DIGITAL ACCESS TO SCHOLARSHIP AT HARVARD
DASH.HARVARD.EDU

HARVARD LIBRARY
Office for Scholarly Communication

Posturing for Prevention: Extended Claim on the Use of Force Against the Threats of Nuclear Terrorism

Citation
Lee, Christy L. 2017. Posturing for Prevention: Extended Claim on the Use of Force Against the Threats of Nuclear Terrorism. Master's thesis, Harvard Extension School.

Permanent link
http://nrs.harvard.edu/urn-3:HUL.InstRepos:33826994

Terms of Use
This article was downloaded from Harvard University's DASH repository, and is made available under the terms and conditions applicable to Other Posted Material, as set forth at http://nrs.harvard.edu/urn-3:HUL.InstRepos:dash.current.terms-of-use#LAA

Share Your Story

The Harvard community has made this article openly available.
Please share how this access benefits you. Submit a story .

Accessibility

Posturing for Prevention:

Extended Claim on the Use of Force against the Threats of Nuclear Terrorism

Christy L. Lee

A Thesis in the Field of Government

for the Degree of Master of Liberal Arts in Extension Studies

Harvard University

2017

Copyright 2017 Christy L. Lee

Abstract

The threats of terrorism, nuclear weapons program by hostile states, and the possibility that these threats could aggregate and converge into more devastating threat of nuclear terrorism has been challenging the international norm on the use of force. The characteristics of these threats dictate that they are not the kinds of threats that can be waited upon to manifest because the stage of their imminence would render a state unable to defend itself by using force as the last resort. To prevent the distinct threats from becoming prevalent throughout the globe and growing into a greater threat, the permissible parameters for the use of force must include the conditions of when and how force can be used effectively in combating these threats. These permissible conditions increasingly depend on placing a greater premium on states' responsibility toward violence that streams outside their territories and strengthening enforcement mechanism toward state responsibility and accountability so that, if breached to cause disproportionate violence in civilian lives, a claim on force could be extended to prevent their present capabilities from inflicting greater harm in the future based on their intent of causing violence demonstrated in their past acts of aggression. The legitimacy of using force to prevent the threats of modern security environment rests on the extent of increasing and enforcing state responsibility and demonstrating that states that inflicted violence and violated international norms in the past and associate with terrorist activities and pursue nuclear weapons technology for hostile purposes in the present are highly likely to perpetuate recurrent attacks in the future. The permissible preventive use of force that would be contingent upon states' breach of responsibility to cause recurrent aggression depends on the process of reinterpreting the pre-existing international norm on the use of force and enforcing state responsibility over the governance of its internal domestic affairs toward stricter adherence toward maintaining international peace and security.

Acknowledgements

I would like to thank my Research Advisor Dr. Donald Ostrowski, who has guided me through this long thesis process and throughout my academic pursuit with enduring patience and encouragement.

I would also like to thank my Thesis Director Dr. Steven E. Miller, the Director of the International Security Program, Belfer Center for Science and International Affairs at the Kennedy School of Government, who has directed me to view the threats of modern world from a different perspective and guided me to frame the structure of my thesis with a renewed perspective.

Table of Contents

Acknowledgements ..……..... iv

List of Tables ……..... vii

List of Figures …….. viii

I. Introduction: Two Kinds of Threats ……... 1

The Threat of Terrorist Attacks and the Use of Force ……...… 1

The Threat of Nuclear Weapons and the Use of Force …….. 5

II. Where It Began: The Start of the Contemporary Shift …….…… 11

The 9/11 Attacks and the US Policy and Action of Prevention ……... 11

A Global Shift toward Prevention ……..….. 13

The Severity of Terrorist Attacks and the Propensity for Prevention …….. 15

III. International Law: The Evolutionary Path toward the Extended Claim of Self-Defense ….. 25

Humanitarian Intervention: Corollary to the Preventive Self-Defense ……..……. 25

The Use of Force and the Right of Self-Defense: UN Charter Chapter VII Article 51

and Caroline Case − Armed Attack and Imminent Attack ……. 30

Narrow Interpretation: Self-Defense against an Armed Attack ……..……..... 33

Broad Interpretation: Self-Defense against an Imminent Attack …..……..... 34

Armed Attack and Imminent Attack Criteria Evaluated against

Nuclear Terrorism: The Elements of Uncertainties ...……...……. 35

An Armed Attack and Terrorist Attack: Interpretations on the Degree of a State's

"Substantial Involvement" in Terrorism ……..……... 40

Extended Claim of Self-Defense on "Substantive Involvement" in Terrorism ...……..... 44

Prevention of Threat by All Other Means and Force as the Last Resort ……..…..….. 48

Rising Threat: A Precipitant on Military Strikes against Nuclear Facilities……...…. 52

IV. Conclusion: The Elements of Uncertainties, Fuel for Force ……..……..... 61

V. Works Cited ……. 64

List of Tables

Table 1. Number of Airstrikes against ISIS by Combined Joint Task Force–Operation Inherent Resolve (CJTF-OIR) August 2014–January 2017 ……..……..……...…. 4

Table 2. The Severity of Terrorist Attacks 1980–2005: Independent Variable ……...…. 16

Table 3. The Degree of Prevention: Dependent Variable ..……...……..... 18

Table 4. Scale Scheme on States' Propensity toward Prevention ……...……..... 19

Table 5. The Severity of Terrorist Attacks and Propensity toward Prevention: Correlation …… 22

Table 6. The Elements of Uncertainties in the Three Stages of Nuclear Terrorism …….…… 38

List of Figures

Figure 1. The Severity of Terrorist Attacks 1980–2005 ……..…….…….. 17

Figure 2. Linkages: Threat Continuum and Preventive Framework ……..…..…….. 40

I.

Introduction:

Two Kinds of Threats

The use has been considered in response to two conditions – the threat of terrorist attacks and the threat of nuclear weapons. I will discuss each in turn.

The Threat of Terrorist Attacks and the Use of Force

In the wake of terrorist attacks that swept through the streets of Paris in a series of coordinated shootings and suicide bombings that left 129 dead and 352 wounded on November 13, 2015,[1] which is considered the worst violence that took place in France since the World War II, [2] French President Francoise Hollande proclaimed "we are at war" and pronounced the French intent on escalating its already on-going airstrikes against terrorist group Islamic State of Iraq and Syria (ISIS) that claimed the responsibility for the attacks.[3] Echoing the French intent, President Barack Obama condemned the Paris attackers and stated, "There will be an intensification of the strategy against ISIS." [4] Followed by these statements were heavy bombardments against ISIS stronghold of Raqqa in Syria, some ten French aircrafts dropping twenty bombs on facilities used

---

[1] Mariano Castillo, Margot Haddad, Michael Martinez, and Steve Almasy, "Paris Suicide Bomber Identified; ISIS Claims Responsibility for 129 Dead," *CNN*, November 16, 2015, http://edition.cnn.com/2015/11/14/world/paris-attacks/index.html; and Jethro Mullen, "'France Is at War,' President Francois Hollande Says after ISIS Attack," *CNN*, November 17, 2015, http://edition.cnn.com/2015/11/16/world/paris-attacks/index.html.

[2] Katharine Lackey, "World Leaders React to Paris Terror Attacks," *USA Today,* November 14, 2015, http://www.usatoday.com/story/news/world/2015/11/14/world-leaders-react-paris-terror-attacks/75771136/.

[3] Castillo, "Paris Suicide Bomber Identified."

[4] Rebecca Kaplan, "Obama Faces Questions on ISIS Strategy after Paris Attacks," *CBSNews*, November 16, 2015, http://www.cbsnews.com/news/obama-asks-more-nations-to-step-up-in-fight-against-isis/.

by the Islamic militant group, while France and the US increased their cooperation on intelligence in Syria. [5]

Since August 2014, the US-led coalition Combined Joint Task Force, of which France is a part, has been bombing ISIS under its air campaign "Operation Inherent Resolve" (CJTF-OIR).[6] In response to the rising threats and attacks perpetuated by the terrorist group in the region and around the Western part of the world, the US Central Command established the CJTF with its mission to "eliminate the terrorist group ISIL [a.k.a. ISIS] and the threat they pose to Iraq, the region and the wider international community."[7] At the Iraqi government's formal request made in June 2014 for US help in fighting ISIS in its territory, President Obama authorized targeted airstrikes against ISIS in Iraq on August 8, 2014, [8] and just hours after the authorization, US aircrafts began its military operations targeting the terrorist group in northern Iraq in its first offensive action in the country since the withdrawal of its ground troops in 2011. [9]

Then, in the same year, on the eve of the thirteenth anniversary of the 9/11 attacks, President Obama announced that the aerial campaign against ISIS in Iraq would extend into Syria because "the air strikes were necessary counter-terrorism measures to prevent the group, also

---

[5] David Nakamura and Karen DeYoung, "France Launches Fierce Assault on ISSI Targets in Syria," *Washington Post*, November 15, 2015, https://www.washingtonpost.com/politics/obama-vows-to-help-france-hunt-down-perpetrators-of-paris-terror-attacks/2015/11/15/a4628faa-8b74-11e5-9a07-453018f9a0ec_story.html?utm_term=.4fd3d1c52047.

[6] For details of its operation and daily strike release, see "Operation Inherent Resolve," the US Department of Defense, http://www.inherentresolve.mil.

[7] Ibid.

[8] "Iraq Formally Asks US to Launch Air Strikes against Rebels," *BBCNews,* June 18, 2014, http://www.bbc.com/news/world-middle-east-27905849.

[9] Chelsea J. Carter, Tom Cohen, and Barbara Starr, "U.S. Jet Fighters, Drones Strike ISIS Fighters, Convoys in Iraq," *CNN,* August 9, 2014, http://edition.cnn.com/2014/08/08/world/iraq-options/; and Dan Roberts and Spencer Ackerman, "US begins air strikes against ISIS targets in Iraq, Pentagon says," *The Guardian,* August 8, 2014, https://www.theguardian.com/world/2014/aug/08/us-begins-air-strikes-iraq-isis.

known as ISIS, from becoming a future threat to the US." [10] ISIS, at the time, did not pose an imminent threat against the US. Homeland Secretary Jeh Johnson stated earlier on the same day when President Obama made the announcement that "[a]t president, we have no credible information that [ISIS] is planning to attack the homeland of the United States." [11] The President, stating, "If left unchecked, these terrorists could pose a great threat beyond that region – including to the United States…While we have not yet detected plotting against our homeland, ISIS leaders have threatened America and our allies," [12] authorized the force to target the Islamic militant group based on ISIS's projected intent that threatened the US and international community, thereby preventing it from attacking the US and international community by disrupting its operations in Syria.

Unlike the Iraqi government, Syria did not request military assistance from the US. Neither did the President seek Syrian permission[13] to launch military attacks in its territory against the group that has been streaming back and forth between Iraq and Syria for the reason that the US was extending its air campaign against ISIS that began in Iraq under the request of the Iraqi government while, at the same time, it was acting under the preexisting authorization to combat al-Qaeda in the region. [14] Since August 2014, the US has launched 7,458 strikes against ISIS in Iraq and 6,532 in Syria while its eight coalition countries conducted 3,527 airstrikes in

---

[10] Dan Roberts and Spencer Ackerman, "Barack Obama authorizes air strikes against ISIS militants in Syria," *The Guardian,* September 11, 2014, https://www.theguardian.com/world/2014/sep/10/obama-speech-authorise-air-strikes-against-isis-syria.

[11] Ibid.

[12] Ibid.

[13] Jethro Mullen, "US-led airstrikes on ISIS in Syria: What you need to know," *CNN,* September 24, 2014, http://edition.cnn.com/2014/09/23/world/meast/syria-isis-airstrikes-explainer/.

[14] Ibid.

Iraq, and eleven coalition countries, 224 strikes in Syria. [15] In all, the CJTF has undertook 17,861 total targeted airstrikes against ISIS in both Iraq and Syria as of January 31, 2017. [16]

Table 1. Number of Airstrikes against ISIS by

Combined Joint Task Force–Operation Inherent Resolve (CJTF-OIR)[17]

August 2014–January 2017

	Iraq	**Syria**	**Total**
US	7,458	6,531	13,989
Coalition	3,535	337	3,872
Total	10,993	6,668	17,861

Coalition in Iraq: 1. Australia 2. Belgium 3. Canada 4. Denmark 5. France 6. Jordan 7. The Netherlands 8. the UK
Coalition in Syria: 1. Australia 2. Bahrain 3. Canada 4. Denmark 5. France 6. Jordan 7. The Netherlands 8. Saudi Arabia 9. Turkey 10. the UAE 11. the UK

Does the US have the permissible right to use force to target ISIS in Syria without an imminent threat posed by the terrorist group and without a consent or request for help from the Syrian government? Do the US and its coalition countries have the permissible right to conduct air strikes in the territories of Syria that has not sponsored or supported ISIS? Should states like Syria be responsible for a terrorist group operating in its territories and as a result, the violence that streams outside its territories even if it does not sponsor or support that terrorist group? If

[15] "Operation Inherent Resolve: Targeted Operations against ISIS Terrorists," the US Department of Defense, https://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve.

[16] Ibid.

[17] Ibid.

states are tolerating or unable to govern over terrorist operations within its territory and as a result, international security is undermined by terrorist attacks that perpetuate around the globe in connection with the terrorist groups operating in their borders, then how should state responsibility be enforced toward the international community? On what basis does international community or a victim state have the right to intervene? At the same time, if states have become the victims of major recurrent terrorist attacks in the immediate past, should they have the permissible right to claim preventive use of force against the terrorist group that is likely to perpetuate attacks in the future?

The Threat of Nuclear Weapons and the Use of Force

A year after President Obama announced its airstrikes against ISIS in Syria, the P5+1 countries reached what proponents call a historical nuclear deal with Iran that came to be known as the *Joint Comprehensive Plan of Action* (JCPOA).[18] It took years of long-drawn out negotiations that followed several rounds of IAEA inspections initially triggered by Iranian President Mohammad Khatami's acknowledgement of the existence of a nuclear facility in Natanz in February 2002, at a time when the momentum was building up for the US invasion of Iraqi.[19] To prevents Iran from enriching uranium and processing plutonium for the purpose of developing nuclear weapons, the deal demands that Iran cap the stockpile of low-enriched uranium from 10,000 kilograms to 300 kilograms in its Natanz and Fordow facilities, the production of its operating centrifuges from 19,000 to about 6,000, and redesign its Arak facility

---

[18] *Joint Comprehensive Plan of Action*, July 14, 2014, https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/.

[19] Paul Kerr, "IAEA 'Taken Aback by Speed of Iran's Nuclear Program," April 1, 2004, *Arms Control Association*, https://www.armscontrol.org/act/2003_04/iran_apr03; and "U.S.: Iran's Nuclear Program Is a 'Great Concern: Facility Violates Nonproliferation Pact, Sources Say," March 10, 2003, *CNN*, http://edition.cnn.com/2003/WORLD/meast/03/10/iran.nuclear/index.html?iref=newssearch.

so that it does not produce weapons-grade plutonium.[20] In exchange, the international community promised to lift sanctions and unfreeze about $100 billion worth of foreign assets that could potentially be used to project its power in the region and raise threats around the world. [21]

Before the deal was reached, the US that did not joined the negotiations until 2006 seriously contemplated on the option of using force to strike Iran when it discovered the existence of an underground uranium enrichment facility in Fordow in 2009 in the city of Qom. [22] The option of using force faded upon a series of discreet talks with Iranian officials in early 2013 and particularly after President Obama made a telephone call to Iran's newly elected President Hassan Rouhani, who is considered more moderate and willing to negotiate than his predecessor Mahmoud Ahmadinejad, in a first contact between the leaders of the two country since 1979.[23] President Obama, however, stated in his 2015 State of the Union Address that all options are open to prevent a nuclear Iran, and few months before the deal was on the verge of being reached, Defense Secretary Ashton Carter stated that "the military option certainly will remain on the

---

[20] Carol Morello and Karen DeYoung, "Historic Deal Reached with Iran to Limit Nuclear Program," *Washington Post,* July 14, 2015, https://www.washingtonpost.com/world/historic-nuclear-deal-with-iran-expected-to-be-announced/2015/07/14/5f8dddb2-29ea-11e5-a5ea-cf74396e59ec_story.html?utm_term=.32f48a4c1629.

