's High-level Panel all identify these threats as presenting a clear and present danger demanding new thinking and urgent action concerning the use of force.[16]

1.1. The new terrorism

Following the High-level Panel, terrorism is defined as action carried out with the intention to "cause death or serious bodily harm to civilians or non-combatants, when the purpose of such action, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act".[17] The new form of terrorism that Al Qaida has pioneered differs from older versions in five ways.[18] First, operations are not restricted to the national or regional level, as has been the case with most of the traditional groups. Al Qaida has a global reach, as evidenced by its ability to plan and carry out attacks in fourteen countries on four different continents.[19]

Second, Al Qaida has a global rather than national or regional agenda. Unlike traditional "political" terrorists such as ETA or the IRA, who have been motivated by specific political objectives like political autonomy or independence, Al Qaida has been driven by religious and more abstract objectives, which have taken the form of a global *jihad* waged on "non-believers" in order to restore the rule of God. These non-believers not only include the United States and the West, but also Islamic regimes like Saudi Arabia.

Third, the ideology of Al Qaida is transnational, and the message of global *jihad* has appeal for Islamist groups and individuals across the world, which may have very different motives for resorting to terrorism. This is also reflected in its members, who come from a variety of countries, including Western ones.

Fourth, it is it organised transnationally. Al Qaida is made up of a core group, which has always been small (numbered in the hundreds), and a broader network made up of satellite terrorist cells worldwide, a conglomerate of Islamist political parties, and largely independent terrorist groups that the core group draws on for logistical and operational support.[20] Although Al Qaida built up its original strength in Sudan and later Afghanistan, its network structure and its ability to use the latest information technology to communicate, spread its ideology and raise funds, enables it to operate without a fixed territorial base. While it is unclear how much of the core group remains intact and how much control Usama bin Laden continues to wield over his operatives and the wider network, Al Qaida is far from having been defeated. Al Qaida activists are believed to be active in insurgencies in the Afghan-Pakistan and Bangladesh-Myanmar border areas, Chechnya, the Pankishi Valley in Georgia, Somalia and Yemen, and to be cooperating closely with other Islamist groups such as Jemma Islamiya (Southeast Asia), al-Ittihad al-Islami (Horn of Africa), al-Ansar Mujahidin (Caucasus), Tunisian Combatants Group, Jayash-e Mohammad (South Asia), and the Salafi Group for Call and Combat (North Africa, Europe and North America).[21] In addition, the example set by Al Qaida will continue to inspire other terrorist groups for a long time to come. Al Qaida has set a new standard for terrorist attacks that other terrorists are likely to follow and even try to surpass in their attempt to attract attention to their cause.[22]

Finally, the new terrorism does not fit Brian Jenkins' much cited dictum that "terrorists want a lot of people watching, not a lot of people dead". September 11th suggested that the new terrorists want a lot of people watching *and* a lot of people dead.[23] Their intention to inflict mass civilian casualties is further underlined by the fact that Al Qaida has threatened to use and sought to acquire WMD. It has sought to acquire highly enriched uranium (HEU), which can be used to build nuclear bombs, on two occasions, and it was apparently engaged in experiments with biological and chemical substances in Afghanistan.[24] This interest in WMD, coupled with the intent demonstrated on September 11th to cause mass civilian casualties and its maximalist, religious and global agenda, create a picture of a terrorist network that can be assumed to be willing to use WMD if given an opportunity to do so.

1.2. WMD proliferation

It is therefore not surprising that the risk of WMD proliferation has been viewed with increased concern since September 11th. The risk of proliferation is generally perceived as growing because the diffusion of WMD technology is expected to make such weapons easier to acquire. At least forty countries have the capability to develop nuclear weapons at relatively short notice,[25] and the renewed interest in nuclear energy means that this number is likely to grow. Chemical agents are already widespread and relatively easy to acquire and weaponise. According to the US Defense Department, more than 24 states or non-state actors either have, or have an interest in acquiring, chemical weapons. Twelve countries are believed to have biological warfare programmes,[26] and advances in the biotechnology sector will increase opportunities for the development of deadly new biological weapons.

Terrorists have already planned and conducted several small-scale attacks using chemical and biological agents in recent years. The Aum Shinrikyo cult in Japan created enough sarin to kill an estimated 4.2 million people. Fortunately it failed to find an effective way to disseminate the sarin, but the example suggests that determined and well-resourced non-state actors are likely to be able to overcome the barriers involved in producing chemical weapons capable of inflicting mass casualties.[27]

The barriers to the development of nuclear weapons are higher, and opinion is divided on the question of whether non-state actors can overcome them. While some regard it to be beyond the capabilities of non-state actors, others warn that terrorists might be able to build a simple nuclear gun-type device similar in design to the one that was exploded over Hiroshima during World War Two. It is therefore a matter of concern that terrorists are likely to be able to obtain the HEU required for such a bomb.[28] It is feared that terrorists might succeed in either stealing or buying HEU from Russia by exploiting problems created by endemic corruption and poorly secured storage sites.[29] Pakistan is also seen as a potential source, as two nuclear scientists belonging to the Khan network, which supplied Iran, North Korea, Libya and possibly a fourth unknown customer with nuclear technology and know-how, are known to have held meetings with Al Qaida.[30] Given Pakistan's recognised potential for state failure and the sympathy that exists for Al

Qaida in large segments of the Pakistani population, it is not hard to imagine a worst case scenario in which Al Qaida might be able to obtain either nuclear material or even weapons from Pakistani sources.

1.3. Weak and failing states

The Pakistani case brings us to the problem posed by weak and failing states, i.e. states which are incapable of controlling their own territory and preventing terrorists from operating on their soil. Before September 11th weak and failing states were primarily seen as a humanitarian problem, not a security threat of the first order. This changed because terrorists may exploit their weakness to establish safe havens where they can recruit and train terrorist operatives, plan attacks, raise funds through the exploitation of natural resources and/or criminal activities such as smuggling and drug trafficking, and seek refuge from counter-terrorist campaigns. Even if weak states do not directly support terrorist organisations, they may still be unable to prevent terrorists from bribing their officials or infiltrating their institutions to obtain passports and other official documents, buy weapons, obtain intelligence about potential targets, information about counter-terrorist campaigns etc.[31] Finally, weak state governments may also enter into direct cooperation with terrorists, and even come to depend on their support to stay in power, as was the case with the Taliban in Afghanistan.

Although the threat posed by such states is usually discussed under the heading of "failed states", terrorists generally prefer weak states and states on the "brink of failure" to completely failed states. The latter offer no protection from outside interference from other states, and the anarchic conditions within them are not conducive to the establishment of the elaborate infrastructure that a terrorist network like Al Qaida needs in order to sustain its worldwide activities. This explains why Al Qaida did not return to Afghanistan until the Taliban had established control over large parts of the country, and why the organisation did not establish a new base in Somalia after the fall of the Taliban, as many feared it would.[32] Instead, a comprehensive analysis of Al Qaida's activities in 2002-2003 suggests that it relied mainly on Saudi Arabia, Yemen, the Philippines, Pakistan and Indonesia to sustain its activities. Afghanistan, Egypt, Algeria and the Sudan also remained important sources of support, even though their significance

declined significantly after 2001. Morocco, Tunisia, Malaysia, Thailand, Kuwait, Uzbekistan and Tajikistan played important roles in terms of recruitment, transit, communications and access to resources, while Georgia, Chechnya, Djibouti, Kenya, Somalia, Sierra Leone and Liberia were significant in terms of logistics, transit and access to resources.[33] The majority of these states can be characterised as willing but unable to take effective action against the terrorists operating on their territory, and it will be a major and probably an impossible task to enable them to do so in the foreseeable future.

2. Non-military responses to the new threats

The initial response to September 11th was characterised by almost universal solidarity and sympathy, which translated into unprecedented international cooperation to combat global terrorist threats and the spread of WMD. The attacks were condemned as barbaric and unjustified by both the UN General Assembly and the Security Council, and the latter swiftly adopted Resolution 1373, which imposed legal obligations on UN members to take steps against all activities associated with terrorism. The Resolution also established a Counter-Terrorism Committee (CTC) to monitor compliance and facilitate the provision of technical assistance to states requiring it to meet the new obligations. All 191 member states submitted first-round reports to the CTC explaining their efforts to comply with the resolution, the rate of ratification of the two main UN anti-terror conventions increased dramatically, and $112 million in alleged terrorist funds were frozen in the first three months after September 11th.[34]

The UN thus emerged as the principal international forum for establishing norms and cooperation to counter the new threats, and Resolution 1540 of 28 April 2004 represents another milestone in this respect. Resolution 1540 is similar to 1373 in the sense that it imposed legal obligations on states to prevent the spread of WMD and associated delivery mechanisms to non-state actors, and it also established a committee to oversee compliance and facilitate the provision of technical assistance.

The initiatives taken by the UN have been supplemented by a large number of initiatives by other international organisations and states in

order to counter the new threats. With respect to preventing WMD from falling into the wrong hands, three other multinational initiatives stand out. The first is the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, launched by the G-8 in June 2002.[35] This involves a commitment to raise $20 billion in the course of ten years to speed up the destruction of chemical weapons, the dismantling of decommissioned nuclear submarines, the disposition of fissile materials and finding employment for former weapons scientists. The initiative is initially directed at Russia, but it may also be used to fund projects in other countries.[36]

The second is the American Proliferation Security Initiative (PSI) of 31 May 2003. This seeks to impede and stop shipments of WMD, delivery systems and related materials going to or from states or non-state actors of proliferation concern. Nineteen states, including the G-8, have joined the initiative as core partners and have put an operational experts working group in charge of its implementation. According to the US, eighty countries have expressed support for the initiative, and the High-level Panel called on all states to join the initiative.[37] The UN Secretary General supported this call in his follow-up report in March 2005.[38]

The third and most recent initiative is the American Global Threat Reduction Initiative (GTRI) launched on 26 May 2004, which is intended to prevent HEU and radiological materials from falling into the hands of terrorists. It involves an American pledge to spend up to $450 million dollars over the next decade to return US- and Russian-origin fuel to its sources from over forty countries around the world and convert all research reactors to run on low enriched uranium (LEU). The plan also includes an important commitment by the United States to convert all domestic research reactors to LEU by 2013.[39]

While these and all the other initiatives adopted after September 11th to reduce the new threats have made life more difficult for terrorists and WMD proliferators, they do not solve the problems. The CTC estimates that as many as seventy states are incapable of honouring the obligations stipulated by resolution 1373, and twenty countries are deemed to be unwilling to do so. This decreases the effectiveness of the CTC's work significantly, since some of the unwilling states are characterised as being "in the frontlines of the battle against terrorism". The G-8 and GTRI initiatives are widely seen as being too slow and too

small to address the threat posed by the Russian stockpiles of nuclear material,[41] and the freezing of terrorist funds has all but ceased. Only $24 million have been frozen since 2002, and use of the informal hawala remittance system and money laundering schemes has ensured a constant flow of money to Al Qaida and other terrorist organisations.[42] These weaknesses are part of the reason why there is a general consensus that force will have to be used to counter the new threats in some circumstances.

3. Use of force against the new threats: the pre-emption/prevention debate

The debate on the use of force against the new threats has to a large extent been shaped by the NSS published in September 2002 and the US-led war against Iraq the following year, which critics perceived as an implementation of the pre-emptive strategy presented in the NSS.[43] The ESS and the UN High-level Panel report were written after the NSS, and they are consequently useful with respect to gauging state opinion on the use of force against the new threats. The ESS represents the compromise that the EU members could agree on, whereas the UN document provides an indication of state opinion more generally.

The NSS is a broad grand strategy document which makes it clear that the war on terror will be fought on all fronts and that the United States will employ all the instruments at its disposal: diplomatic, economic and military. In relation to the new threats, the main argument put forward by the NSS is that the old reactive strategies of self-defence, containment and deterrence that proved effective during the Cold War offer inadequate protection against the new threats. The increased risk that "rogue" states and terrorists may acquire and use WMD offensively without warning against civilian targets makes it too dangerous to allow these actors to get in a position to strike first. The new technologies not only make it easier to acquire such weapons, but the development of more advanced delivery systems and the increased risk of unconventional attacks similar to September 11th reduce the warning time to such an extent that effective defence may become impossible. The problem of timely detection is particularly acute with respect to transnational terrorist networks, which may plan an attack in one country, prepare it in a second, and carry it out in a third.

Conceptual overview of the military strategies discussed

Containment: The creation of strategic alliances in order to check the expansion of a hostile power or force it to negotiate peacefully.