[21] "Donald Trump Intends to Take on Iran. Right, but Risky: How far is the new administration prepared to go?" *The Economist,* February 25, 2017, http://www.economist.com/news/middle-east-and-africa/21717384-how-far-new-administration-prepared-go-donald-trump-intends-take.

[22] Seymour M. Hersh, "The Iran Plans: Would President Bush Go to War to Stop Tehran from Getting the Bomb?" April 17, 2006, *New Yorker,* http://www.newyorker.com/magazine/2006/04/17/the-iran-plans*;* David E. Sanger and William J. Broad, "U.S. and Allies Warn Iran over Nuclear 'Deception,'" *The New York Times,* September 25, 2009, http://www.nytimes.com/2009/09/26/world/middleeast/26nuke.html; Karen DeYoung and Michael D. Shear, "U.S., Allies Say Iran Has Secret Nuclear Facility," *The Washington Post*, September 26, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/09/25/AR2009092500289.html; and "Iran Nuclear Talks: Timeline," *The Guardian,* July 14, 2015, https://www.theguardian.com/world/2015/apr/02/iran-nuclear-talks-timeline.

[23] Jeff Mason and Louis Charbonneau, "Obama, Iran's Rouhani Hold Historic Phone Call," September 28, 2013, *Reuters,* http://www.reuters.com/article/us-un-assembly-iran-idUSBRE98Q16S20130928.

table."[24] The option of using force, in part, is to bulwark against the possibility of Iran breaching the deal and proceeding with nuclear weapons development, but as Iran raises provocation in the region as it has done in the past and most recently in January 2017 by testing its ballistic missiles capable of delivering a nuclear warhead, which does not violate the deal but ignores the Security Council Resolution 2231, the option of using force cannot be precluded. [25]

Although the nuclear deal does not ban ballistic missile tests, in 2015 Security Council passed Resolution 2231 that states, "Iran is called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology, until the date eight years after the JCPOA Adoption Day or until the date on which the IAEA submits a report confirming the Broader Conclusion, whichever is easier."[26] Also, Resolution 1929 passed in 2010, though underpins the nuclear deal, prohibits the testing by stating that "Iran shall not undertake any activity related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missiles technology, and that States shall take all necessary measures to prevent the transfer of technology or technical assistance to Iran related to such activities."[27] The US responded to Iran with sanctions on thirteen individuals and twelve other entities tied to Iran's ballistic missile program, but the threat that Iran raises could compel the use of force, particularly if it violates the terms of the nuclear deal in conjunction with projected aggression.

---

[24] Jeremy Diamond, "Could military force still be used against Iran?" *CNN,* April 2, 2015, http://edition.cnn.com/2015/04/02/politics/iran-nuclear-deal-military-attack/.

[25] Tom DiChristopher, "What an unraveling of the Iran nuclear deal could look like," *CNBC,* February 3, 2017, http://www.cnbc.com/2017/02/03/how-the-iran-nuclear-deal-could-unravel.html.

[26] United Nations Security Council (SC), Resolution 2231, "Non-Proliferation," Adopted by the Security Council at its 7488 meeting, July 20, 2015, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231(2015).

[27] SC, Resolution 1929, "Non-Proliferation," Adopted by the Security Council at its 6335th meeting, June 9, 2010, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1929(2010).

A number of resolutions adopted by the IAEA General Conference prohibits the use of force against nuclear facilities intended for peaceful purposes.[28] Yet states have considered using force and used force against states that covertly pursued nuclear weapons development or purportedly pursued it under the guise of peaceful purposes. What factors triggered states to use or consider using force against nuclear facilities of other states? Are diplomatic deals and sanctions effective against hostile states? When should all other means be considered exhausted? Is the use of force effective in removing nuclear weapons program? Under what conditions could the use of force against the threats of nuclear weapons considered justified?

These two types of threats – terrorism perpetuated by terrorist groups like ISIS and al-Qaeda and the pursuit of nuclear weapons development by hostile states like Iran – epitomize the kind of threats that the world has witnessed and the ones on which the Western part of the world has been focused since the onset of the new millennium. Distinctively, they are the threats that develop at different paces and manifest in different places. Cumulatively, however, these threats, along with other elements, play an integral part in aggregating and converging toward nuclear terrorism in the future. Seemingly, the threat of terrorism from ISIS and al-Qaeda and the pursuit of nuclear weapons program by Iran, though it agreed on the deal, appear to be disconnected incidents of threats as Iran is supporting Syria in its combat against ISIS and no direct link exists between these two states and ISIS and al-Qaeda, the terrorist groups that caused major civilian deaths in the West. Yet these distinctive individual threats cannot be discounted because they are perpetuated by two capable sets of actors with high propensity toward conflict that can increase

---

[28] International Atomic Energy Agency, General Conference (GC), Resolution 407, "Protection of Nuclear Installations Devoted to Peaceful Purposes against Armed Attacks," November 9, 1983, https://www.iaea.org/About/Policy/GC/GC27/GC27Resolutions/English/gc27res-407_en.pdf; GC Resolution 444, "Protection of Nuclear Installations Devoted to Peaceful Purposes against Armed Attacks," September 27, 1985, https://www.iaea.org/About/Policy/GC/GC29/GC29Resolutions/English/gc29res-444_en.pdf; GC Resolution 533, "Prohibition of All Armed Attacks against Nuclear Installations Devoted to Peaceful Purposes Whether Under Construction or in Operation," October 1990, https://www.iaea.org/About/Policy/GC/GC34/GC34Resolutions/English/gc34res-533_en.pdf.

the level of those threats into greater danger of nuclear terrorism, which could propel a wider instability in the international security environment.

These threats with which the Western powers have been grappled as they have been the main victims of terrorist attacks and the targets of nuclear weapons, are also the threats that are challenging the strict interpretation of the international norm on the use of force. The characteristics of threats that are challenging international system, whether it be the individual threat of terrorism or nuclear weapons proliferation by hostile states or the combination of these threats converging into nuclear terrorism, are not the kinds of threats that can be waited upon to manifest because the stage of their imminence would render a state unable to defend itself using force as the last resort. To prevent the distinct threats from becoming prevalent throughout the globe and growing into a greater threat, the permissible parameters for the use of force must include the conditions of when and how force can be used effectively in combating these threats instead of basing the consideration solely on whether force should or should not be used. These permissible conditions will increasingly depend on placing a greater premium on states' responsibility toward violence that streams outside their territories and strengthening enforcement mechanism toward state responsibility and accountability so that, if breached to cause disproportionate violence in civilian lives, a claim on force could be extended to prevent their present capabilities from inflicting greater harm in the future based on their intent of causing violence demonstrated in their past acts of aggression. The legitimacy of using force to prevent the threats of modern security environment will rest on the extent of increasing and enforcing state responsibility and demonstrating that past violence and violation of international norm by states that associate with terrorism and pursue nuclear weapons technology in the present are highly likely to cause attacks in the future. The permissible preventive use of force that is contingent upon states' breach of responsibility to cause recurrent aggression depends on

reinterpreting the pre-existing international norm on the use of force and enforcing state responsibility over the governance over its internal domestic affairs toward stricter adherence toward maintaining international peace and security. The nature of modern threats of terrorism and nuclear weapons that renders force ineffective at the stage of imminence has been increasingly and inevitably steering the direction of international acceptability and utilization toward preventive use of force, the shift that is likely to continue.

II.

Where It Began: The Start of the Contemporary Shift

The path toward preventive use of force has been trod gradually with some legalistic oppositions against what appeared to be an abrupt yet gradual and inescapable policy shift that began most recently with the 9/11 attacks in the US.

The 9/11 Terrorist Attacks and the US Policy and Action of Prevention

The Western states, some reluctantly first but inevitably as French has done, while others with reserved stance in the beginning but with requisite posture later, followed this shift as global terrorism pervaded through their homelands during the first decade of the new millennium. This global shift toward prevention, stark in a way if comparing how the US policy of prevention was opposed initially and criticized vehemently, particularly by the French, set a direction in reshaping the terrain of the international security landscape.

Ever since Islamic terrorist group al-Qaeda inflicted a series of devastating attacks against the twin towers of the World Trade Center and the Pentagon and attempted attack aimed at either the US Capital or the White House in Washington DC using commercial air planes and caused approximately three thousand casualties[29] on September 11, 2001 with the help of Taliban regime in Afghanistan, the US, recognizing the terrorist group's capability to inflict unsuspected mass death in civilian lives in metropolitan region, began to become weary of the terrorist group employing nuclear weapons to cause greater violence of nuclear terrorism.

---

[29] "The RAND Database of Worldwide Terrorism Incidents," RAND Corporation, http://www.rand.org/nsrd/projects/terrorism-incidents.html.

In response to the horrors of the 9/11 attacks and upon the realization of greater destruction that the terrorists could cause if using nuclear weapons in their attacks, the US launched Operation Enduring Freedom on October 7, 2001 against Taliban in Afghanistan that sponsored and supported al-Qaeda to prevent more attacks from occurring in the future. Then, in September 2002, it promulgated the policy of prevention in *The National Security Strategy* of 2002, claiming its right to defend against an emerging threat by preventing terrorism and rogue states from developing the weapons of mass destruction using all necessary means including the use of force.[30] The US, by stating that it will be "taking anticipatory action to defend [itself], even if uncertainty remains as to the time and place of the enemy's attack," [31] broadened the parameters of threat against which it could use force and acted on this policy by launching a military attack under the same name Operation Enduring Freedom against what was misconstrued as Iraq's nuclear capabilities in 2003 Iraq War. Then, it reiterated the policy of prevention, though less forthrightly, in *The National Security Strategy* of 2006, which emphasized that it will not abandon the strategy of prevention to forestall an emerging threat before it materializes.[32] As a consequence of the 9/11 attacks and due to the characteristics of terrorist attacks that must be prevented before the threat becomes imminent, the US found the policy and action of prevention inevitably necessary and set a tone in redefining the condition upon which force must be used.

Debates ensued among state leaders, scholars, international lawyers, and journalists who evaluated and criticized the illegality and illegitimacy of the US policy and the use of preventive

---

[30] The White House, *The National Security Strategy of United States of America* (Washington, DC: 2002), 15.

[31] Ibid.

[32] The White House, *The National Security of United States of America*, (Washington, DC: 2006), 18.

force stating that the use of force against an emerging threat violates the international norm on the use of force that is only permitted after an actual attack as codified under the UN Charter Article 51 or upon an imminent attack as stipulated under customary international law based on Caroline case.

A Global Shift toward Prevention

Despite vociferous international criticism against the US policy and action, however, states raised the intensity of their voices toward the need for prevention against emerging threats, especially as terrorist attacks erupted and claimed numerous civilian lives in Bali in 2002 and Madrid in 2004. Tony Blair, stressing the need to fight terrorism and justifying military action in Iraq, stated, "Emphatically I am not saying that every situation leads to military action. But we surely have a duty and a right to prevent the threat materializing; and we surely have a responsibility to act" [33] while Vladimir Putin, another staunch opponent of the US action in Iraq, stated that Russia is "seriously preparing to act preventively against terrorists." [34] Australia, India, Israel, Japan, Russia, and the UK went further and vied for the criteria of using force to be amended. [35] Stressing that the nature of threat from terrorists and nuclear weapons from

---

[33] "Full Text: Tony Blair's Speech," *The Guardian*, March 5, 2004, https://www.theguardian.com/politics/2004/mar/05/iraq.iraq. Quoted in Peter Dombrowski and Rodger A. Payne, "The Emerging Consensus for Preventive War," *Survival* 48, no. 2 (2007): 118. Also see, Thomas M. Nichols, *Eve of Destruction: The Coming Age of Preventive War* (Philadelphia: University of Pennsylvania Press, 2008), 82.

[34] Thomas M. Nichols, "Anarchy and Order in the New Age of Prevention," *World Policy Journal* 22, no. 3 (2005): 9.

[35] Dombrowski and Payne, "Emerging Consensus," 118; Nichols, "Anarchy and Order," 9; Raimo Vayrynene, "Preventive Action by Military Means: A Contested Approach," *Global Security* 20, no. 1 (2006): 69-86; and Wolf-Dieter Eberwein and Bertrand Badie, "Prevention and Sovereignty: A Vision and a Strategy for a New World Order?" *Global Society* 48, no. 1 (2006): 1-24.

recalcitrant states necessitates the early institution of measures, former Italian Prime Minister Silvio Verlusconi stated that "new uses of military force may require 'a change in international law,' which previously held that the sovereignty of a single state was inviolable." [36] Similarly, former Australian Prime Minister John Howard stated that "the UN Charter's provisions concerning the use of force should be amended in order to effectively deal with the transnational nature of the terrorist threat." [37] France stated that "in today's context of foreseeable risks and threats, we must pay greater attention to missions of protection and to the means that allow prevention or foiling of aggression within the framework of prevention….Within this framework possible preemptive action is not out of the question, where an explicit and confirmed threat has been recognized." [38] China is the only state known to publicly oppose preemption and the idea of prevention for the fear of other states directing them toward it.[39] As violence against civilian lives increased due to terrorist attacks in cities like London in 2005 and in Glasgow in 2007 fueling greater concerns over the threats from terrorist groups and potential for their use of nuclear weapons that hostile states are attempting to proliferate, some states crystallized their expressed concerns into an actual security policy.

---

[36] Dombrowski and Payne, "Emerging Consensus," 117.

[37] Ibid.

[38] Nichols, *Eve of Destruction*, 83.

[39] Nichols, "Anarchy and Order," 10; and Dombrowsky and Payne, "Emerging Consensus," 120.

The Severity of Terrorist Attacks and the Propensity for Prevention[40]

A close examination of security doctrines of Australia, Canada, China, France, New Zealand, Russia, the UK, and the US released between 2005 and 2010 reflects the concerns of global terrorism and nuclear weapons proliferation by hostile states and the tendency toward the policy of prevention to combat against emerging threats in the future. States such as the France, the UK, and the US exhibited high propensity toward prevention measured in terms of contextual language that these states used in their national security doctrines. The national security policies of France, the UK, and the US contain the most explicit and strongest posture toward the policy of prevention and the need to fight emerging threats before the they grow into an imminent proportion that cannot be averted. An examination of the severity of terrorism that these eight countries incurred in their domestic territories in terms of the number of incidents, death, and

[40] Christy Lee, "An Emerging Norm against International Terrorism?" (Unpublished work: Harvard University, 2012), 8-15. A research was conducted to see if states' (the US, the UK, France, Russia, China, Canada, Australia, New Zealand) propensity for preventive posture depended on the severity of terrorism that these states incurred in their domestic territories. A high correlation was shown between the varying degree of preventive posture (1. retaliation, 2. preemption, 3. reserved claim on prevention, and 4. forthright claim on prevention) that the contextual language in security doctrines of these states exhibited and the severity of terrorism (number of death, injuries, and incidents) that these states incurred in their domestic territories. The degree of preventive posture was measured by reviewing the states' security doctrines published between 2005 and 2010 and assigning scales 1 to 4 to each country with 1 having no preventive posture and 4 having the strongest preventive stance. Scale 1 was assigned to the states that claimed their right to use force as a retaliation against the launch of an actual attack as stipulated by the UN Article 51. China, Russia, New Zealand, and Canada fell into this category. Scale 2 was given to the states that claimed their right to use force preemptively against an imminent attack which is in accordance with the *Caroline Doctrine*, and no states belonged to this category. Scale 3 was assigned to the states that exhibited reserved stance toward prevention, and Scale 4 was assigned to the states that showed forthright posture toward prevention in their security doctrines. The security doctrines of France, Australia, and the UK displayed reserved stance toward prevention and assigned with Scale 3. The US showed forthright posture toward prevention, thereby assigned with Scale 4. The severity of terrorism was measured by the counts of casualties, injuries, and incidents of terrorism that these states incurred in their domestic territories between 1980 to 2005 using data from http://www.start.umd.edu/gtd/search/. The "Terrorism Criteria" selected to obtain the data are: Criterion I: The act must be aimed at attaining a political, economic, religious, or social goal and Criterion III: The action must be outside the context of legitimate warfare activities, i.e., the act must be outside the parameters permitted by international humanitarian law (particularly the admonition against deliberately targeting civilians or non-combatants). The ambiguous cases were not selected, and the unsuccessful attacks were selected to include the number of attempted terrorist attacks. Only the known perpetuators were selected.

injuries revealed that France, the UK, and the US, the countries with strongest stance of prevention, suffered the greatest number of incidents, death, and injuries in their homeland between 1980 and 2005.

Table 2. The Severity of Terrorist Attacks 1980-2005[41]: Independent Variable

Countries	**Incidents**	**Casualties**	**Injuries**
US	81	3002	797 +
UK	31	328	812
France	109	63	526
Russia	12	13	4
China	0	0	0
Australia	5	4	3
New Zealand	0	0	0

[41] The severity of terrorism was measured by the counts of casualties, injuries, and incidents of terrorism that these states incurred in their domestic territories between 1980 to 2005 using data from http://www.start.umd.edu/gtd/search/. The "Terrorism Criteria" selected to obtain the data are: Criterion I: The act must be aimed at attaining a political, economic, religious, or social goal and Criterion III: The action must be outside the context of legitimate warfare activities, i.e., the act must be outside the parameters permitted by international humanitarian law (particularly the admonition against deliberately targeting civilians or non-combatants). The ambiguous cases were not selected, and the unsuccessful attacks were selected to include the number of attempted terrorist attacks. Only the known perpetuators were selected.

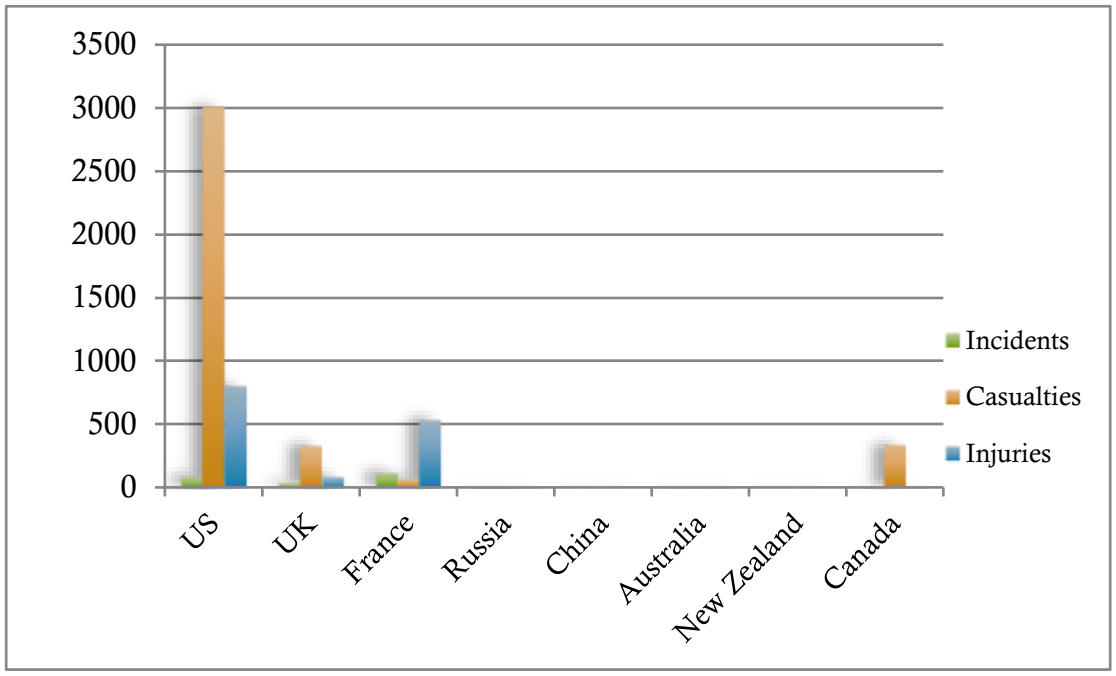

Figure 1. The Severity of Terrorist Attacks 1980-2005[42]

[42] Ibid.

Table 3. The Degree of Prevention[43]: Dependent Variable

The varying degrees of states' preventive stance contained in their doctrines was measured according to the following scale.

Scales	**Description**
Scale 1	If the policy statement emphasizes the use of force mainly as a means to defend its territory against an armed attack in accordance to the UN Charter
Scale 2	If the policy statement contains the permissive use of force against an imminent threat.
Scale 3	If the policy statement contains reserved posture toward the permissive use of force against a future emerging threat.
Scale 4	If the policy statement contains explicit posture toward preventive use of force against a future emerging threat.

[43] The degree of preventive posture was measured by reviewing the states' security doctrines published between 2005 and 2010 and assigning scales 1 to 4 to each country with 1 having no preventive posture and 4 having the strongest preventive stance. Scale 1 was assigned to the states that claimed their right to use force as a retaliation against the launch of an actual attack as stipulated by the UN Article 51. China, Russia, New Zealand, and Canada fell into this category. Scale 2 was given to the states that claimed their right to use force preemptively against an imminent attack which is in accordance with the *Caroline Doctrine*, and no states belonged to this category. Scale 3 was assigned to the states that exhibited reserved stance toward prevention, and Scale 4 was assigned to the states that showed forthright posture toward prevention in their security doctrines. The security doctrines of France, Australia, and the UK displayed reserved stance toward prevention and assigned with Scale 3. The US showed forthright posture toward prevention, thereby assigned with Scale 4.

Table 4. Scale Scheme and States' Propensity toward Prevention

Scale	**Claim on Force**	**Types of Threat**	**Relevant Law**	**Degree of Preventive-ness**	**States**
1	Retaliation	Claim on self-defense against an armed attack	Legal use of force based on UN Article 52	Least Preventive	China Russia New Zealand Canada
2	Preemptive Use of Force	Claim on self-defense against an imminent attack	Legitimate use of force based on Caroline Doctrine		
3	Reserved Preventive Use of Force	Claim on preventive self-defense against an emerging attack	Illegal and illegitimate		France Australia UK
4	Forthright Preventive Use of Force	Claim on preventive self-defense against an emerging attack	Illegal and illegitimate	Most Preventive	US

The US that incurred the highest number of casualties from international terrorism in its domestic territory, most notably from the 9/11 attacks, showed the most preventive stance among the eight countries by claiming its right to use force against emerging threats in *The National Security Doctrine* of 2006, which contains similar content, though less emphatic, as the one

issued in 2002. [44] Outlining the dangers from the threats of terrorism and nuclear weapons at the hands of hostile states, the US pronounced a shift from reactive policy to proactive policy of prevention by stating that it will "no longer simply rely on the deterrence to keep the terrorism at bay or defense measures to thwart them at the last moment," and that it will "[p]revent attacks by terrorist networks before they occur."[45] It further states that the duty to protect the Americans "obligates the government to anticipate and counter threats, using all elements of national power, before the threat can do grave damage. The greater the threat, the greater is the risk of inaction – and the more compelling the case of taking anticipatory action to defend, even if uncertainty remains as to the time and place of the enemy's attack."[46]

Similarly, the UK that incurred the highest number of injuries, the second highest in casualties and the third highest in the number of incidents of terrorism in its soil among the eight countries showed the second highest preventive stance in its security doctrines by, at first, reservedly stating that it will employ the strategy of prevention against the threats that have the potential to grow into a violence in the future but, later, more forthrightly claiming preventive self-defense against emerging threats. In *The National Security Strategy for the United Kingdom: Update 2009,* the UK emphasizes the need to "tackle security challenges early," by "scan[ning] the horizon for future challenges" and "tack[ling] not just threat as when they become real, but also the driver or causes of threat before they lead to potential damage to security." [47] In its 2010 doctrine *The National Security Strategy: A Strong Britain in an Age of Uncertainty*, the UK heightens its stance on prevention by stating that it will "place much more emphasis on spotting

[44] The White House, *The National Security* (2006), 8.

[45] Ibid., 12.

[46] Ibid., 18

[47] The United Kingdom, Cabinet Office, *The National Security Strategy for the United Kingdom: Update 2009: Security for the Next Generation* (HM Government: 2009), 28.

emerging risks and dealing with them before they become crisis," and that it will "tackle the causes of instability overseas in order to prevent risks from manifesting themselves in the UK."[48] In order to deal with emerging threats of the future and to prevent them from manifesting, the UK states that it will strengthen and employ its military "decisively at the right time…on tackling risks before they escalate." [49]

France that suffered the highest number of the incidents of international terrorism in its territory, the third highest in the number of injuries, and the fourth in the casualty among the eight countries also demonstrated the second highest propensity toward prevention. France also claimed its right to use all means of state instruments including military force to prevent emerging threats. If the UK focuses its language on tacking emerging threats, France, in *The French White Paper on Defense and National Security* published in 2008, emphasizes the measure of prevention. It states, "The aim of prevention is to avoid the emergence or the aggravation of threat to our national security. And effective prevention strategy will apply on a broad range of tools: diplomatic, economic, military, legal, cultural, combined and coordinated at the national and international levels." [50] By stating that it will rely on all state instruments, France expressly claimed its use of force to deal with emerging threats.

Significantly, the number of terrorism incidents, injuries, and casualties that these states incurred in their homeland and the propensity toward preventive use of force measured in their security doctrines resulted in high degree of correlation, demonstrating that the tendency for these states to adopt the policy of prevention to use force against emerging threats depended on the

---

[48] The United Kingdom, Cabinet Office, *The National Security Strategy: A Strong Britain in an Age of Uncertainty* (HM Government: 2010), 5 and 10.

[49] The United Kingdom, Cabinet Office, *The National Security Strategy: A Strong Britain,* 17.

[50] France, *The French White Paper on Defense and National Security* (2008), 11.

severity of terrorist attacks that they incurred in their soil. In other words, the adoption of strong policy stance on preventive use of force by France, the UK, and the US was contingent upon the atrocities of terrorist attacks that these states experienced in their cities. The correlation suggests that the states claimed their right to use force preventively not in the absence of an armed attack but in the presence of recurrent attacks perpetuated against civilians in their homeland. These states claimed preventive self-defense against the perpetuators of future threat based on the past attacks or aggression that posed endangerment to their national security. Recurrent terrorist attacks, coupled with the threats of nuclear weapons proliferation by hostile states and the nature of these threats rendering force ineffective at the point of imminence induced states to claim preventive use of force and have prompted them to use force early against the perpetuators of threats.

Table 5. The Severity of Terrorist Attacks and Propensity toward Prevention: Correlation

Rank	**# of Incidents**	**# of Casualties**	**# of Injuries**	**Preventive-ness Scale**
1	France 109	US 3002	UK 812	US 4
2	US 81	UK 328	US 797+	UK 3
3	UK 31	Canada 332	France 526	Australia 3
4	Russia 12	France 63	Russia 4	France 3
5	Canada	Russia	Australia	Russia

	9	13	3	1
6	Australia 5	Australia 4	Canada 3	Canada 1
7	New Zealand 0	New Zealand 0	New Zealand 0	China 1
8	China 0	China 0	China 0	New Zealand 1
r	0.70544309	0.61922593	0.74924137	

The tendency to adopt the policy of prevention is not exclusive to individual states. International and regional organizations including the UN, EU, and NATO have recognized that the modern threats of terrorism, nuclear weapons proliferation, and nuclear terrorism are salient impetus necessitating a shift from a reactive policy of wait until hit to proactive policy of counter the hit at the indication or even at the suspicion of a hit. [51] "Member states of the UN, the EU, and NATO, as such, seem to be edging toward a more preventive stance against terror, nuclear, biological, and chemical threats," [52] and "[p]olicies to counter WMD are emerging as a common denominator in transatlantic relations as the EU is also becoming more concerned about the threat posed by them."[53]

The shift in states' and international and regional organizations' policy stance suggests that the strict interpretation of international law, making force permissible as a retaliatory second

[51] Dombrowski and Payne, "Emerging Consensus," 116.

[52] Ibid., 117.

[53] Raimo Vayrynene, "Preventive Action by Military Means: A Contested Approach," *Global Security* 20, no. 1 (2006): 74.

strike upon an armed attack or as a preemptive first strike against an imminent attack will no longer be the standard to which the international community will adhere because they are ineffective against dealing with the threats that dominate the current security environment. States have also discarded the strategy of deterrence that attempts to prevent the first attack from occurring in the first place as it is insufficient in dealing with threats posed by terrorist groups. The nature of modern threats that necessitates early use of force and the shift in international policy stance on these threats has been inducing permissible claims on the use of force to achieve a greater degree of prevention and to enforce state responsibility.

III.

International Law:

The Evolutionary Path toward an Extended Claim of Self-Defense

Four legal ways exist on which a state could use force legally under current international security environment bound by what appears to be a gradual erosion of Westphalian ideal of state sovereignty and the principle of nonintervention. The legal claims on force can be made on the grounds of humanitarian intervention, the right of self-defense, an intervention by invitation or consent from a host country, and UN Security Council authorization. [54] These legal claims on the use of force has been affecting one another and reinforcing and reshaping each other toward the prevention of threats and enforcement toward state responsibility.

Humanitarian Intervention: Corollary to the Preventive Self-Defense

Humanitarian intervention, most significantly, opened the pathway toward a greater acceptability toward international community's use of force to protect civilian lives if their own state fails to fulfill its responsibility to do so and set a direction toward permissible use of force for the purpose of preventing threats that a state projects outwardly toward the citizens of other countries.

A path toward accepted justification for using force based on humanitarian crisis began with a heightened sense of value placed on human security which unbolted the locks on the principle of nonintervention on the territorial integrity of a sovereign state and allowed accepted practice of using force to protect the lives of civilians. This path of intervention, like the evolving

[54] Richard K. Betts, "Striking First: A History of Thankfully Lost Opportunities," *Ethics & International Affairs* 17, no. 1 (2003): 17.

norm on the use of force against emerging threats, took on gradually with turns and twists toward becoming an accepted norm.

Before terrorist attacks targeting civilian population in metropolitan regions became rampant in inducing the use of force to combat terrorism, humanitarian crises necessitated the use of force to prevent massive and brutal killing of innocent lives that fell victim to civil and ethnic strife. Based on the necessity to prevent massacres and genocide, humanitarian intervention became another pathway on which force could be legitimately claimed.

The first instance that spurred the UN Security Council to pass a resolution authorizing force for humanitarian cause, declaring that human suffering at a massive scale was tantamount to a threat to international peace and security, was during the Somalian crisis. [55] Until then, no mechanism was considered to exist under the UN Charter, the product of post-World War II that designed to prevent another great war by prescribing nonintervention, on which the Security Council acted to authorize an intervention using force on another country's internal affairs. [56] Due to the sheer atrocity of the crisis, the Security Council passed Resolution 794 in 1992, "determining that the magnitude of the human tragedy caused by the conflict in Somalia … constituted a threat to international peace and security" and invoking Chapter VII of the Charter, authorized member states "to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia" while calling "on all Member States which are in a position to do so to provide military force." [57] Acting under Resolution 794, the US sent its troops to provide relief assistance. Soon after its involvement, though, it became

[55] Nichols, *Eve of Destruction*, 20

[56] Ibid., 21

[57] SC Resolution 794, "Somalia," Adopted by the Security Council at its 3145th meeting, December 3, 1992, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/794(1992).

embroiled in the internal civil war and after sacrificing a significant number of troops, the US withdrew to avoid further loss.[58]

The debacle of the US involvement in Somalia influenced the US and other major Western powers from taking any action in the next major humanitarian crisis that occurred in Rwanda. [59] Despite witnessing almost a million people being killed brutally in a horrific genocide of Tutsi minority by the Hutu majority, the international community remained silent. The inaction and silence toward Rwanda, because of widespread and loud condemnation toward international neglect on massive civilian death that could have been prevented with an intervention by force, ironically though, induced action toward humanitarian crisis in Bosnia and Kosovo in the following years, serving as a progressive milestone toward the accepted norm of using force for the purpose of saving human lives. The US decision that led NATO against Bosnian Serbs in 1995 began in response to the rising death toll that amounted to 100,000 people, mainly Bosniak and Croatian civilians killed in ethnic cleansing, and a large-scale air operation was expanded under Operation Joint Endeavor. The action that was undertaken in Bosnia-Herzegovina represents the case in which the Western powers were willing "to use military power as an instrument of humanitarian relief"[60] after the lesson learned from their inaction in Rwanda.