(Self-)Defence: Use of force in response to a hostile act or armed attack.

Deterrence: Use of threats and specific actions aimed at discouraging adversaries from taking certain action (e.g. use WMD).

Deterrence through denial: Action taken in advance to deny a certain action from achieving its objective (e.g. ensure that use of terrorism and WMD fail).

Deterrence through punishment: Threat/action taken to inflict unacceptable pain on the opponent if a certain action is carried out (e.g. retaliation in response to a terrorist/WMD attack).

Dissuasion: discourage adversaries from even considering military competition with, or hostile action against, the United States through the maintenance of overwhelming military superiority (e.g. discourage use of terrorism and WMD acquisition in the first place).

Pre-emption (classical): Use of force initiated in a crisis on the basis of incontrovertible evidence that an enemy attack is imminent.

Pre-emption (NSS definition): Use of force initiated against emerging threats before they are fully formed.

Prevention: Use of force initiated in the belief that military conflict, while not imminent, is inevitable, and that to delay would involve greater risk.

The response in the NSS is to supplement the existing arsenal of non-military and military instruments and strategies with a strategy of dissuasion and a strategy of pre-emption. It is the latter strategy that has

attracted most of the attention because it may involve the preventive use of force against the new threats if prevention by non-military means fails to have the desired effect. The strategy of pre-emption is narrowly conceived. It only applies to "rogue" states (Iraq and North Korea are identified as such by the NSS) and terrorists with global reach who are seeking to acquire and use WMD, and it is defined as an option of last resort in exceptional circumstances.[44]

According to the NSS, pre-emption is an "old" option, as the United States "has long maintained the option of preemptive actions to counter a sufficient threat" to its national security.[45] This is correct. The Clinton administration launched pre-emptive strikes against targets on many occasions in the no-fly zones in Iraq in the course of the 1990s and in Afghanistan and Sudan in 1998, and it came very close to launching a preventive attack on North Korea's nuclear programme in 1994.[46] But two differences between the statements and actions taken by the two administrations explain the concern generated by the NSS. The first is that the Clinton administration refrained from using force to prevent North Korea from acquiring nuclear weapons, whereas the Bush administration decided to do so to prevent Saddam Hussein from acquiring such a capability.[47] The second is that the Clinton administration refrained from making pre-emption part of its official security strategy and made clear that pre-emption only would be used if intelligence indicated an imminent threat against American or allied troops in the field.[48] Defined in this way, pre-emption is widely seen as legitimate by other states, and Israel's attack on the Egyptian air force, which marked the beginning of the Six Day War in June 1967, is regarded by many states as a classical case of legitimate pre-emption.

The NSS not only made the option of military pre-emption part of official US security strategy, it also employed a definition of pre-emption that was much wider than the traditional one. The NSS argues that the traditional understanding of imminent threat has to be widened to allow effective defence against actors that may use WMD without warning and in a concealed manner. The NSS consequently defines pre-emption in such a way that one can use military force against "emerging threats before they are fully formed".[49] Such use of force has traditionally been seen as preventive. It is illegal under current international law and has traditionally been regarded as illegitimate. Unlike pre-emption, which is limited to instances where an attack is imminent, the preven-

tive use of force is employed to prevent a threat from becoming imminent sometime in the future. It is based on the premise that armed conflict is unavoidable and that it is better to fight now than to wait until the adversary has become stronger. Examples of preventive use of force include the British bombardment of Copenhagen and seizure of the Danish fleet in 1807, the Japanese attack on Pearl Harbor in 1941, the Israeli attack on Iraq's nuclear reactor at Osirak in 1981, and the American- led overthrow of Saddam Hussein in 2003.

It is widely accepted that the new threats have created a grey zone where it may be hard to distinguish between the pre-emptive and preventive use of force. The ESS agrees with the NSS that a new conception of self-defence is required and that the use of force may occasionally be required against the new threats.[50] Similarly, several governments, including Australia, France, Japan and Russia, have reacted to September 11th and subsequent terrorist attacks on their own citizens by declaring their intention to use force pre-emptively against the new threats in situations where the risk of an attack is imminent. These states thus support pre-emption in the classic understanding of the strategy.[51] Finally, the High-level Panel and the UN Secretary General agree with the NSS that it may be necessary to carry out not only pre-

Figure 2
The relationship between self-defence, pre-emption and the preventive use of force

Level of military threat	Threat of an attack invented	Real, but non-imminent threat of enemy attack	Imminent threat of enemy attack	Actual enemy attack
Classical definitions of the use of force	Military aggression	Preventive use of force	Pre-emptive use of force	Self-defence
NSS definitions of the use of force	Military aggression	Pre-emptive use of force permitted against non-imminent threats emanating from "rogue" states and terrorists		Self-defence

emptive but also preventive military action against the new threats before they become imminent, and it urges the Security Council to be more proactive in addressing the new threats.[52]

It is consequently not the pre-emptive/preventive option presented in the NSS per se that has been the principal source of international disagreement and concern. The most contentious issue revolves around how pre-emption and prevention should be implemented and who should take the legal and legitimate decision to employ such action. It is the prospects of unilateral and unauthorised use that has given rise to concern. This concern has two sources. First, it has been created by the statement in the NSS that the United States will "not hesitate to act alone, if necessary, to exercise our right of self-defence by acting pre-emptively",[53] which has been seen as a clear indication of America's willingness to use force. Second, the coupling of pre-emption with the right of self-defence and the call for a widening of the understanding of imminent threat suggest that the NSS is seeking to create a right of pre-emption that would make it legal to use pre-emptive and preventive force in self-defence. This would pose a direct challenge to the UN and the strict limitations on the use of force in the UN Charter (see Chapter 3). The 2003 Iraq War and the American and Israeli threats to use force to destroy the Iranian nuclear programme have served to reinforce these two sets of concerns and tended to crowd out the assurances in the NSS that unilateral military action will only be employed as a last resort in exceptional circumstances.