If the practice of humanitarian intervention became an accepted norm through the conflict in Bosnia, then the concept of the norm expanded through the humanitarian crisis in Kosovo. It was at this point just prior to the turn of the new millennium when innumerous civilian lives were being lost that the international community began to recognize the significance of human security and human rights issues and viewed the use of force as an instrument of saving lives through

---

[58] Nichols, *Eve of Destruction,* 21.

[59] Ibid., 22-28.

[60] Ibid., 28.

humanitarian intervention not just as an accepted norm but a necessary practice. Resolution 1199 extensively describes the Security Council's concern over the Serbian genocide of ethnic Albanians and the need to prevent further death and displacement of lives. By emphasizing,

> numerous civilian casualties…the displacement of over 230,000 persons from their homes…. Deeply concerned by the flow of refugees…up to 50,000 of whom the United Nations High Commissioner for Refugees has estimated are without shelter and other basic necessities…. Reaffirming the right of all refugees and displaced persons…Deeply concerned by the rapid deterioration in the humanitarian situation throughout Kosovo, alarmed at the impending humanitarian catastrophe… and emphasizing the need to prevent this from happening…. Deeply concerned also by reports of increasing violation of human rights…and emphasizing the need to sure that the right of all inhabitants of Kosovo are respected, [61]

the UN Security Council, invoking Chapter VII of the Charter, declared the armed conflict in Kosovo as the threat to international security.

However, it did not explicitly authorize force. NATO, acting on its own accord, directed Operation Allied Force against the Milosevic regime and the Serbians in 1999.[62] The critics of the NATO's intervention advance an argument similar to the arguments made by the opponents of the US's preventive action in Iraq. They argue that the NATO's large-scale military action without the prior Security Council authorization stretched the limits of international law and raised "significant doubts about the status of the law governing the use of force and the viability of United Nations primacy in matters of international peace and security."[63] Generally, though, the humanitarian intervention in Kosovo is viewed justified and legitimate, and this action by NATO, as critics even observed, "contribute[d] to a broader phenomenon, a loosening of the legal and political constraints on the use of force." [64] It served to legitimize the use of force to defend

[61] SC Resolution 1199, "Kosovo (FRY)," Adopted by the Security Council at its 3930th meeting, September 23, 1998, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1199(1998).

[62] Nichols, *Eve of Destruction,* 30.

[63] David Wippman, "Kosovo and the Limits of International Law," *Fordham International Law Journal* 25, no. 1 (2001): 129.

[64] Ibid.

human lives. Through Kosovo crisis, "a new norm was established: collective intervention against a government committing serious human rights violation could be justified, especially when these violations threaten regional or international peace and security." [65] The Kosovo case signify "a turning point in which major power in the international system made clear that they would go to war not only for traditional reasons of state, but to defend moral precepts they valued so highly as to count them as part of their national interest."[66]

From Somalia to Kosovo, state practices on using force changed in response to the changing conditions of international security that deemed the use of force necessary. The incidents of international conflicts causing massive civilian death in humanitarian crisis and changing perceptions toward the use of force as a measure to protect human lives prompted the International Commission on Intervention and State Sovereignty to issue *The Responsibility to Protect*[67] three months after 9/11 in 2001. The report by the Commission frames this shift in norms and practice by elevating, first, the security and the value of human lives and then, heightening the role of state responsibility toward this cause as a prerequisite of being endowed with the privilege of state sovereignty. The violation of this state responsibility risks losing that privilege and could trigger the transfer of the responsibility to the international community. The Commission argues that states have a paramount responsibility to protect the security of its citizens. When states are either unwilling or unable to provide protection for their citizens by intentionally terrorizing them or unintentionally failing to provide governance over the sources of

---

[65] Stanley Hoffmann, "America Goes Backwards," *New York Review of Books,* June 12, 2003, 79. Quoted in Nichols, *Eve of Destruction*, 30.

[66] Nichols, *Eve of Destruction,* 30.

[67] International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, 2001.

violence, "the principle of nonintervention yields to the international responsibility to protect." [68] Furthermore, the international community not only have the responsibility to protect but also to prevent crisis that originate from a state's sovereign territory.

Three changes that began to take shape since Somalian crisis and that became very concrete after Kosovo and that which were framed in *The Responsibility to Protect* have been influencing the norm on the use of force further. The increased valued of human security, the role of state responsibility, and the need for international intervention to protect citizen lives from conflicts occurring inside a state boundary have been affecting international community's acceptability toward using force to prevent threats directed outside a state's territory toward the citizens of other states through greater emphasize placed on states' responsibility on governance over violence originating from its territories. [69] If the principles of *The Responsibility to Protect* and the necessity for humanitarian intervention has been borne as the product of a state's conflicts and violence directed against civilians inside its border, then, the still evolving norm on the preventive use of force on the perpetuators of modern threats is the result of those threats streaming externally outside a state's territories to target civilians of other states.

The Use of Force and the Right of Self-Defense

UN Charter Chapter VII Article 51 and Caroline Case: Armed Attack and Imminent Attack

[68] ICISS, *The Responsibility,* xi.

[69] For the international community's responsibility to prevent terrorism and nuclear weapons proliferation by hostile states, see Lee Feinstein and Anne-Marie Slaughter, "A Duty to Prevent," *Foreign Affairs* (2004): 142. Feinstein and Slaughter state, "The duty to prevent is the responsibility of states to work in concert to prevent governments that lack internal checks on their power from acquiring WMD or the means to deliver them. In cases where such regimes already possess such weapons, the first responsibility is to halt these programs and prevent the regimes from transferring WMD capabilities or actual weapons. The duty to prevent would also apply to states that sponsor terrorism and are seeking to obtain WMD."

A state could legally claim the right to use force as a self-dense on the basis of two bodies of international law as the US had done after 9/11 to defend itself from the terrorist threat emanating from Afghanistan which was considered legal in accordance to the strict interpretation of "armed attack" criterion in Article 51 of Chapter VII of the UN Charter and against the perceived nuclear threat from Iraq that was considered unlawful by the standards of the narrow interpretation of "armed attack" in Article 51 as well as the broad interpretation of "imminent attack" under customary international law. The narrow interpretation of the two criteria – "armed attack" and "imminent attack" – in the international law on the use of force that serve as the primary conditions of violence or threat against which a state could claim the right to defend itself by using force are currently being contested in their application toward the modern threats as these criteria are considered inadequate threshold to defend against sudden, surprising, or unknown time of attacks. Increasingly, due to the nature of the delivery of the attacks that strips away the ability defend against these attacks if adhering to the strict interpretation of the prescribed law, alternative interpretations that extends self-defense on "armed attack" and "imminent attack" are suggested as justifiable claims upon which force could be used.

An extended claim of self-defense based on stricter interpretation of a substantial state involvement in international terrorism derived from the principles behind humanitarian intervention which places the burden of proof to an adversarial state, with the UN resolutions continuing to serve as an enforcement mechanism and increased imposition of responsibility toward civilians both internally within its domestic territories and externally toward other states in the international system as a prerequisite of being endowed with state sovereignty that *The Responsibility to Protect* has been promulgating, as well as on broad interpretation of imminence, not only in terms of temporal immediacy to cause an attack but also temporal opportunity to prevent threats by evaluating a state's capability to cause harm based on its intention to inflict

harm – not merely in terms of rhetoric pronouncement but the kind of aggressive acts that an adversary has exhibited in the past and also displaying in the present that constitutes as a consistent provocation of conflict or constant violation of international treaty or UN resolutions, thereby increasing the likelihood of escalating threat in the future – should become a primary standard on which the legitimacy of preventive self-defense should rest.

According to the international codified law stipulated under the UN Charter Article 51 of Chapter VII, the use of force is only legally permissible as self-defense against an attack that had already occurred after all other means have been exhausted. Article 51 states, "Nothing in the present Charter shall impair the inherent right of an individual or collective self-defense if an armed attack occurs against a Member of the United Nations." [70] Under the customary international law set forth by the Caroline case, using force as self-defense against an imminent attack that is "instant, overwhelming" and leaves "no choice of means" and "no moment of deliberation" is also considered legal. [71] The standard of imminence based on *Caroline* case contains essentially two characterization of an imminent attack or threat – the time and scale of an attack or the level of threat. "Instant" suggests that an attack and threat must occur either right now or in the immediate future. "Overwhelming" signifies that the scale of an attack or the level of threat must be extensive. "Leaving no choice of means" denotes that all other means must have been exhausted because either they have been utilized before or there is, again, no time to implement them. "No moment of deliberation" also suggests that an attack or threat is impending, depriving of any time to ponder upon what measures to use. According to these standards, an attack or threat must be substantially damaging and imminent, and force is legally permitted for

---

[70] *Charter of the United Nations*, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, http://www.un.org/en/sections/un-charter/chapter-vii/.

[71] Letter from U.S. Secretary of State Daniel Webster to British Plenipotentiary Lord Ashburton, August 6, 1842, http://avalon.law.yale.edu/19th_century/br-1842d.asp#web1.

the purpose of retaliation against an armed attack that had already occurred or preemption against an attack or threat that is impending but not for prevention against an emerging threat that is developing and has not manifested into a delivery stage of an attack. Broadly two kinds of interpretation exist on armed attack and imminent attack criteria.

Narrow Interpretation: Self-Defense against an Armed Attack

Advocates of the narrow interpretation of armed attack in Article 51 or "restrictionists" preclude the incorporation of preexisting international customary law in the Charter, thereby discounting the "imminent attack" criterion set by the customary law based on *Caroline* case as being legal. The proponents of narrow interpretation adhere to the literal meaning of "armed attack" [72] and "occurs" in Article 51, arguing that an attack must happen before a state can claim self-defensive force. This interpretation "permits recourse to [a unilateral] self-defense only when faced with actual 'armed attack,'" prohibiting, by default, any "anticipatory or pre-emptive actions by a state so threatened." [73] A physical evidence of an attack must take place first before any claim on self-defense can be made[74] at which point the attack cannot be refuted or disputed as not having been occurred. In this regard, proponents of narrow interpretations distinguish an actual attack from imminent attack or threat, asserting that self-defense claim against an imminent

---

[72] James J. Wirtz and James A. Russell, "U.S. Policy on Preventive War and Preemption," *The Nonproliferation Review* 10, no. 1 (2003): 117; Michael Bothe, "Terrorism and the Legality of Pre-emptive Force," *European Journal of International Law* 14, no. 2 (2003): 229; and Dershowitz, *A Knife,* 202. Wirtz and Russell state, "The overall impact of the UN Charter generally was to narrow the international legal justification governing when states could resort to force. The UN Charter…called on all member states to refrain from the threat or the use of force against the territorial integrity or political independence of other member states."

[73] Jackson Nyamuya Maogoto, "Rushing to Break the Law? 'The Bush Doctrine' of Pre-emptive Strikes and the UN Charter Regime on the Use of Force," *University of Western Sydney Law Review* 7, no. 1 (2003): 31.

[74] Ibid., 37, 39.

attack or threat that is yet to happen is considered unlawful, noting that the power to authorize the use of force against a "threat to peace" lies with the Security Council under Article 39 of Chapter VII of the Charter. [75] The basis of narrow interpretation stems from the view that when self is too broadly defined, a defensive action could look like an aggression. [76] Proponents of narrow interpretation also argue that using anticipatory self-defense against a threat that has not happened sets a bad precedent for other states to follow, which could lead to more violence and conflict in the end. [77]

Broad Interpretation: Self-Defense against an Imminent Attack

Proponents who broadly interpret international law on the use of force or "counter-restrictionists" argue that the Charter recognizes the right of anticipatory self-defense against an imminent attack specified under the customary international law. [78] They contend that since anticipatory force was permissible form of self-defense under customary international law, a practice exercised by states long before the adoption of the UN Charter, it should be an acceptable form of self-defense under Article 51 and that the imminence of an attack serves as a legal basis for using force before an actual armed attack is launched. [79] They argue that "the intent

---

[75] Bothe, "Terrorism and the Legality of Pre-emptive Force," 229. Bothe states: "The conclusion is thus clear: 'armed attack in the sense of Article 51 is an actual armed attack, which happens ('occurs'), not one which is only threatened."

[76] Neta Crawford, "The Slippery Slope to Preventive War," *Ethics & International* Affairs 17, no. 1 (2003): 31.

[77] Also see, Donald C. F. Daniel, Peter J. Dombrowski, and Rodger A. Payne, "The Bush Doctrine: Rest in Peace?" *Defense Studies* 4, no. 11 (2004): 31; and Gu Guoliang, "Redefine Cooperative Security, Not Preemption," *Washington Quarterly* 26, no. 3 (2003): 138. Daneiel, Dombrowski, and Payne argue that preemption of the US allows other countries to emulate its doctrine. Gu Guoliang states that "[a]dopting a preemptive strategy sets a bad example for other governments and could have a seriously negative global impact"

[78] Maogoto, "Rushing to Break the Law?" 32.

[79] Anthony Clark Arend, "International Law and the Preemptive Use of Military Force," *Washington Quarterly* 26, no. 2 (2003): 90.

of the charter was not to restrict the preexisting customary right of anticipatory self-defense … the reference in Article 51 to an 'inherent right' indicates that the charter's framers intended for a continuation of the broad pre-UN Charter customary right of anticipatory self-defense." [80] From this view, preemptive use of force against an imminent attack or threat is considered legal.

Armed Attack and Imminent Attack Criteria Evaluated against Nuclear Terrorism: Elements of Uncertainties

Both the narrow and broad interpretation of armed attack and imminent attack criteria loses utility when evaluated against nuclear terrorism. Waiting until an armed attack to occur before a state can permissibly claim self-defense deprives a state from exercising its right to primary defense against the first blow which strips away the element of defense in self-defense. By definition, self-defense carries a notion of prevention, the action carried out to resist or avoid an attack in the first place. The application of an armed attack criterion toward a nuclear terrorism is disregarded just as in conventional nuclear attack because the result of a nuclear explosion would be so disastrous for a state to wait and endure the first strike. "If this [strict interpretation] is the intended meaning of Article 51, then it is not only unrealistic, but also morally unacceptable, especially in an age of weapons of mass destruction, when a first strike can be catastrophic and make reactive self-defense more difficult or even impossible. Not surprisingly, Article 51 in its most restrictive interpretation, has been widely ignored."[81] Even when a defensive action appears offensive under broader parameters on which self-defense could be claimed, if what might appear to be an offensive action could prevent an armed attack that brings

---

[80] Ibid., 92.

[81] Dershowitz, *The Knife*, 202.

greater violence otherwise without the use of force, then force must be authorized against such an attack.

At the same time, the standard of imminent attack also loses utility when evaluated against nuclear terrorism. It may be possible to discern "instant" and "overwhelming" occurrence of an attack in a conventional attack. In nuclear terrorism, waiting for an attack to occur "overwhelmingly" and in an "instant" means that the capabilities to inflict an attack has reached the domestic territories of a state ready to explode in any moment. Waiting for the capabilities of nuclear terrorism to explode overwhelmingly in an instant deprives the time available to utilize any measures including force. Particularly and significantly, the difference between the imminence in traditional attack and in nuclear terrorism is presumed to be the difference in the uncertainties associated with the nuclear transfer and nuclear attack stages.