The need for multilateral action and UN authorisation of the use of force is emphasised in both the ESS and the High-level Panel report. One of the strategic objectives of the ESS is to create an international order based on "effective multilateralism". International cooperation is not seen as an option but a "necessity", and the UN Charter is described as the "fundamental framework for international relations".[54] The message is clear: the new threats should be addressed multilaterally, and the use of force beyond self-defence should be authorised by the UN Security Council.[55]

The High-level Panel report is more explicit in this regard, arguing that the use of force against non-imminent threats has to be authorised by the Security Council to be legal and legitimate, and adding that the establishment of a right of unilateral preventive military action would pose an unacceptable risk to global order. Allowing one state to carry

out unilateral preventive military action "is to allow all", as the report puts it.[56] This concern has also been expressed by several analysts and governments. The sharpest criticism has come from the French President Jacques Chirac, who reacted to the publication of the NSS by characterising it as "extraordinarily dangerous":

As soon as one nation claims the right to take preventive action, other countries will naturally do the same. What would you say in the entirely hypothetical event that China wanted to take pre-emptive action against Taiwan, saying that Taiwan was a threat to it? How would the Americans, the Europeans and others react? Or what if India decided to take preventive action against Pakistan, or vice versa?[57]

Similar criticisms were expressed by the Malaysian Prime Minister, Mahathir Mohamad, and high-ranking EU officials.[58] It was also acknowledged by the drafters of the NSS, who therefore inserted a warning to other states not to "use pre-emption as a pretext for aggression".[59] The criticism and concern triggered by the 2003 Iraq War has to be understood against this background, since it was perceived by critics as setting a precedent that would make it easier for other states to legitimise the use of preventive military action.[60]

Summing up, there is international understanding and acceptance of the American position that force may have to be used more proactively in some circumstances to counter the new threats. It is the prospects of unilateral use that generate concern, suggesting that the prospects for establishing a security consensus on the use of pre-emption and prevention to a large extent depend on how often preventive force is used unilaterally against the new threats. If it is used frequently, it might well have the destabilising consequences that its critics fear. If, on the other hand, it is reserved for exceptional circumstances and employed multilaterally, the effect on international peace and security might be positive. To assess how often preventive military force is likely to be employed against the new threats in the future, the effectiveness of deterrence and the feasibility of preventive military action will be examined next.

4. Deterrence and the new threats

The strategy of deterrence seeks to discourage opponents from taking certain action (in this case launching a WMD attack or transferring

WMD to terrorists) by taking countermeasures that will prevent such an attack from achieving its objective (deterrence through denial) and by threatening to inflict unacceptable pain on one's enemies if such an attack is carried out (deterrence through punishment). The NSS is based on the premise that deterrence through punishment offers insufficient protection against the new threats. "Rogue" state leaders are seen as more willing to take risks than ordinary state leaders, and the new terrorists are considered undeterrable because their statelessness and willingness to die for their cause renders the threat of retaliation impotent.[61]

Opinion is divided on the relative effectiveness of deterrence vis-à-vis the new threats. The argument that "rogue" states are much harder to deter than other states has been a topic of considerable debate, and there is also grounds for believing that deterrence may have some effect against some, but not all, types of terrorists. This debate has important implications for the future use of prevention, because this will depend on the extent to which use of WMD can be deterred. The problems of deterring states and terrorists will be discussed separately below because states are regarded as easier to deter than terrorists.

4.1. Deterring state from WMD use

The argument that "rogue" or irresponsible states are much harder to deter from WMD use than other states hinges on the belief that their leaders are less risk-averse and more prone to miscalculation than ordinary state leaders. While WMD in the hands of "rogue" states with a record of international aggression and/or revolutionary ideologies is a source of real concern, there is no logical reason why deterrence should not work as well against "rogue" states as it has done against "ordinary" states. Like other states, "rogue" states have territory vulnerable to retaliation and leaders who generally display a strong interest in self-preservation. Deterrence also appears to have worked against states described as "rogue" by the United States, including Iraq. The often mentioned argument that deterrence failed when Iraq invaded Kuwait in 1990 is incorrect since no attempt was made to deter Iraq at the time. Western policy was characterised by an attitude of conciliation, and the invasion took both Arab and Western countries by surprise.[62]

Kenneth M. Pollack, who made the most sophisticated case for the 2003 Iraq War, made a different argument. His main point was that Saddam Hussein had to be stopped because of his proneness to miscal-

culation. Since the Iraqi dictator had already miscalculated twice and led his country into two disastrous wars (Iran 1980-88 and the 1991 Gulf War), Pollack considered him likely to make the same mistake again. Therefore, he had to be stopped before he acquired nuclear weapons. In addition, there was the concern that a nuclear-armed Saddam Hussein would be free to intimidate his neighbours and engage in nuclear blackmail without fear of American or Israeli retaliation.[63]

Considering the way in which North Korea has used its WMD as an effective bargaining chip to extract economic assistance from South Korea and the United States, the risk that "rogue" states might use WMD to blackmail their neighbours cannot be discounted. But in the case of North Korea deterrence has still served its principal purpose of deterring a war of aggression against South Korea. Similarly, the United States also succeeded in deterring Saddam Hussein from using WMD against the coalition and Israel during the 1991 Gulf War. Critics question this assessment, pointing out that Saddam Hussein had authorised his field commanders to use chemical and biological weapons against the coalition if it marched on Baghdad, and that he was not deterred from attacking Israel with Scud missiles armed with conventional warheads. However, this criticism does not affect the overall conclusion that he did not use those WMD that he had at his disposal. What it does suggest is that "rogue" state leaders are most likely to use their WMD to deter others from attacking them or as a last minute gesture of defiance if all else is lost.[64]

This logic also applies with respect to the risk highlighted in the NSS and in official US statements that "rogue" states might transfer WMD to terrorists. This risk is not considered high in the literature, and the Central Intelligence Agency (CIA) reportedly views a deliberate transfer by a state as "the least likely route to a terrorist nuclear weapon".[65] Two factors explain this threat assessment. First, a "rogue" state would have no assurance that the terrorists would not turn the weapon against itself. Second, the transfer would be very difficult to keep secret. The state sponsors behind previous terrorist attacks on US targets have usually been identified, and the isotopic signature of a nuclear device can be traced to its country of manufacture. A "rogue" regime deliberately providing such weapons to terrorists would consequently sign its own death sentence.[66] This suggests that the risk of

unauthorised WMD transfers is higher than authorised ones, as deterrence would not work against them. WMD stockpiles in weak and failing states with poor control over their WMD would thus seem to constitute a greater threat of WMD transfers than "rogue" states with effective control measures in place.

The American success with respect to reducing state sponsorship of terrorism since the 1980s provides another indication that deterrence is likely to work against "rogue" states. Fear of retaliatory action had already led Libya, Iran and Iraq to stop sponsoring attacks on American targets before September 11th.[67] Since then US has sought to make state sponsorship of terrorism even harder to conceal, and these efforts (deterrence through denial) seem to be paying off, as state sponsorship of terrorism continues to drop. According to the US State Department's 2003 overview of state-sponsored terrorism, Libya and Sudan have stepped up their counter-terrorist cooperation with Western intelligence services considerably and appear to have cut most of their known ties with terrorist organisations. North Korea has not been linked to a terrorist attack since 1986, and Cuba, Iran and Syria continue to support terrorists but have distanced themselves from Al Qaida. Cuba continues to support the Basque terrorist group ETA and two Columbian groups, ELN and FARC, but appears to have no links with Islamist groups. Similarly, Iran and Syria continue to support groups that fight Israel (Hamas, Hizbollah, the Palestine Islamic Jihad, the Popular Front for the Liberation of Palestine-General Command and the Popular Front for the Liberation of Palestine), but have taken steps against Al Qaida.[68] Iran has refused to hand over detained Al Qaida operatives for interrogation and trial, however, and US officials have claimed that members of Al Qaida in Iran were involved in the May 2003 bombings of three residential compounds in Saudi Arabia.[69]

4.2. Deterring terrorists from WMD use

Deterrence is much harder to use effectively against terrorists than states for two reasons. First, terrorists, unlike states, do not have territory that is vulnerable to retaliation. It is simply not possible to respond to a WMD attack by responding in kind. Second, some terrorists, unlike governments, see death as an end in itself. Not all terrorists are suicidal, however, and it is the goals, not the means, employed by a terrorist organisation that determines whether it can be deterred or not.

Terrorists can be placed on a continuum with apocalyptic terrorists at one end and political terrorists at the other. Apocalyptic terrorists have insatiable demands, and no concession will stop them from continuing their use of terrorism. In contrast, political terrorists are driven by pragmatic political goals and can be expected to stop their use of terrorism when their grievances have been addressed or they become convinced that it is futile or counterproductive to continue.[70] In the real world, terrorist groups are likely to have both political and apocalyptic elements, and terrorist groups may also move from one end of the spectrum to the other in the course of their struggle. But the continuum is useful in showing that some terrorists pose greater threats than others, and that there is greater scope for negotiation and compromise the closer we get to the political end of the continuum.[71]

The hard core of Al Qaida, with its maximalist global agenda, belongs to the apocalyptic category, whereas groups with local or separatist agendas, such as ETA, the IRA and the Palestinian groups, belong to the political end of the continuum. Whereas apocalyptic terrorists must be considered undeterrable, it should be possible in the short term to deter political terrorist groups from cooperating with Al Qaida and seeking WMD by convincing them that the costs of such actions outweigh the benefits. The focus on Al Qaida and WMD significantly enhances the risk that such activities will be discovered (deterrence through denial), in which case punishment in the form of US attacks or support to the government that the terrorists are fighting can almost be taken for granted. In addition, association with Al Qaida or WMD terrorism is also likely to result in stigmatization and loss of international support. The conflict in Chechnya is a case in point. The association of the Chechen rebels with Al Qaida and other radical Islamist terror groups has reduced sympathy for their cause in the West and made it easier for Russia to employ ruthless measures against them. The Madrid bombing carried out in March 2004 by Al Qaida associates had the same effect of reducing public sympathy for the terrorist campaign conducted by ETA. Links between the Palestinian groups and Al Qaida would be likely to hurt the Palestinian cause in the same manner. Just as deterrence has helped to reduce state sponsorship of terrorism, it may help to isolate Al Qaida from political terrorist groups and deter the latter from seeking to acquire and use WMD.[72]

In the longer term, deterrence may help to drive terrorists out of

business by contributing to strategic failure. While hard core apocalyptic terrorists will continue until they are caught or killed, their recruitment pool may gradually dry up if it becomes clear that their struggle is failing to produce results. A lack of results (deterrence through denial) and the increased risk of US retaliation (deterrence through punishment) explain the decline in state-sponsored terrorism referred to above. Similarly, the dramatic rise in the use of suicide terrorism since the early 1980s can be explained by the fact that the method works. Suicide attacks thus produced concessions from their targets in six of the eleven suicide terrorist campaigns that were completed during 1980-2001.[73]

Summing up, the NSS seems to underestimate the effectiveness of deterrence in relation to the new threats. There is no inherent reason why deterrence should be less effective with respect to deterring stable "rogue" states from using WMD against the United States, its allies and its friends or from transferring it to terrorists than it was with respect to deterring the superpowers from using force against each other during the Cold War. WMD use or transfer to terrorists only makes sense for "rogue" state leaders if they come under attack or as a last gesture of defiance in a situation when all else is lost. Weak or failing states seem to constitute greater risks of WMD use or transfer to terrorists than stable "rogue" states.

Deterrence is much harder against terrorists than states but not impossible. The scope of deterrence depends on the goals and motivations of the terrorists. Politically motivated terrorist groups with local agendas may be deterred from acquiring WMD and from cooperating with Al Qaida. Al Qaida, on the other hand, appears to be undeterrable and likely to use WMD against Western targets if given an opportunity to do so.

It follows that there is a strong case for using force preventively against Al Qaida and other terrorist groups seeking to acquire WMD. The case and need for using prevention against "rogue" states is weaker because deterrence is more likely to work. The good news that deterrence appears to be more effective against the new threats than the NSS assumes may serve to reduce the actual use of military pre-emption and prevention in the future. This said, deterrence is not fail-safe. Governments occasionally considered the use of preventive military action against WMD targets prior to September 11th and must be

expected to do so again in the future in relation to the new threats. To a government contemplating the use of preventive military action, the question of feasibility will play a major role in the decision whether or not to use force. It is to this question we now turn.

5. Prevention in past practice: considerations and complications

Declaring a policy of prevention is one thing, implementing it quite another. To assess how often preventive military action is likely to be seen as a feasible option against "rogue" states and terrorists seeking to acquire WMD, this section examines the historical record and the current debate in order to obtain a better understanding of when preventive action is likely to be considered, how such action is likely to be carried out and to what effect. Although the new threats and the end of the Cold War have altered the calculus of prevention, the practical considerations and complications affecting its use remain essentially the same.