In a traditional state-to-state conflict, a state's development or possession of weapons does not constitute as an imminent level of threat until it is deployed for the purpose of attacking another state. Therefore, the notion of imminent threat is generally viewed in terms of temporal proximity to an armed attack.[82] The enemy's mobilization of arms for the purpose of launching an armed attack or at "the last stage of mobilization of critical mass" signals that threat would manifest soon,[83] upon which force can legally be used to preempt the attack.

---

[82] Crawford, "The Slippery Slope," 31; and Michael N. Schmitt, "U.S. Security Strategies: A Legal Assessment," *Harvard Journal of Law & Public Policy* 27, no. 3 (2004): 755. Crawford states that "imminent threats are those which can be made manifest within days or weeks unless action is taken to thwart them." Schmitt states: "Traditionally, the imminence criterion was viewed in terms of temporal proximity; i.e., self-defense can only occur as a pending, armed attack is about to be launched…. This approach made sense when armies had to mobilize to go to war and combat was linear, concentrated along a fairly well defined line."

[83] Dieter Janssen, "Preventive Defense and Forcible Regime Change: A Normative Assessment," *Journal of Military Ethics* 53, no. 2 (2004): 116. He states, "An attack may be considered a reaction to an imminent threat when the last stage of mobilization of the critical mass of enemy force is reached. 'Critical mass' here denotes the amount of forces or weapons systems that according to reasonable probability are necessary to overwhelm us."

Applying this notion of imminence to nuclear terrorism dictates that the time when an adversary mobilizes its weapons for the purpose of attacking another state is equivalent to the time when nuclear weapon is mobilized or transferred from a hostile nuclear state or an unsecure location to terrorists who would launch the attack. This marks the level of imminence to begin at the stage of nuclear transfer when terrorists have nuclear materials in their hands and end when they enter a target state, which marks the beginning of the nuclear attack stage. Applying further the notion of imminence that makes the use of force permissible to nuclear terrorism suggests that the period after terrorists enter a target state just prior to a nuclear attack marks the moment of imminence and when force becomes permissible.

Considering the mobilization of arms as the point of imminence, however, is problematic in nuclear terrorism due to the elements of uncertainties related to nuclear transfer and attack stages. First, the uncertainties related to nuclear transfer stage such as when and where terrorists would obtain nuclear material is difficult to ascertain. In traditional conflict, a mobilization of arms is readily detectable with the visible preparation of weapons. In nuclear terrorism, terrorists' capabilities to disguise themselves as civilians and to operate in multiple cells that could be set up and dismantled within any state boundaries make their activities related to acquiring weapons highly undetectable.

Also, determining the uncertainties associated with the attack such as when, where, and how an attack would take place is more difficult in nuclear terrorism than traditional conflict because terrorists' capabilities to launch surprise attacks. Even if these unknown elements are identified, the use of force as the last preventive measure becomes ineffective at this point after terrorists enter a target state with nuclear materials.[84] At the same time, the time between nuclear transfer and nuclear attack stages does not provide a wide window of opportunity to use force to

[84] Schmitt, "U.S. Security Strategies," 755. Schmitt states, "To require states to wait until the blow is about to fall would often render them defenseless."

prevent the attack because after terrorists obtain nuclear material, they could enter a target state at any given time.

Table 6. The Elements of Uncertainties in the Three Stages of Nuclear Terrorism

Stage 1:	**Unknowns in Nuclear Development Stage**
Actors (Who)	1. Development: Hostile nuclear developing or possessing states 2. Attempted Procurement: Terrorist organizations
Time (When)	Any point on the continuum of this stage
Location (Where)	1. Development: Within the boundaries of hostile nuclear states 2. Attempted Procurement: Anywhere
Method (How)	1. Development/Enhancement: Clandestine 2. Attempted Procurement: Theft, purchase, exchange

Stage 2:	**Unknowns in Nuclear Transfer/Attack Stage**
Actors (Who)	Transfer from a hostile nuclear state to a terrorist organization
Time (When)	Any point on the continuum of this stage
Location (Where)	Anywhere
Method (How)	Theft, purchase, exchange

Stage 3	**Unknowns in Nuclear Attack**
Actors (Who)	A terrorist organization
Time (When)	Any point on the continuum of this stage
Location (Where)	Anywhere
Method (How)	Assumed unconventional surprise attack

Because the time that imminent attack criterion permits preemptive use of force is just prior to the actual attack, which would equate to the time when terrorists have mobilized weapons and entered the target country, it is ineffective standard in authorizing the use of force to prevent the threat from nuclear terrorism. Similar logic of reason can apply to terrorism without the employment of nuclear weapons. Above all, the uncertainties of when and where transfer and attack of nuclear weapons by terrorist would occur in nuclear terrorism and when and where attack would be targeted in regular terrorist attack makes the use of force against imminent level of threat just before an attack is launched ineffective.

Due to the inopportune time to use force effectively against an imminent threat, states are targeting terrorists' capabilities to launch further possible attack that is likely to emerge by using force early to strike their bases and strongholds in foreign territories. In essence, states have brought the battle to the enemies' base of operation. The tendency to use force prior to imminent threat against nuclear terrorism is summarized below.

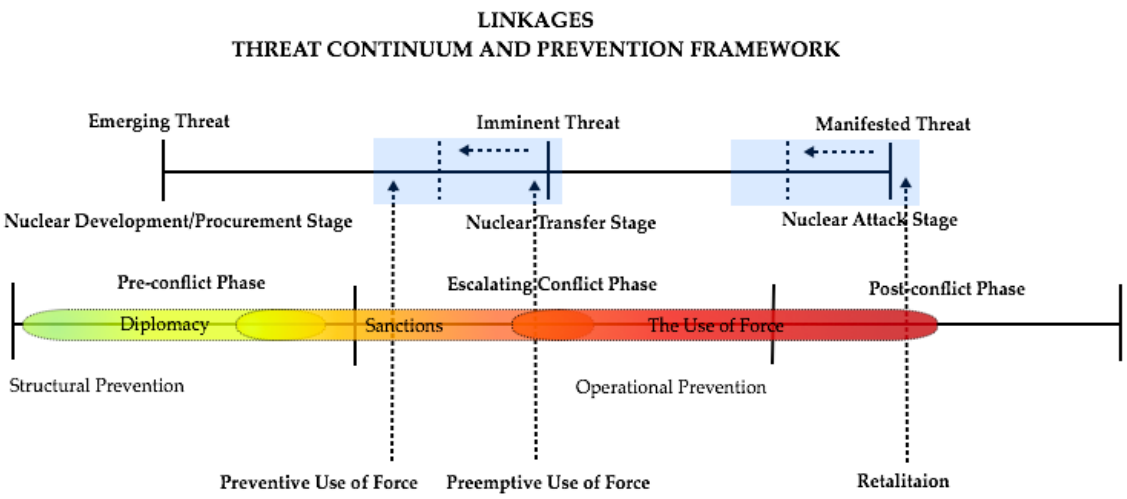

Figure 2. Linkages: Threat Continuum and Prevention Framework

An Armed Attack and Terrorist Attack:

Interpretations on the Degree of a State's "Substantial Involvement"

Directing force permissibly against terrorists in the territory of a foreign state requires a substantial state involvement in terrorism. A predominant legal argument prescribes that an armed attack must originate from a state itself or that a state must sufficiently be involved in a non-state violent acts in order for an attacked state to claim permissible right to defend itself using force. [85] The interpretation of legal rationale based on the "substantial involvement" of a state in terrorism, initially limited its scope set on the kind of perpetuator on which force could be used. But as a greater state responsibility toward terrorism is demanded due to greater attacks launched from terrorists basing their operations in states like Afghanistan, Iraq, Pakistan, and Syria that are associated with terrorism in varying degrees, the tendency exists to extend the

[85] Bothe, "Terrorism and Legality of Pre-emptive Force," 230.

interpretation toward lessening the degree of the substantial state involvement in terrorism which enlarges the conditions upon force could be used.

The interpretation of "substantial involvement" of a state stems from the definition of aggression defined in Resolution 3314 adopted by the UN General Assembly in 1974 and a ruling on what constitutes as an armed attack by the International Court of Justice which relies on GA Resolution 3314 in the 1986 case of *Nicaragua v. United States*. GA Resolution 3314 defines aggression as "the sending by or on behalf of a State of armed bands, groups, irregular or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein."[86] Citing this definition of aggression, the ICJ in *Nicaragua v. United States* case ruled that an "armed attack must be understood as including not merely action by regular armed forces across an international border, but also 'sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity to amount to…an actual armed attack conducted by regular forces, 'or its substantial involvement therein.'" [87]

This "substantial involvement" requirement is interpreted, in a stringent sense, a state sponsorship in a form of active control or directives and, to a lesser degree, a support in the forms of training, equipment, money, transportation, etc. provided to terrorist groups. [88] This means the

---

[86] United Nations General Assembly (GA), Resolution A/3314, "Definition of Aggression," December 14, 1974, https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement .

[87] International Court of Justice, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), June 27, 1986, http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5.
Cited in W. Michael Reisman and Andrea Armstrong, "The Past and Future of the Claim of Preemptive Self-Defense," *American Journal of International Law* 100, no. 3 (2006): 533.

[88] Gregory M. Travalio, "Terrorism, International Law, and the Use of Military Force," *Wisconsin International Law Journal* 18, no. 1, (2000): 150.

attacked state can claim self-defensive use of force against the territories of a state that sponsor or support terrorists.

According to the interpretation that defines armed attack as a state sponsored or supported terrorism, the US military action against the Taliban in Afghanistan is considered legal because there was a strong indication that the regime sponsored and supported al-Qaeda. The US reported to the UN Security Council on October 7, 2001 that it had "clear and compelling information that the al-Qaeda organization, which is supported by the Taliban regime in Afghanistan, had a central role in these attacks," and in response to this information linking al-Qaeda to Taliban in Afghanistan, the US will take actions "designed to prevent and deter future attacks on the United States" including "measures against al-Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan." [89] The US claim of preventive self-defense against al-Qaeda and the Taliban in Afghanistan is considered legal because of the clear establishment between the terrorist group's attack against the US and the Taliban's sponsorship of the terrorist group.

The link between al-Qaeda and Taliban was well established before this report was submitted after the 9/11 attack. The resolutions passed by the Security Council drew a clear connection between the terrorist group and the state-sponsorship of the Taliban in Afghanistan, serving as enforcement mechanism that ascribed the responsibility of terrorism to Taliban and demanding it to cease its terrorist acts. In Resolution 1214 passed on December 8, 1988, the Security Council expressed its concern on the "continuing use of Afghan territory, especially area controlled by the Taliban, for sheltering and training terrorists and planning of terrorist acts"

[89] SC, S/2001/946, "Letter Dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council, October 7, 2001, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2001/946. Quoted in Jack M. Beard, "America's New War on Terror: The Case for Self-Defense Under International Law," *Harvard Journal of Law & Public Policy*, 25, no. 2 (2002): 560.

demanding "the Taliban stop providing sanctuary and training for international terrorists and their organizations." [90] Furthermore, after the US embassies in Kenya and Tanzania were attacked by Osama bin Laden operatives in 1988,[91] the UN Security Council passed Resolution 1267 in October 1999 and demanded that Osama bin Laden be turned over to the authority in the country he was indicted, stating that it was "[s]trongly condemning the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts" and "[d]eploring the fact the Taliban continues to provide safe haven to Usama bin Laden and to allow him and other associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations."[92] When the Taliban rejected the demands, the Security Council passed Resolution 1333 in 2000 which continued to demand that Taliban "act swiftly to close all camps where terrorists are trained with the territory under its control." [93]

Soon after the 9/11 attacks the Security Council passed Resolution 1368 and emphasizing the issue of state responsibility for sponsoring and supporting terrorism by stating "that those responsible for aiding, supporting of harbouring the perpetuators, organizer and sponsors of these

---

[90] SC, Resolution 1214, "Afghanistan," Adopted by the Security Council at its 3952nd meeting, December 8, 1998, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1214(1998). Quoted in Beard, "America's New War on Terror," 582.

[91] James C. McKinley, Jr., "Two U.S. Embassies in East Africa Bombed," *The New York Times,* August 8, 1988, *https://partners.nytimes.com/library/world/africa/080898africa-bombing.html*; and William Claiborne, "Bombs Explode at 2 U.S. Embassies in Africa: Scores Dead," *The Washington Post,* August 8, 1998, http://www.washingtonpost.com/wp-srv/inatl/longterm/eafricabombing/stories/main080898.htm; Jason Burke, "Africa embassy bombings: attacks that propelled Bin Laden into the limelight," *The Guardian,* January 20, 2015, https://www.theguardian.com/world/2015/jan/20/africa-embassy-bombings-osama-bin-laden-kenya-tanzania-al-qaida.

[92] SC, Resolution 1267, "Middle East," Adopted by the Security Council at its 4051st meeting, October 15, 1999, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1267(1999). Quoted in Beard, "America's New War on Terror," 582-583.

[93] SC, Resolution 1333, "Afghanistan," Adopted by the Security Council at its 4251st meeting, December 19, 2000, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1333(2000).

acts will be held accountable," gave legal authority for the US to exercise its "inherent right of individual and collective self-defense" against Afghanistan to "bring to justice the perpetuators, organizers, and sponsors of these terrorist acts." [94] Upon clear establishment of connection between the past records and magnitude of state sponsorship in terms of control and direction, as well as support in providing training, territory, and finance, the Taliban regime in Afghanistan was held responsible for al-Qaeda's attack and force on Taliban considered legal.

Extended Claim of Self-Defense on a State's "Substantive Involvement" in Terrorism

The degree of a state's "substantive involvement" in the acts of terrorist attack can be largely divided into an active involvement including the acts of state sponsorship and support and a passive involvement including a state's "toleration" and "inaction." [95] Sponsorship and support are forms of a state's direct involvement in terrorism such as, as mentioned above, command and control in the case of a sponsorship and the provision of training, equipment, territory, money, and transportation in the case of a support. Toleration is defined by an association where a "state makes no effort to arrest or suppress the terrorist, although it does not actively support or direct them" and inaction as the condition that a "state, because of political factors or inherent weakness, is simply unable to deal effectively with terrorists." [96] States that sponsor, support, and tolerate terrorists and their activities can be further categorized as the states that are unwilling to quell terrorists activities within their territories and states that does not have the means to effectively deal with terrorist operations within their boundary as unable states.

---

[94] SC Resolution 1368, "Threats to International Peace and Security Caused by Terrorist Acts," Adopted by the Security Council at its 4370th meeting, September 12, 2001, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1368(2001). Quoted in Jeffrey F. Addicott, "Legal and Policy Implications for a New Era: The 'War on Terror,'" 4, no. 209 (2002): 219-220.

[95] Travalio, "Terrroism," 150.

[96] Ibid.

The higher the degree of state involvement in terrorism, the greater the extent of legitimacy on the claim of self-defense[97] as well as the responsibility that can be attributed to states. States with active and willing involvement – sponsoring and supporting – are held the most accountable, and the legitimacy for using force against these types of states becomes greater. Increasingly though, states with passively willing – states that tolerate terrorist operation in its soil – are being considered to be held with the same kind of accountability as states that sponsor and support terrorism if the magnitude of attacks from terrorists that dwell in the territories of these states are considered substantial by invoking Article 2 (4) of the Charter. The "international community appears to be willing to apply international legal prohibitions, including Article 2 (4) of the U.N. Charter, to states that sponsor or support terrorists, and even to apply these prohibitions to states that merely acquiesce in their organized activities on their territory. The attitude of states in this area has been evolving toward stricter standards of state responsibility and imposition of clear obligations." [98] Article 2 (4) of the Charter demands that states "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[99] By imposing this prohibition, states that tolerate terrorist operations in their territories in addition to states that sponsor or support terrorists are considered a threat to international security and required to adhere to the same rules that apply to states that are targeted by terrorism.