A state that feels sufficiently threatened to contemplate preventive military action has to consider three sets of complications: whether the intelligence is good enough to ensure operational success (is the target list complete/reliable?); whether operational success is achievable at an acceptable cost (collateral damage and casualties); and how the target and the international community will react (retaliation, escalation, diplomatic isolation, increased use of prevention by other states). This calculus will differ from case to case and will depend on the nature of the target – whether it is a great power, a small state or a terrorist organisation. It makes a crucial difference whether the target is a state with a WMD programme or a terrorist organisation seeking to buy or steal WMD. First, it is likely to be easier to locate fixed WMD sites than small groups of terrorists on the move, and small-scale attacks are likely to be enough to capture or kill terrorists whereas major operations are likely to be required to eliminate state-run WMD programmes. Second, attacks on terrorists are likely to be regarded as more legitimate than attacks on states because in most cases they can be justified as pre-emption in the traditional sense of the term, i.e. as military action to prevent an imminent attack. Moreover, attacks on Al Qaida and affiliated groups may be seen as self-defence because Al Qaida has been engaged

in a war against the US, its allies and its friends since 1993, when it began to attack US targets.[74] Attacks to eliminate state-run WMD programmes are more controversial because they are more likely to fall into the prevention category and because the inherent risk of escalation and long-term destabilization of the international system is greater. The use of prevention against states and terrorist organisations will therefore be dealt with separately in the analysis below.

5.1. Preventive use of force against WMD states

The complications of attacking WMD facilities have limited the number of such attacks significantly in the past. Dan Reiter has identified sixteen attacks against WMD states during 1942-2003: seven allied attacks against the German and Japanese WMD programmes (1942-1945), culminating in regime change, two Israeli and one Iranian attack against the Iraqi nuclear programme (1979-81), Iraqi air strikes against the Iranian nuclear programme (1980-88), an Iraqi attack against the Israeli programme (1991), and the US-led attacks against the Iraqi WMD programmes (1991-2003), culminating in regime change.[75]

This list reveals two interesting things: only five state programmes have been targeted, and most attacks have been carried out in the context of an ongoing war. The number of preventive attacks launched for the sole purpose of stopping WMD programmes during peacetime is very small indeed. The only attacks belonging in this category are the two Israeli attacks against the Iraqi nuclear programme and the two US campaigns targeting the Iraqi WMD programmes after the end of the 1991 Gulf War – Operation Desert Fox in 1998 and Operation Iraqi Freedom in 2003, the latter culminating in regime change.

The reluctance to launch preventive attacks during peacetime to stop WMD programmes is further underlined by the occasions where states have considered such action but decided against it. The United States contemplated preventive WMD action against the Soviet Union in the early 1950s and China in the early 1960s, against Cuba during the Cuban missile crisis in 1962 and against North Korea in 1994. Similarly, India considered taking preventive action against Pakistan's nuclear programme in the 1980s, the Soviet Union considered attacking China's nuclear programme in 1969, and Egypt contemplated military action against Israel's Dimona nuclear reactor in the 1960s.[76]

The combination of poor intelligence, doubts concerning the

prospects of operational success and fear that a limited attack might trigger a major war explain why prevention was rejected in these cases. The importance of these complications is further demonstrated in Dan Reiter's analysis of the sixteen attacks against state-run WMD programmes that did take place during 1942-2003. He found that limited military attacks generally failed to stop or significantly delay WMD programmes, that full-scale wars and regime change were required to end them, and that the target and the international community may impose significant costs on the state launching the preventive attack.

Three factors account for the limited effectiveness of limited attacks. First, the intelligence picture is usually incomplete. Poor intelligence meant that American efforts to eliminate the Iraqi WMD programmes (1991-2003) had little impact, even though most of the known targets were successfully destroyed. The CIA report on Iraqi WMD released in September 2004 showed that Iraq had abandoned all its active WMD programmes by the mid-1990s.[77] It also concluded that Iraq appears to have destroyed all its biological and chemical weapons after the 1991 war. The intelligence used to guide the air strikes conducted against Iraqi WMD installations since the mid-1990s was, in short, wrong. The attacks on the German and Japanese WMD programmes during World War II were also hampered by poor intelligence, and the US was even unaware that it had put an end to the embryonic Japanese nuclear programme in a bombing raid on Tokyo in April 1945.[78]

Second, effectiveness may be limited by the fear that the release of biological and chemical agents or nuclear radiation might result in significant civilian casualties. This concern played a role in the Clinton administration's decision not to launch a preventive attack on North Korea in 1994, suspected Iraqi chemical and biological sites were not attacked for this reason during Operation Desert Fox in 1998, concern about collateral damage led to the removal of one building from the target list later that year when the US launched cruise missiles against a chemical plant suspected of producing chemical weapons in the Sudan, and the US also refrained from attacking the sites where Al Qaida was suspected of developing biological and chemical weapons during the war in Afghanistan.[80]

Third, the effectiveness of limited attacks is limited by their very nature. The Israeli attack on the Osirak reactor in 1981, which is wide-

ly seen as the prototype of a successful limited attack on a WMD program, is illustrative in this respect. The Israelis were acting on the basis of good intelligence, the reactor was successfully destroyed in a single air raid, the level of collateral damage was minimal, and Israel suffered no casualties during the operation. But the attack did not achieve its strategic objective, as it neither stopped Iraq's nuclear programme nor significantly delayed it. On the contrary, it led Saddam Hussein to accelerate, diversify and conceal his nuclear programme. The Osirak attack demonstrates the inherent problem involved in limited attacks: that they leave the decision whether or not to terminate WMD programmes to the target. Nothing prevents the target from continuing the effort to acquire WMD, and a successful attack may even have the counterproductive effect of speeding up and enlarging the WMD programme it sought to end, as happened, according to the sources quoted by Reiter, in the Osirak case.[81]

The impossibility of coercing Saddam Hussein into abandoning his WMD ambitions was one of the reasons why the US opted for regime change instead. This option holds out greater promise of lasting success by enabling the preventer to destroy an ongoing WMD programme completely and install a friendly regime without WMD ambitions. It worked remarkably well in Germany and Japan after World War II and is now being attempted in Afghanistan and Iraq. The problem with regime change is, of course, that it is extremely costly. The experiences of Germany and Japan suggest that long-term success hinges on the establishment of a stable democratic regime and long-term military deployments, and the current difficulties in Afghanistan and Iraq, as well as the problems encountered by the UN, the EU and NATO in the Balkans since the mid-1990s, demonstrate that successful democratization is very difficult, very costly and very slow.[82]