The imposition of increased responsibility for terrorism on states that tolerate terrorist operation in their territory can be seen in Resolution 1373 passed after the Security Council

---

[97] Ibid., 147 and 151.

[98] Beard, "America's New War on Terror," 579.

[99] *Charter of the United Nations*, Chapter I: Purposes and Principles, Article 2, Paragraph 4, http://www.un.org/en/sections/un-charter/chapter-i/index.html.

reaffirmed that the US has the inherent right of self-defense against Taliban and declared that al-Qaeda's terrorist attacks as the breach of international peace and security.[100] Resolution 1373 demanded all states to:

> Refrain from providing any support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply weapons to terrorists…Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe haven…Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other State or their citizens.[101]

It includes wider range of active or passive acts for which states will be held responsible in their association with terrorism activities including helping in planning, facilitating, and lending territories to terrorists.

Years before 9/11 and terrorism became a greater concern, resolutions were passed condemning states' association of terrorism in another state in a form of toleration and inaction by acquiescing in terrorism operation in their territories even if they are not involved in active planning or support of terrorist activities. UN General Assembly passed 40/61 in December 1985 and Security Council Resolution 748 passed in March 1992 called upon states to fulfill their obligation by extending all forms of state involvement, participation, and acquiescence in terrorism by invoking Article 2 (4) prohibition.[102]

---

[100] Beard, "America's New War on Terror," 581-582.

[101] SC, Resolution 1373, "Threats to International Peace and Security Caused by Terrorist Acts," Adopted by the Security Council at its 4385th meeting, on 28 September 2001, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1373(2001). S/RES/1373 (2001) states that "every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organizing activities within its territory directed toward the commission of such acts."

[102] GA, Resolution 40/61, "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes," Adopted in 108th Plenary Meeting, December 9, 1985, http://www.un.org/en/ga/search/view_doc.asp?symbol= A/RES/40/61; and SC, Resolution 748, "Libyan Arab Jamahiriya," March 31, 1992, http://www.un.org/en/ga/

The increased responsibility demanded on states for terrorism operations in their territories has a decreasing effect on the degree of substantial state involvement required for targeted states to claim self-defense. In the modern international security environment where terrorists that inflict recurrent attacks base their operation not just in states that sponsor or support them but also in states that tolerate terrorist operation in their territories and that are unable to govern over terrorist activities within its borders, greater state responsibility toward governance over terrorist activities in their territory must be enforce, and the states that fell victim to terrorist attacks should have the right to extend their claim on the use of force to combat terrorism in those states. The use of force by the US against al-Qaeda in Pakistan demonstrate the case in which a state used force against a country that tolerated terrorist operation in its territory in conjunction with the consent of the government. The Pakistani government, though considered to have publicly protested drone strikes, privately consented and gave a tacit approval in the US pursuit of al-Qaeda in its territory. [103] Similarly, the use of force by the US against ISIS in Iraq demonstrates the incident in which a state used force in a country that was unable to control terrorist activity within its border along with the government request for help.

---

search/view_doc.asp?symbol=S/RES/748(1992). The General Assembly in A/RES/40/61, "*Calls* upon all States to fulfill their obligations under international law to refrain from organizing, instigating, assisting or participating in terrorist acts in other States, or acquiescing in activities within their territory directed toward the commission of such acts." S/RES/748 (1992) states: "Deeply concerned that the Libyan Government has still not provided a full and effective response to the requests in its resolution 731 (1992), *Convinced* that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is essential for the maintenance of international peace and security…. *Reaffirming* that, in accordance with the principle in Article 2, paragraph 4, of the Charter of the United Nations, every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when such acts involve a threat or use of force, *Determining,* in this context, that the failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992) constitutes a threat to international and security." See Beard, "America's New War on Terror," 581-582.

[103] James DeShaw Rae, *Analyzing the Drone Debates: Targeted Killing, Remote Warfare, and Military Technology* (New York: Palgrave Macmillan, 2014), 28 and 59.

Prevention of Threat by All Other Means and Force as the Last Resort

Before resorting to force, states are to employ all other means of policy tools including diplomacy and sanctions. However, these state tools are considered ineffective when dealing with states that have a long-record of projecting aggressions and evade the rules and norms of the international system. When should states consider all other means to have been exhausted in their utility when dealing with states that defy international rules and regulations?

Preventive diplomacy is a policy tool considered effective when it can be implemented in the beginning of a conflict to prevent the escalation or spread of violence or to resolve underlying root causes of conflict[104] through a dialogue or negotiations[105] in an attempt to avoid the use of armed force or other coercive action.[106] Positive inducement as a form of preventive diplomacy is considered effective in preventing nuclear conflict when it is able to change the fundamental cause or policy that gave rise to violent behavior in the international system.[107] The policies of hostile states that have a long record of provocative and intractable behavior in the international security environment are difficult to affect a change through positive inducements. When

[104] Boutros Boutros-Ghali, *An Agenda for Peace*, New York: United Nations, June 17, 1992, http://www.un-documents.net/a47-277.htm. The former UN Secretary General characterizes preventive diplomacy as "an action to prevent disputes from arising between two parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur." He further states that "the most desirable and efficient employment of diplomacy is to ease tension before they result in conflict – or, if conflict breaks out, to act swiftly to contain it and resolve its underlying causes." Quoted in Albrecht Schnabel, "Post-Conflict Peacebuilding and Second-Generation Preventive Action," *International Peacekeeping* 9, no. 2 (2002): 12.

[105] J. Moolakkattu Stephen John, "The Concept and Practice of Conflict Prevention: A Critical Reappraisal," *International Studies* 42, no. 1 (2005): 4.

[106] Michael Lund, "Preventing Violent Intrastate Conflicts: Learning Lessons from Experience," in Paul van Tongeren, Hansvan de Veen, and Juliette Verhoeven, eds., *Searching for Peace in Europe and Eurasia: An Overview of Conflict Prevention and Peace-building Activities* (Boulder, Co: Lynne Rienner, 2002), 101; and John, "The Concept and Practice of Conflict Prevention," 4.

[107] For effectiveness of positive inducements see Alexander L. George, "Strategies for Preventive Diplomacy and Conflict Resolution: Scholarship for Policymaking," *PS: Political Science and Politics* 33, no. 1 (2000): 15-19; and Hans Dorussen, "Mixing Carrots with Sticks: Evaluating the Effectiveness of Positive Incentives," *Journal of Peace Research* 38, no. 2 (2001): 251-262.

agreements are implemented, it can build trust, but when they are not implemented correctly, incentives can turn into sanctions.[108] In the short run, hostile states that enter into an international agreement like Iran has done by agreeing into the nuclear deal tend to take the advantage of time and material incentive provided under the agreement only to retract back to their original position that projects hostility. "Positive inducements are counterproductive and wrong when dealing with unsavory states, that attempt to reform bad government via inducement will result in their pocketing those rewards without meaningful behavioral change."[109] It is a policy tool that seemingly works against hostile states in the short-run when they are in a structurally weak position, but once they reach their strategic capabilities, they tend to break away from diplomatic agreements.

When, during the early stages of conflict, diplomacy fails due to the breaking of an agreement and dispute is intensified[110] states tend to respond by issuing sanctions to coerce a target state to change policy that conforms to the international conduct or norms.[111] Sanctions are considered effective when both sender and target states incur high costs, if cordial relationship existed prior to the imposition of sanctions, and if target states are in an economically weaker condition and receive limited international assistance.[112] High audience and political costs in

---

[108] Dorussen, "Mixing Carrots with Sticks," 254.

[109] Miroslav Nincic, "The Logic of Positive Engagement: Dealing with Renegade Regimes," *International Studies Perspectives* 7, no. 4 (2006): 322.

[110] For high level of conflict or intensification of dispute raised or confrontational policy adopted by target state as main external factors that triggers the issuance of sanctions, see A. Cooper Drury, "Sanctions as Coercive Diplomacy: The U.S. President's Decision to Initiate Economic Sanctions," *Political Research Quarterly* 54, no. 3 (2001): 495.

[111] For sanctions as tool inducing policy changes of target states, see Robert A. Hart, Jr., "Democracy and the Successful Use of Economic Sanctions," *Political Research Quarterly* 53, no. 2 (2000): 268; and Sean M. Bolks and Al-Sowayel, "How Long Do Economic Sanctions Last? Examining the Sanctions Process through Duration," *Political Research Quarterly* 53, no. 2 (2002): 243.

[112] Hart, "Democracy," 269. For successful sanctions depending on the existence of the prior cordial relationship between sender and target states and economically vulnerable conditions of target states, see Chao Jing, William H. Kaempfer, and Anton D. Lowenberg, "Instrument Choice and the

democratic states make them difficult to back down once a commitment has been made to sanction a target state, sending high signals and making an effective tool that pressure for a change in target's policy that meets the sender's demand.[113] The high costs of a sender state, the commitment it must endure, and the strong signal it sends to a target state are considered to lead to high probability for the success of sanctions.

However, these high costs that a sender state must incur, are considered to makes sanctions less likely to become effective because high costs induces sender states' commitment, and commitment, in turn, increases the duration of sanctions.[114] Sanctions, therefore, in short, are costly and lengthy policy options.[115] Economic sanctions on autocratic states tend to last longer with failed sanctions lasting twice the time, taking on the average of one hundred months with the successful one taking about fifty-three months.[116]

The main reason for sanctions as an ineffective policy tool is due to autocratic state's government institutional structure that allows narrow or restricted decision-making process, which makes them develop effective countermeasures to defy the pressure of sanctions. "Those states that can best formulate countermeasure are those that can best hold out in the face of extended economic hardship and cause sanctions to endure."[117] Because sanctions lead to the development of countermeasures by autocratic states, it could escalate tension. "In such cases, the

---

Effectiveness of International Sanctions: A Simultaneous Equations Approach," *Journal of Peace Research* 40, no. 5 (2003): 531.

[113] Hart, "Democracy," 269.

[114] Han Dorussen and Jongryn Mo, "Ending Economic Sanctions: Audience Costs and Rent-Seeking as Commitment Strategies," *The Journal of Conflict Resolution* 45, no. 4 (2001): 397.

[115] Bolks, "How Long Do Economic Sanctions Last?" 262.

[116] Ibid.

[117] Ibid., 261.

sender state may not be able to achieve their desired policy short of war."[118] Also, high costs associated with sender states do not necessarily send strong signals to target states to change their policies. "Because states have a strong incentive to maximize costs to the target while minimizing costs to themselves, they generally end up sending weak signals with sanctions."[119] Sender states' tendency to minimize costs sends a weak signal to target states that consider sanctions as "foreign policy on the cheap," triggering them to subvert the message of the sender. Instead of achieving the intended goal of avoiding to use force, sanctions tend to "increase the probability of conflict."[120] Sanctions, in this view leads to the use of force.[121]

A factor that prompts sender states to transition its policy from diplomacy to sanctions is an increased tension. "An increased tension level indicated that the target is resisting the sender's demands, making the two side more hostile toward each other. For the sender, this increased tension is a sign that more coercive measures, such as economic sanctions, must be used in order to achieve its goals."[122] Similarly, a factor that triggers a state to resort to force after applying sanctions is the increased level of threat that a perpetuator state is projecting by raising provocation, escalating conflict, and violating international norms. After "economic sanctions do not produce the desired effect and the dispute escalates to a crisis level, the use of military force is likely."[123] A rising level of threat or a "precipitant" serves as a main impetus that propel a state to adopt more stringent policy of force.[124]

---

[118] Ibid., 249.

[119] David Lektzian and Christopher M. Sprecher, "Sanctions, Signals, and Militarized Conflict," *American Journal of Political Science* 51, no. 2 (2007): 419.

[120] Ibid., 429.

[121] Ibid.

[122] Drury, 491 and 495.

[123] Ibid., 487.

[124] Ibid., 491.

Rising Threat: A Precipitant on Military Strikes against Nuclear Facilities

The high level of threat projected from adversarial states was in fact what became a key factor that prompted states to use or consider using force against their nuclear facilities. International norm prohibits states from using force on nuclear facility built for peaceful purposes. However, Israel, Iraq, and the US used force to strike the nuclear reactors of states that were thought to be under construction for military purposes. What precipitated states to use force or consider using force was the perception of threat deriving from capabilities and intention projected to them. [125] Factors such as international condemnation and retaliation did not dissuade states from using force against the nuclear facilities of states that were believed to be used against them once capabilities were completed. [126] States used and considered using force when they felt highly threatened by nuclear weapons programs of their adversarial states. [127] The source of the threat, however, that precipitated states to use force was not so much on the increasing capabilities of nuclear weapons. Israel's strike against nuclear weapons facilities of Iraq in 1981 and Syria in 2007, Iraq's military force directed against Iran's nuclear weapons reactors during Iraq-Iran War from 1984 to 1988, and the US force targeted against Iraq's nuclear weapons program in 1991 and 2003 occurred when the threats from nuclear weapons capabilities have not reached the level of imminence. [128]

Rather what threatened states, triggering them to use force against nuclear facilities of adversarial states including the five occasions mentioned above were intentions of adversarial

---

[125] Robert S. Litwak, "The New Calculus of Pre-emption," *Survival* 44, no. 4 (2003): 67.

[126] Matthew Fuhrmann and Sarah E. Kreps, "Targeting Nuclear Programs in War and Peace: A Quantitative Empirical Analysis, 1941-2000," *Journal of Conflict Resolution* 54, no. 6 (2010): 833.

[127] Fuhrmann and Kreps, "Targeting Nuclear Programs," 831.

[128] Sarah E. Kreps and Matthew Fuhrmann, "Attacking the Atom: Does Bombing Nuclear Facilities Affect Proliferation?" *Journal of Strategic Studies* 34, no. 2 (2011): 161.

states revealed through their institutional characters inclined toward aggression. Factors such as "prior violent militarized conflict," "the presence of a highly autocratic proliferator," and "divergent foreign policy interests" of states pursuing nuclear weapons characterize their political and military orientation that contributed to their propensity to raise high level of threat.[129] These factors that characterize states' aggressive behavior are often at odds with the values and ideals of democratic countries and become signals that indicate the intention to use nuclear weapons for hostile purposes upon completion, serving as a salient impetus that precipitates the use of force. "[U]ltimately, the central issue is assessment by the risk-averse security specialists of one international actor of the intentions of another actor who has or may acquire the weapons." [130] Adversarial states' pursuit of nuclear weapons capabilities infuse threat, but their projected intentions serve as a precipitant that trigger state's decision to use force. [131]

When these factors signaled a high level of threat, states that utilized force preventively against nuclear facilities of adversarial states before the capabilities reached the level of imminence by seizing the temporal opportunity to carry out preventive action upon the seriousness of threat that those capabilities will pose to them in the future. States used force preventively when the threat in terms of adversarial states' intention regarding their capabilities was endangering and at the time when they were able to use force effectively to prevent those projected intentions from becoming real.

The following section describes the ways in which elements of capabilities, intentions, and temporal opportunity affected the decision to use force preventively against Iraq's nuclear weapons program by Israel in 1981 and by the US in 1991 and 2003. It will be followed by a

---

[129] Furhrmann and Kreps, "Targeting Nuclear Programs," 838-841.

[130] Reisman and Armstrong, "The Past and Future," 526.

[131] Litwak, "The New Calculus of Pre-emption," 67. Litwak states: "The threshold issue regarding the use or consideration of the use of force is a judgement about intentions."

brief discussion on the effectiveness of using preventive use of force in removing nuclear weapons threat in Iran between 1984 to 1988 and Syria in 2007 and the application of the conclusions drawn from Iraq's case toward potential nuclear weapons threats posed by Iran and Syria.