The need to engage in full-scale war to stop WMD programmes militarily is illustrative of the third complication that has limited the number of preventive attacks in the past: fear of the consequences. Unwillingness to fight a major war had a strong deterrent effect on decision-makers during the Cold War, and it also played an important role in the US decision not to attack North Korea in 1994. The Clinton administration was worried that North Korea might react to a limited preventive strike by attacking Seoul or launching an all-out invasion of South Korea. According to Pentagon estimates, a conventional war in

Korea would result in 500,000 casualties in the first ninety days alone, and the total number of casualties was put at one million military and civilian casualties, including 100,000 American dead.[83]

On top of the likely costs imposed by the target, a state contemplating prevention must add the possible costs that the international community may impose. Good evidence of a WMD threat (capability and intent), multilateral support and a successful military operation conducted in accordance with the rules of war are generally seen as the minimum requirements for legitimising preventive WMD operations.[84] Credible evidence of a threat and of the inevitability of war will be easier to produce the closer the target is to launching an actual attack. In other words, the further one moves from pre-emption in the traditional sense towards prevention, the harder it will be for the preventer to convince others of the threat and to mobilise support for military action. From a moral as well as a strategic point of view, it is easier to justify military action to forestall an imminent attack than against a threat that may or may not become imminent sometime in the future. It is difficult to show that war is indeed inevitable months or years from now, and equally difficult to argue that force is being used as a last resort in such circumstances. Making a morally defensible case for prevention is thus much harder than making one for pre-emption in the traditional sense of the word.[85]

At the same time it is not impossible. Two cases involving Iraq make the point: the Israeli attack on Osirak, and the American invasion of 2003. Israel was able to make a plausible case that the Iraqi nuclear programme constituted a serious threat to its national security since Iraq had stated publicly that it was directed against the "Zionist enemy".[86] Israel's case was bolstered by the fact that Iran also perceived the Iraqi programme as a threat and had made an unsuccessful attempt to destroy it. The Israeli attack was timed to destroy the reactor before it came operational in order to minimise the risk of collateral damage, it was limited in scope and duration, it focused exclusively on destroying the reactor and it achieved complete operational success with a minimum loss of life.

The attack was condemned by a united UN Security Council as a violation of international law, but there was no mention of punishment in the resolution, and no state apart from the United States, which delayed the delivery of four F-16s, took any practical steps to punish

Israel for the attack. After the Gulf War and the discovery of the Iraqi military nuclear programme by UN weapons inspectors, there was widespread recognition that the attack had been justified, and the US Secretary of Defense, Dick Cheney, publicly thanked Israel for having prevented Iraq from having nuclear weapons at the time of the Gulf War.[87] While it is debatable whether the Israeli attack had this effect, it is indisputable that Israel was relatively successful in legitimising a unilateral preventive attack against a threat that was regarded as real but not imminent.

From a strategic perspective, the important thing for the preventer is to avoid other states taking steps to punish it, and in this sense Israel was remarkably successful. This success is somewhat surprising because the attack failed to meet the requirement of multilateralism that is generally seen as crucial in legitimising the use of force beyond self-defence, which is not authorised by the Security Council.[88] This suggests that the perceived seriousness of the threat, the scale of the operation, its low costs in terms of collateral damage and casualties and its successful outcome may be more important.

A comparison of the Osirak attack with the 2003 Iraq War supports this conclusion. On the face of it, in some respects the US had a better case than Israel. The threat posed by the Iraqi regime was generally not perceived as lower when the war broke out: Iraq was generally assumed to have a biological and chemical weapons capability, as well as the intention to acquire a nuclear capability; a united Security Council had determined that Iraqi non-compliance with UN resolutions constituted a threat to international peace and security; unlike Israel, the US involved the UN Security Council; and the attack was more multilateral, as the US was supported by a number of allies.

What makes the attack different is its scale, the failure of the coalition to win the peace following its swift defeat of the Iraqi military, the subsequent disclosure that the intelligence on the Iraqi WMD programmes was wrong, and the widespread concern that the US might impose regime change on other states as well. This led several states to impose costs on the US by denying it legitimacy and practical support, and Iran and Syria have reportedly been supporting the insurgency against the US-led coalition in an attempt to deter the United States from attacking them next.[89] These costs have been compounded by the failure of the coalition to establish basic security in all of Iraq or pre-

vent the outbreak of the insurgency. More than anything else, the Iraqi case underlines the importance of bringing military operations to a quick and successful conclusion. Had the coalition been equally successful with respect to winning the peace as it was with respect to defeating the Iraqi military, the operation would probably have been viewed as more legitimate by the international community.

5.2. Preventive use of force against WMD terrorists

Preventive military action against terrorist WMD facilities has so far not been taken very often, in fact only twice: in 1998, when the US used cruise missiles to destroy a factory suspected of producing chemical weapons for Al Qaida in Sudan; and in the Afghanistan war, which served the same purpose by destroying Al Qaida's limited WMD facilities there.[90]

The prevention calculus looks very different in relation to terrorists compared to states. The problem of obtaining reliable intelligence is greater. Terrorist WMD facilities are likely to be smaller, more primitive and hence harder to locate. In addition, terrorists may also speed up the acquisition process by buying or stealing WMD from state sources, leaving less time for detection and preventive action. This creates an incentive to capture or kill operatives belonging to apocalyptic terrorist organisations when the opportunity arises. The American counter-terrorism campaign targeting Al Qaida and affiliated groups has done precisely that. The US military has been involved in a continuous campaign against Al Qaida in Afghanistan since the invasion in 2001, provided military support for governments fighting Al Qaida and affiliated groups on their own territory and killed six Al Qaida operatives with a Predator drone armed with Hellfire missiles in Yemen in November 2002, while an armed US team captured an Al Qaida operative in Mogadishu and took him out of Somalia for questioning in March 2003.[91] The latter two operations were the result of a policy which tasks US agents and Special Forces to track, capture or kill Al Qaida operatives in countries with which the US is not openly at war, and a new military base in Djibouti has been set up to facilitate such operations throughout the Horn of Africa.[92]

Limited military action of this nature, targeting Al Qaida operatives and their supporters in weak and failing states that are incapable of preventing terrorists from operating or hiding on their soil, is far easier to

legitimise than preventive action against states. It can be justified as self-defence or as pre-emption in the classic sense, i.e. as the use of force to prevent an imminent attack, because the threat of new Al Qaida attacks causing mass casualties is ever present. After September 11th many states tolerate and even support such action, even though its legality is questionable if it takes place without the consent of the local government. There is an emerging consensus that it may be legitimate to take military action against terrorists in states that are either unwilling or unable to meet their legal obligations under UN Resolution 1373 to prevent terrorists from using their territory as launching pads for attacks on other countries. These requirements also enhance the likelihood that governments will allow other states to carry out limited military operations against terrorists on their territory. The Hellfire attack on Al Qaida operatives in Yemen is a case in point, as it was carried out with the consent of the Yemenite government.

Limited military action against terrorists is thus a far more attractive option than taking preventive action against states. It is more likely to succeed and there is no need to worry about escalation, since the terrorists are already trying to inflict the maximum damage. The risk of casualties and collateral damage is limited since the operations will typically be small in scale, and the political costs are likely to be low since many states, including all the great powers, consider such action legitimate, provided that the laws of war are respected. Failure to comply with these laws is likely to trigger criticism, however. This was the case with the Hellfire attack in Yemen, which was perceived by its critics, both within and outside the United States, as a summary execution.[93] It is the intelligence requirement that constitutes the principal obstacle to the use of limited force against terrorists, and the difficulty of obtaining such intelligence is likely to limit the scope for such action significantly.

6. The future of prevention

The future does not look particularly bright for preventive military action against "rogue" states and terrorists with WMD. Preventive action of this sort against states is unlikely to be regarded as an attractive option very often since it is a high-risk, high-cost undertaking with limited scope for operational success. Preventive wars involving regime change are difficult to legitimise and entail high costs, suggesting that

this option will continue to be used in exceptional cases only. Limited attacks are more likely, as American and Israeli threats of preventive strikes against the Iranian nuclear programme illustrate.[94] The United States is less constrained than was the case during the Cold War, when such action could always escalate into military confrontation with the Soviet Union, and the unparalleled superiority of US airpower enhances the likelihood of American air strikes against "hostile" WMD facilities, as the retaliatory capacity of the "rogue" states is relatively limited. North Korea stands out as the exception to the rule in this regard. That said, the practical and political difficulties associated with such attacks must still be expected to have a deterrent impact on decision-makers contemplating such action.

The Osirak attack complicated the task of conducting successful limited attacks. It taught not only Iraq but all states determined to acquire WMD of the need to conceal, disperse and build redundancies into their WMD programmes to make them less vulnerable to limited attacks and sabotage. Iraq succeeded remarkably well in doing this, as the poor results obtained in the attacks conducted by the United States in the first Gulf War demonstrate. Successful North Korean concealment and dispersal of its nuclear programme helped to deter the Clinton administration from launching a preventive attack in 1994, and there is a general consensus that Iran has made its nuclear programme difficult to destroy from the air.[95]

Further complicating the use of prevention against states is the risk that such action may induce other states to follow suit and make the preventive use of force more frequent. In light of the difficulties and risks identified in the course of this analysis, this risk should not be overstated. States, as we have seen, generally think twice before launching preventive attacks against other states, and the 2003 Iraq War has probably reinforced this reluctance. The US and Israel remain the only two states to have declared an official policy permitting unilateral, military prevention against states with WMD.[96] Australia, France and Japan have only expressed support for the pre-emptive use of force against imminent attacks, i.e. anticipatory self-defence or traditional pre-emption, which is generally seen as far more legitimate.[97] They do not subscribe to the new interpretation of pre-emption in the NSS. Russia moved closer to the NSS position after the Beslan massacre in September 2004, when it declared its willingness to conduct preventive

strikes against terrorist bases in neighbouring countries, but this shift in policy did not extend to states as well.[98] There is, in short, nothing to suggest that preventive military action against states will become any more frequent in the foreseeable future than it has been in the past. It seems most likely to remain an option reserved for exceptional circumstances.

The same cannot be said for the use of preventive military action against terrorists. Intelligence permitting, this option will probably be used more often to kill and capture terrorist operatives hiding in, or conducting attacks from, weak states that are unable to control their own territory. This option is low-cost and low-risk compared to major military operations, and limited preventive military actions against Al Qaida in weak states have generally been met with acceptance, if not outright support, from the international community. In many cases such operations can be expected to take place with the consent of the local government, as was the case with the Predator attack in Yemen. In cases where consent has not been granted, limited operations are still likely to be seen as legitimate, since states have a Chapter VII obligation to prevent terrorists from using their soil as launching pads for terrorist attacks on other states.

7. Conclusion: positive implications for international law and stability

Unilateral preventive use of force against WMD states rarely succeeds. Obtaining the intelligence required for operational success has been a problem in most cases, limited military attacks have a poor track record as they rarely significantly delay or stop WMD programmes, and the consequences in the form of escalation and international isolation may be costly. Still, the Israeli attack on Osirak is proof that the international reaction may be limited to verbal condemnation, provided that hostile intent can be demonstrated, the attack is limited in time and scale, it achieves operational success and the loss of life is reduced to a minimum. Regime change is likely to be more effective with respect to terminating WMD programmes than limited attacks, but it is a high-risk, high-cost operation that is very difficult to legitimise in peacetime.

The fact that unilateral military prevention against states looks so unattractive from a strategic perspective eases the political-legal dilemma that unauthorised military prevention poses to international law,

peace and stability. It gives all states a strong interest in bolstering efforts to prevent the spread of WMD by peaceful means; it means that deterrence is likely to be regarded as a viable alternative in more cases than the NSS seems to imply; and the implication is that unilateral prevention against states is likely to be employed in exceptional circumstances only.

Although preventive military action is likely to be taken more frequently against terrorists, this does not appear to pose major problems for international law or international peace and stability. All the major powers, the EU and the UN Secretary General's High-level Panel share the American view that military action may be required to counter the new threat emanating from apocalyptic terrorist groups with global reach seeking to acquire WMD. Most attacks on terrorists can be legitimised as self-defence or pre-emption, both of which may be legal under current international law, as the next chapter will show. The use of force against terrorists will generally be small in scale and of limited duration, and take place in weak states that are unable and/or unwilling to prevent terrorists from operating on their soil. They are consequently unlikely to have major destabilising consequences for international peace and security.

The risk of unilateral and unauthorised prevention is, in short, not likely to become as threatening to international law and international stability as many have feared.