Israel's concern over Iraq's nuclear weapons capability began in the mid-1970s when Iraq's nuclear program took off momentum with Saddam Hussein's rise to power and when its military arsenal increased fourfold including bombers capable of loading nuclear warheads and reaching Israel. [132] Israeli leaders believed Iraq's nuclear program was not driven by its defensive security concerns but by "a fanatical ideology" of Saddam who was considered as "a risk-acceptance, possibly irrational, and ultimately undeterrable leader." [133] Israel felt highly threatened by Iraq whose projection of aggression was exacerbated by two incidents in 1980. Iraq's termination of inspection by the IAEA and attack against Iran fueled the perception that once Saddam obtains the weapons capability, he is likely to use it against Israel.[134] Israel's belief about Iraq's hostile intent was reinforce when Iraq, in its official Baghdad newspaper *al Jumhuriya*, revealed its position in 1980 by stating, "Iraqi nuclear reactor constitutes a grave danger for 'Israel.'"[135] Another Iraqi newspaper stated, "The Iraqi nuclear reactor is not intended to be used against Iran, but against Zionist enemy." [136] These statements affirmed Israel's perception that Iraq would use its nuclear weapons against it once Iraq obtained the capabilities,

---

[132] Jack S. Levy, "Preventive War and Democratic Politics," *International Studies Quarterly* 52, no. 1 (2008): 12.

[133] Ibid., 12.

[134] Ibid., 13.

[135] Dershowitz, *A Knife,* 94.

[136] Ibid.

and Iraqi government's unpredictability and lack of transparency under Saddam Hussein's dictatorship precipitated Israel's motivation to use force.[137] Israel raided and destroyed the Osirak reactor in 1981.[138]

At the time, Iraq, which pursued the plutonium route to develop nuclear weapons was far from reaching the level of producing enough plutonium to make nuclear weapons. Varying accounts of Iraq's nuclear weapons capability exists. After Israel's strike, the US Congressional Research estimated that Iraq would have taken ten to thirty years to produce enough plutonium for a single nuclear warhead while the IAEA assessed that the reactor could have produced enough plutonium for a bomb every four years.[139] Another assessment by the US suggested that if the Osirak facility was dedicated to produce plutonium, Iraq would have had a sophisticated bomb in fewer than two years and a simple device in little over a year.[140] Although the estimated number of nuclear warhead that Iraq could have produced in years ahead differs, Iraq, at the time of Israel's attack, did not possess the capabilities to produce a large amount of fissile material or to weaponized the material.[141] At the best, by 1981, Iraq had completed the infrastructure including an operational light water reactor and a laboratory scale reprocessing facility that would have enabled the development of capabilities to produce fuel and reprocess plutonium. [142]

---

[137] Furhmann, 54.

[138] Kreps and Fuhrmann, "Attacking the Atom," 169.

[139] Dan Reiter, "Preventive Attacks against Nuclear Programs and the 'Success' at Osiraq," *Nonproliferation Review* 12, no. 2 (2005): 358.

[140] Malfrid Braut-Hegghammer, "Revisiting Osirak: Preventive Attacks and Nuclear Proliferation Risks," *International Security* 36, no. 1 (2011): 112.

[141] Ibid., 110.

[142] Ibid.

Israel's preventive action against the Osirak reactor in 1981 could be best understood as the strike that was carried out after a careful calculation not necessarily on temporal immediacy of the threat itself but on temporal opportunity to successfully prevent the disastrous consequence of the threat Iraq would have posed in the future if the facility remained intact. [143] The decision to strike preventively depended on any likelihood of Iraq developing the weapons to target Israel's civilian population. Israel's then Prime Minister Menachem Begin stated that "another Holocaust would have happened in the history of the Jewish people."[144] At the same time, Israel was not going to wait until the nuclear reactor was in near completion toward its activation as the strikes against it would have posed harm to Iraqi civilians by dispersing radioactive material over Baghdad. Prime Minister Begin stated, "No Israeli government could contemplate bombing…that would have brought about a massive radioactive fallout over…Baghdad [where] tens of thousands of innocent residents would have been hurt." [145]

Israel's preventive strike against Iraq's nuclear facility is considered to have removed the past progress made toward the nuclear weapons development.[146] Israel's strike is also considered to have ultimately delayed Iraq's capabilities from completing its nuclear weapons program in the future. [147] However, this delay in producing nuclear weapons is attributed to the intervening variable of bureaucratic challenges and technical difficulties that Iraq underwent from shifting to clandestine uranium enrichment after the Israel's strike. [148] Iraq's development toward nuclear weapons by 1991 is assessed to have been close to crossing the threshold of acquiring a nuclear

[143] Dershowitz, *A Knife,* 96.

[144] Dershowitz, *A Knife,* 95.

[145] Ibid., 96; and Levy, "Preventive War," 13.

[146] Kreps and Fuhrmann, "Attacking the Atom," 170.

[147] Ibid., 171. See also, Reiter, "Preventive Attacks," 8.

[148] Braut-Hegghammer, 116 and 131-132.

weapons capability[149] while another estimate suggests that Iraq failed to acquire sufficient quantities of fissile material through uranium enrichment. [150] These accounts and a number of Iraqi nuclear facilities that the US had targeted in 1991 suggests that Iraq had made significant progress toward developing the technology after the Israel's strike but did not reach the operational level. In this sense, Israel's strike was successful in destroying the capability that Iraq had developed until 1981 but accelerated its will to develop nuclear weapons which took three occasions of US military strikes to remove in 1991, 1993, and 2003. The use of force, then, was successful in removing the threat of nuclear weapons capabilities in the short run, but additional strikes were necessary to eliminate the threat of adversary's intention to rebuild the program in the long run.

After Israel struck the Osirak in 1981, Iraq intensified its nuclear weapons program and shifted its nuclear weapons program from extracting plutonium to enriching uranium, the option that it had considered before but abandoned due to technical challenges. It chose to pursue uranium enrichment program because it was easier to evade attracting the attention of IAEA inspections that increased with Israel's preventive strike in 1981. [151] It chose primary technology as electromagnetic isotope separation (EMIS) in conjunction with gaseous diffusion or centrifuges in order to detract from foreign suspicion and reliance. [152] Pursing EMIS technology presented substantial challenges and delayed the progress of the program, and as a result, Iraq reorganized its program to put more effort on developing centrifuge as its primary technology

---

[149] Ibid., 132.

[150] Kreps and Fuhrmann, "Attacking the Atom," 172

[151] Ibid., p. 171-172.

[152] Braut-Hegghammer, 119. The EMIS technology was easily accessible as it was described in open source literature.

along with the EMIS which accelerated its advance toward the weapons capability and prepared to establish program at an operational level. [153] By early 1990s, Iraq is considered to have been on the verge of crossing the threshold of a nuclear weapons capability. [154] At the same time, though, it is considered to have failed in producing enough fissile material by the time of the US strike on its facilities in 1991 during the Persian Gulf War. [155]

When the US conducted its military operation against Iraq, it did so in response to Iraq's aggression of invading Kuwait and danger it posed through the pursuit of nuclear weapons. Even before Iraq invaded Kuwait, it projected hostilities against Israel and violence in invading Iran in 1984 that prolonged into a lengthy war. Iraq's aggression in the region backed by Saddam's unpredictable behavior, fueled the US perception toward Iraq's intent on using nuclear weapons once it obtained the capabilities and motivated the US to strike Iraq's nuclear weapons facilities. "The threat that Iraq might acquire nuclear weapons was the most persuasive argument for supporting military intervention against Iraq."[156] US National Security Advisor Brent Scowcroft is known to have stated that Saddam's "notoriously mercurial behavior" provided added impetus for the US to target Iraq's nuclear program during the Persian Gulf War.

During the Gulf War, the US strikes were successful in bombing the EMIS enrichment plants at Tarmiya and Ash Sharqat as well as suspected uranium production facility near Mosul and a uranium extraction facility at Al Qaim, and other key facilities such as yellowcake facility at Al-Qa'im, feed material plant at Mozul, and explosive testing sites were only damaged. [157] It took another round of strikes by the US in 1993 to destroy other key suspected facilities such as

[153] Ibid., 123.

[154] Ibid., 125.

[155] Kreps and Fuhrmann, "Attacking the Atom," 172.

[156] Levy, "Preventive War," 15.

[157] Ibid., 178.

Facility 409 and 416 designed for EMIS program. [158] But it was not until 2003, after the US suffered the devastating damage from terrorist attacks, that the US force removed the threat deriving from Iraq's intent to pursue nuclear program by changing the regime and killing autocratic leader Saddam Hussein who perpetuated conflicts and drove the nuclear weapons program.

In this respect, although Iraq had targeted Iran's Bushehr reactor in total seven rounds of attacks over five years during the war waged against Iran from 1984 to 1988 and caused significant damage which is considered to have set back the progress of the nuclear weapons program, the strikes did not damage nor destroy Iran's will on pursuing the nuclear weapons program that still threatens the international community. In the similar vein, although Israel struck Syrian reactor at Al Kibar in 2007 built for plutonium production with assistance from North Korea which is considered to have been far from completion, it did not prevent Syria's ambition toward the nuclear weapons program as some evidence points to a large stock of natural uranium that pose nuclear proliferation risk. [159] The strike is considered to have set back the program for six years, but a reprocessing facility to produce the spent nuclear fuel was not located.[160] Syria is believed to have continued a secret program as approximately 8,000 fuel rods are reportedly found in an underground location.[161] Israel's use of force on Syria's nuclear facility

---

[158] Ibid.

[159] Erich Follath, "Assad's Secret: Evidence Points to Syrian Push for Nuclear Weapons," *Spiegel*, January 9, 2015, http://www.spiegel.de/international/world/evidence-points-to-syria-still-working-on-a-nuclear-weapon-a-1012209.html. The German publication reports that according to the IAEA, Syria possess up to 50 tons of natural uranium that is sufficient to make three to five bombs once the enrichment procedure is completed. Also, the Institute for Science and International Security in Washington DC believes there is a strong indication that Syria possesses the stockpiles, according to the report. Also, the IAEA has found nuclear particles in one of the two sites of the facilities that were constructed clandestinely. Also, see Kreps and Fuhrmann, "Attacking the Atom," 174

[160] Kreps, and Fuhrmann, "Attacking the Atom," 173.

[161] Follath, "Assad's Secret."

can be concluded as the one that destroyed some capabilities toward its nuclear weapons program and directed the attention of international safeguard regime for more rigorous inspections but that did not end Syria's intent on pursuing nuclear weapons program.

IV.

Conclusion:

Elements of Uncertainties, the Fuel for Force

The tendency for states to claim their right to preventive self-defense that alters the international norm on the use of force against the distinct threats of terrorist attacks and nuclear weapons proliferation which could contribute toward nuclear terrorism that renders force ineffective at the point of imminence stems from their shift in aiming uncertainties related to an attack to uncertainties associated to threats. In terrorism and nuclear terrorism, uncertainties related to attacks are difficult to ascertain due to surprise attacks terrorists employ against civilian populations. Even at the point of knowing the time, location, and method of an attack, which equates to the time of imminent attack, renders the use of force almost useless because it means the attack is already planned and might already be underway. In nuclear weapons proliferation by hostile states, the time of knowing when, how, and where these states will use nuclear weapons once they acquire the technology also diminishes the effectiveness of force as the last resort. Due to the inopportune time to use force after the uncertainties related to attacks become known, states have shifted their focus on dealing with the uncertainties related to potential threat by preventing adversaries' present capabilities to cause future harm based on their demonstrated intention of inflicting past harm.

Uncertainties is considered one of the main causes of conflict among adversarial actors in the international system. [162] Uncertainties about the opponent's capability and intention that stem from asymmetric information or the enemy's incentive to misrepresent private information could

[162] Andrew H. Kydd and Barbara F. Walter, "The Strategies of Terrorism," *International Security* 31, no. 1 (2006): 55. Kydd and Walter state: "Uncertainty has long been understood to be a cause of conflict."

raise the level of insecurity in the international system which could further drive the system to the elevated level of security dilemma and potentially to the ultimate use of force. [163]

In a system that lacks full openness, accountability, trust, and a reliable method of monitoring and verifying each other's internal affairs, actors have to rely on the power of information gathering to assess threat projected by their opponents. Asymmetric information compels the actors to rely on two fundamental factors as the signals of threat – capability and intention. The assessment of opponents' threat in terms of weapons capabilities and degree of projected hostility become salient signals that shape and determine state's countervailing policy. When threat is perceived to be low, states might respond with diplomatic engagement. When bargaining breaks down through diplomacy, states might issue stronger measure through coercive methods such as sanctions. Bargaining failure at the stage of sanctions might entail the use of force if the threat continues to rise to the level deemed credibly dangerous.

The degree of uncertainty is particularly prone to be higher in assessing capabilities and intentions of actors that operate with a low level of transparency such as hostile states characterized as "rogues" and transnational non-state actors such as terrorist groups. Bargaining failure is more like to occur when dealing with these two non-transparent actors that have a high propensity to incentivize withholding and misinterpreting private information regarding their capabilities and intention related to nuclear weapons development and transfer and terrorist attacks. When diplomacy to negotiate with and coercion to compel these two actors fail or

---

[163] For uncertainty about capability, see Geoffrey Blaine, *The Causes of War,* 3rd ed. (New York: Free Press, 1988) as quoted by Kydd and Walter in "The Strategies of Terrorism," 57-58. They state, "This uncertainty could reflect a disagreement about power…or a disagreement over resolve, will-power, or the intensity of preference over the issue." For uncertainty about intention, see Kydd and Barbara, "The Strategies of Terrorism," 57. Kydd and Barbara state "States are often uncertain about each other's ultimate ambitions, intentions and preferences. Because of this, anything that increases one side's belief that the other is deceitful, expansionist, risk acceptance, or hostile increases incentives to fight rather than cooperate." Also for uncertainties about intention, see James D. Fearon, "Rationalist Explanation for War," *InternaV.tional Organization* 49, no. 3 (1995): 379-414

become ineffective in the case of terrorist groups, the ultimate use of force is must be considered as the last option to be utilized at the opportune time to prevent the occurrence of threats from terrorist attacks, nuclear weapons proliferation, and nuclear terrorism.

V.

Works Cited

Addicott, Jeffrey F. "Legal and Policy Implications for a New Era: The 'War on Terror.'" 4, no. 209 (2002): 209-259.

Arend, Anthony Clark. "International Law and the Preemptive Use of Military Force." *Washington Quarterly* 26, no. 2 (2003): 89-103.

Beard, Jack M. "America's New War on Terror: The Case for Self-Defense under International Law." *Harvard Journal of Law & Public Policy*, 25 no. 2 (2002): 559-590.

Betts, Richard K. "Striking First: A History of Thankfully Lost Opportunities." *Ethics & International Affairs* 17, no. 1 (2003): 17-24.

Blaine, Geoffrey. *The Causes of War,* 3rd ed. New York: Free Press, 1988.

Bolks, Sean M. and Al-Sowayel. "How Long Do Economic Sanctions Last? Examining the Sanctions Process through Duration." *Political Research Quarterly* 53, no. 2 (2002): 241-265.

Bothe, Michael. "Terrorism and the Legality of Pre-emptive Force." *European Journal of International Law* 14, no. 2 (2003): 227-240.

Boutros-Ghali, Boutros. *An Agenda for Peace*, New York: United Nations, June 17, 1992, http://www.un-documents.net/a47-277.htm.

Braut-Hegghammer, Malfrid. "Revisiting Osirak: Preventive Attacks and Nuclear Proliferation Risks." *International Security* 36, no. 1 (2011): 101-132.

Burke, Jason. "Africa embassy bombings: attacks that propelled Bin Laden into the limelight." *The Guardian,* January 20, 2015, https://www.theguardian.com/world/2015/jan/20/africa-embassy-bombings-osama-bin-laden-kenya-tanzania-al-qaida.

Carter, Chelsea J., Tom Cohen, and Barbara Starr. "U.S. Jet Fighters, Drones Strike ISIS Fighters, Convoys in Iraq." *CNN,* August 9, 2014, http://edition.cnn.com/2014/08/08/world/iraq-options/.

Castillo, Mariano, Margot Haddad, Michael Martinez, and Steve Almasy. "Paris Suicide Bomber Identified; ISIS Claims Responsibility for 129 Dead." *CNN*, November 16, 2015, http://edition.cnn.com/2015/11/14/world/paris-attacks/index.html.

Claiborne, William. "Bombs Explode at 2 U.S. Embassies in Africa: Scores Dead." *The Washington Post,* August 8, 1998, http://www.washingtonpost.com/wp-srv/inatl/longterm/eafricabombing/stories/main080898.htm.

Crawford, Neta. "The Slippery Slope to Preventive War." *Ethics & International* Affairs 17, no. 1 (2003): 30-36.

Daniel, Donald C. F., Peter J. Dombrowski, and Rodger A. Payne. "The Bush Doctrine: Rest in Peace?" *Defense Studies* 4, no. 11 (2004): 18-39.

DeYoung, Karen and Michael D. Shear. "U.S., Allies Say Iran Has Secret Nuclear Facility." *Washington Post*, September 26, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/09/25/AR2009092500289.html

Diamond, Jeremy. "Could Military Force Still Be Used against Iran?" *CNN,* April 2, 2015, http://edition.cnn.com/2015/04/02/politics/iran-nuclear-deal-military-attack/.

DiChristopher, Tom. "What an unraveling of the Iran nuclear Deal Could Look Like." *CNBC,* February 3, 2017, http://www.cnbc.com/2017/02/03/how-the-iran-nuclear-deal-could-unravel.html.

Dombrowski, Peter and Rodger A. Payne. "The Emerging Consensus for Preventive War." *Survival* 48, no. 2 (2007): 115-136.

Dorussen, Hans. "Mixing Carrots with Sticks: Evaluating the Effectiveness of Positive Incentives." *Journal of Peace Research* 38, no. 2 (2001): 251-262.

Dorussen, Han and Jongryn Mo. "Ending Economic Sanctions: Audience Costs and Rent-Seeking as Commitment Strategies." *Journal of Conflict Resolution* 45, no. 4 (2001): 395-426.

Drury, A. Cooper. "Sanctions as Coercive Diplomacy: The U.S. President's Decision to Initiate Economic Sanctions." *Political Research Quarterly* 54, no. 3 (2001): 485-508.

Eberwein, Wolf-Dieter and Bertrand Badie. "Prevention and Sovereignty: A Vision and a Strategy for a New World Order? *Global Society* 20, no. 1 (2006): 1-24.

Fearon, James D. "Rationalist Explanation for War." *International Organization* 49, no. 3 (1995).

Feinstein, Lee and Anne-Marie Slaughter. "A Duty to Prevent." *Foreign Affairs* 83 (2004): 136-150.

Follath, Erich. "Assad's Secret: Evidence Points to Syrian Push for Nuclear Weapons." *Spiegel*, January 9, 2015, http://www.spiegel.de/international/world/evidence-points-to-syria-still-working-on-a-nuclear-weapon-a-1012209.html.

France. *The French White Paper on Defense and National Security* (2008).

Fuhrmann, Matthew and Sarah E. Kreps. "Targeting Nuclear Programs in War and Peace: A Quantitative Empirical Analysis, 1941-2000." *Journal of Conflict Resolution* 54, no. 6 (2010): 831-859.

George, Alexander L. "Strategies for Preventive Diplomacy and Conflict Resolution: Scholarship for Policymaking." *PS: Political Science and Politics* 33, no. 1 (2000): 15-19.

Guoliang, Gu. "Redefine Cooperative Security, Not Preemption." *Washington Quarterly* 26, no. 3 (2003): 135-145.

Hart, Jr., Robert A. "Democracy and the Successful Use of Economic Sanctions." *Political Research Quarterly* 53, no. 2 (2000): 267-284.

Hoffmann, Stanley, "America Goes Backwards." *New York Review of Books.* June 12, 2003.

International Atomic Energy Agency, General Conference, Resolution 407, "Protection of Nuclear Installations Devoted to Peaceful Purposes against Armed Attacks." November 9, 1983, https://www.iaea.org/About/Policy/GC/GC27/GC27Resolutions/English/gc27res-407_en.pdf

International Atomic Energy Agency, General Conference, Resolution 444, "Protection of Nuclear Installations Devoted to Peaceful Purposes against Armed Attacks." September 27, 1985, https://www.iaea.org/About/Policy/GC/GC29/GC29Resolutions/English/gc29res-444_en.pdf.

International Atomic Energy Agency, General Conference, Resolution 533. "Prohibition of All Armed Attacks against Nuclear Installations Devoted to Peaceful Purposes Whether Under Construction or in Operation." October 1990, https://www.iaea.org/About/Policy/GC/GC34/GC34Resolutions/English/gc34res-533_en.pdf.

International Commission on Intervention and State Sovereignty (ICISS). *The Responsibility to Protect*, 2001.

International Court of Justice. "Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)." June 27, 1986, http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5.

Janssen, Dieter, "Preventive Defense and Forcible Regime Change: A Normative Assessment." *Journal of Military Ethics* 53, no. 2 (2004): 105-128.

Jing, Chao, William H. Kaempfer, and Anton D. Lowenberg. "Instrument Choice and the Effectiveness of International Sanctions: A Simultaneous Equations Approach." *Journal of Peace Research* 40, no. 5 (2003): 519-535.

Joint Comprehensive Plan of Action. July 14, 2014, https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/.

John, Moolakkattu Stephen. "The Concept and Practice of Conflict Prevention: A Critical Reappraisal." *International Studies* 42 no. 1 (2005): 1-19.

Kaplan, Rebecca. "Obama Faces Questions on ISIS Strategy after Paris Attacks." *CBSNews*, November 16, 2015, http://www.cbsnews.com/news/obama-asks-more-nations-to-step-up-in-fight-against-isis/.

Kreps, Sarah E, and Matthew Fuhrmann. "Attacking the Atom: Does Bombing Nuclear Facilities Affect Proliferation?" *Journal of Strategic Studies* 34, no. 2 (2011): 161.

Kydd, Andrew H. and Barbara F. Walter. "The Strategies of Terrorism." *International Security* 31, no. 1 (2006): 55.

Lackey, Katharine, "World Leaders React to Paris Terror Attacks." *USA Today,* November 14, 2015, http://www.usatoday.com/story/news/world/2015/11/14/world-leaders-react-paris-terror-attacks/75771136/.

Lee, Christy L. "An Emerging Norm against International Terrorism?" Unpublished work: Harvard University, 2012.

Lektzian, David and Christopher M. Sprecher. "Sanctions, Signals, and Militarized Conflict." *American Journal of Political Science* 51, no. 2 (2007): 415-431.

Letter from U.S. Secretary of State Daniel Webster to British Plenipotentiary Lord Ashburton, August 6, 1842, http://avalon.law.yale.edu/19th_century/br-1842d.asp#web1.

Levy, Jack S. "Preventive War and Democratic Politics." *International Studies Quarterly* 52, no. 1 (2008): 1-24.

Litwak, Robert S. "The New Calculus of Pre-emption." *Survival* 44, no. 4 (2003): 53-80.

Lund, Michael. "Preventing Violent Intrastate Conflicts: Learning Lessons from Experience." In Paul van Tongeren, Hansvan de Veen, and Juliette Verhoeven eds. *Searching for Peace in Europe and Eurasia: An Overview of Conflict Prevention and Peace-building Activities.* Boulder, CO: Lynne Rienner, 2002.

Maogoto, Jackson Nyamuya. "Rushing to Break the Law? 'The Bush Doctrine' of Pre-emptive Strikes and the UN Charter Regime on the Use of Force." *University of Western Sydney Law Review* 7, no. 1 (2003): 1-43.

McKinley, Jr., James C. "Two U.S. Embassies in East Africa Bombed." *New York Times,* August 8, 1988, https://partners.nytimes.com/library/world/africa/080898africa-bombing.html.

Morello, Carol and Karen DeYoung. "Historic deal reached with Iran to limit nuclear program." *Washington Post,* July 14, 2015, https://www.washingtonpost.com/world/historic-nuclear-deal-with-iran-expected-to-be-announced/2015/07/14/5f8dddb2-29ea-11e5-a5ea-cf74396e59ec_story.html?utm_term=.32f48a4c1629.

Mullen, Jethro, "'France Is at War,' President Francois Hollande Says after ISIS Attack." *CNN*, November 17, 2015, http://edition.cnn.com/2015/11/16/world/paris-attacks/index.html.

Mullen, Jethro. "US-led Airstrikes on ISIS in Syria: What You Need to Know." *CNN,* September 24, 2014, http://edition.cnn.com/2014/09/23/world/meast/syria-isis-airstrikes-explainer/.

Nakamura, David and Karen DeYoung. "France Launches Fierce Assault on ISSI Targets in Syria." *Washington Post*, November 15, 2015, https://www.washingtonpost.com/politics/obama-vows-to-help-france-hunt-down-perpetrators-of-paris-terror-attacks/2015/11/15/a4628faa-8b74-11e5-9a07-453018f9a0ec_story.html?utm_term=.4fd3d1c52047.

Nichols, Thomas M. "Anarchy and Order in the New Age of Prevention." *World Policy Journal* 22 no. 3 (2005): 1-23.

Nichols, Thomas M. *Eve of Destruction: The Coming Age of Preventive War.* Philadelphia: University of Pennsylvania Press, 2008.

Nincic, Miroslav. "The Logic of Positive Engagement: Dealing with Renegade Regimes." *International Studies Perspectives* 7, no. 4 (2006): 321-341.

"Donald Trump Intends to Take on Iran. Right, But Risky: How Far Is the New Administration Prepared to Go?" *The Economist,* February 25, 2017,

http://www.economist.com/news/middle-east-and-africa/21717384-how-far-new-administration-prepared-go-donald-trump-intends-take.

"Full Text: Tony Blair's Speech." *The Guardian*, March 5, 2004, https://www.theguardian.com/politics/2004/mar/05/iraq.iraq.

"Iran Nuclear Talks: Timeline." *The Guardian,* July 14, 2015, https://www.theguardian.com/world/2015/apr/02/iran-nuclear-talks-timeline.

"Iraq Formally Asks US to Launch Air Strikes against Rebels." *BBCNews,* June 18, 2014, http://www.bbc.com/news/world-middle-east-27905849.

"Operation Inherent Resolve." The US Department of Defense, http://www.inherentresolve.mil.

"Operation Inherent Resolve: Targeted Operations against ISIS Terrorists." the US Department of Defense, https://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve.

"The RAND Database of Worldwide Terrorism Incidents." RAND Corporation, http://www.rand.org/nsrd/projects/terrorism-incidents.html.

Rae, James DeShaw. *Analyzing the Drone Debates: Targeted Killing, Remote Warfare, and Military Technology.* New York: Palgrave Macmillan, 2014.

Reisman, W. Michael and Andrea Armstrong. "The Past and Future of the Claim of Preemptive Self-Defense." *American Journal of International Law* 100, no. 3 (2006): 533-550.

Reiter, Dan. "Preventive Attacks against Nuclear Programs and the 'Success' at Osiraq." *Nonproliferation Review* 12, no. 2 (2005): 355-371.

Rivkin, Jr., David B. "The Virtues of Preemptive Deterrence." *Harvard Journal of Law & Public Policy* 29, no. 1 (2005): 85-102.

Roberts, Dan and Spencer Ackerman. "US Begins Air Strikes against ISIS Targets in Iraq, Pentagon says." *The Guardian,* August 8, 2014, https://www.theguardian.com/world/2014/aug/08/us-begins-air-strikes-iraq-isis.

Roberts, Dan and Spencer Ackerman. "Barack Obama Authorizes Air Strikes against ISIS Militants in Syria." *The Guardian,* September 11, 2014, https://www.theguardian.com/world/2014/sep/10/obama-speech-authorise-air-strikes-against-isis-syria.

Sanger, David E. and William J. Broad. "U.S. and Allies Warn Iran over Nuclear 'Deception.'" *New York Times,* September 25, 2009, http://www.nytimes.com/2009/09/26/world/middleeast/26nuke.html.

Schmitt, Michael N. "U.S. Security Strategies: A Legal Assessment." *Harvard Journal of Law & Public Policy* 27, no. 3 (2004): 737-763.

Schnabel, Albrecht. "Post-Conflict Peacebuilding and Second-Generation Preventive Action." *International Peacekeeping* 9, no. 2 (2002): 7-30.

Travalio, Gregory M. "Terrorism, International Law, and the Use of Military Force." *Wisconsin International Law Journal* 18, no. 1, (2000): 145-191.

The United Kingdom, Cabinet Office. *The National Security Strategy for the United Kingdom: Update 2009: Security for the Next Generation.* London: HM Government: 2009.

The United Kingdom, Cabinet Office. *The National Security Strategy: A Strong Britain in an Age of Uncertainty.* London: HM Government: 2010.

United Nations, *Charter,* Chapter I: Purposes and Principles, Article 2, Paragraph 4, http://www.un.org/en/sections/un-charter/chapter-i/index.html.

United Nations, *Charter*, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, http://www.un.org/en/sections/un-charter/chapter-vii/.

United Nations General Assembly, Resolution 3314, "Definition of Aggression." December 14, 1974, https://documents-ddsny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement.

United Nations General Assembly, Resolution 40/61, "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes." Adopted in 108th Plenary Meeting, December 9, 1985, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/40/61.

United Nations Security Council, Resolution 748, "Libyan Arab Jamahiriya." March 31, 1992, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/748(1992).

United Nations Security Council, Resolution 794, "Somalia." Adopted by the Security Council at its 3145th meeting, December 3, 1992, http://www.un.org/en/ga/search/view_ doc.asp?symbol=S/RES/794(1992).

United Nations Security Council, Resolution 1199, "Kosovo (FRY)." Adopted by the Security Council at its 3930th meeting, September 23, 1998, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1199(1998).

United Nations Security Council, Resolution 1214, "Afghanistan." Adoption by the Security Council at its 3952nd meeting, December 8, 1998, http://www.un.org/en/ga/search/ view_doc.asp?symbol=S/RES/1214(1998).

United Nations Security Council, Resolution 1267, "Middle East." Adopted by the Security Council at its 4051st meeting, October 15, 1999, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1267(1999).

United Nations Security Council, Resolution 1333, "Afghanistan." Adopted by the Security Council at its 4251st meeting, December 19, 2000, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1333(2000).

United Nations Security Council, Resolution 1368, "Threats to International Peace and Security Caused by Terrorist Acts." Adopted by the Security Council at its 4370th meeting, September 12, 2001, http://www.un.org/en/ga/search/view_ doc.asp?symbol=S/RES/ 1368(2001).

United Nations Security Council, Resolution 1373, "Threats to International Peace and Security Caused by Terrorist Acts." Adopted by the Security Council at its 4385th meeting, on 28 September 2001, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/ 1373(2001).

United Nations Security Council, Resolution 1929, "Non-Proliferation." Adopted by the Security Council at its 6335th meeting, June 9, 2010, http://www.un.org/en/ga/search/view_ doc.asp?symbol=S/RES/1929(2010).

United Nations Security Council, Resolution 2231, "Non-Proliferation." Adopted by the Security
Council at its 7488 meeting, July 20, 2015, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231(2015).

United Nations Security Council, S/2001/946, "Letter Dated 7 October 2001 from the Permanent
Representative of the United States of America to the United Nations Addressed to the President of the Security Council, October 7, 2001, http://www.un.org/en/ga/search/ view_doc.asp?symbol=S/2001/946.

Vayrynene, Raimo, "Preventive Action by Military Means: A Contested Approach." *Global Security* 20, no. 1 (2006): 69-86.

The White House. *The National Security of United States of America.* Washington, DC: 2002.

The White House. *The National Security of United States of America*. Washington, DC: 2006.

Wippman, David. "Kosovo and the Limits of International Law." *Fordham International Law Journal* 25, no. 1 (2001): 129-150.

Wirtz, James J. and James A. Russell. "U.S. Policy on Preventive War and Preemption." *Nonproliferation Review* 10, no. 1 (2003): 113-123.