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**The Bush Doctrine – a carte
blanche for a war on the world?**

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Summary

The events on September 11, 2001, changed the view for many regarding the use of force. The US immediately engaged in a war against terrorism, and in an attempt to win this war and protect American citizens, President Bush and his administration used all means necessary. Thus, the Bush Doctrine came to be. This doctrine introduced a controversial view of the use of force. It would allow the US to attack another state, pre-emptively, if that state is considered to pose a possible threat to the US. In addition, this would not need the sanction of the Security Council or the support of the international community. This has caused a debate among international law experts and forced an examination of the established rules in international law. However, there is an existing right of anticipatory self-defence in international law, though very restricted. The question therefore, is if the pre-emptive self-defence also is permitted in international law. Can there be a right, approving one state attacking another, based on nothing but a possible future threat?

In my thesis, I will examine the right of use of force in international law today. I will compare this to the US' National Security Strategy and their doctrine on pre-emptive self-defence. During the course of this examination, I conclude that the right of pre-emptive self-defence contradicts international law and international customary law today. The international community is far too divided in its opinion on pre-emptive self-defence to reach the conclusion that a new opinion juris has arisen on the subject. The doctrine of pre-emptive self-defence is also undesirable in international law because of the obvious risk of abuse. There is no way of controlling who or when the doctrine might be used as an excuse for engaging in a military attack. The US actions might serve as an incentive for other states to follow. In addition, a unilateral approach to international law and the use of force threatens the role of the UN and the Security Council as the primary body responsible for maintaining international peace and security.

Abbreviations

AJIL	American Journal of International Law
EES	EU Security Strategy
EJIL	The European Journal of International Law
ELIN	Electronic Library Information Navigator
EU	The European Union
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ILM	International Legal Materials
ILR	International Law Reports
NATO	North Atlantic Treaty Organization
NSS	National Security Strategy
S/RES/	Security Council Resolution
UN	United Nations
U.N.T.S.	United Nations Treaty Series
US	The United States of America
WMD	Weapons of Mass Destruction

1 Introduction

On September 11, 2001, a new era in the foreign policy of USA began. The unprecedented terrorist attack against the twin towers and Pentagon would set a new agenda for the Bush administration. Their main objective would now be security for the country and for Americans in the world. However, this new policy would not only affect the country itself, but also the international community and put international law to the test. The new pre-emptive doctrine presented by the Bush administration has become a subject of much debate. Some countries are positive to a widened right of self-defence, but many other states think the opposite. This has caused international law experts around the world to re-examine the rule of force in international law. Nevertheless, the increasing threat of terrorism and WMD challenge the established rules in the UN Charter and in international customary law. The events on September 11 did not involve just the American people and their nation. It also affected the entire international community and meant a re-examination of the established rules in international law.

1.1 Purpose and delimitations

The purpose of this thesis is to examine claims on the existence of a right to pre-emptive self-defence and the National Security Strategy in the USA from 2002¹ and 2006² (NSS 2002, NSS 2006), to see what possible effect theses might have on pre-emptive self-defence. My focus will lie on the possible existence of a right of pre-emptive self-defence, but the recent development in the USA with a new NSS might have a considerable importance on that right. My objective is to shed light on what effect the

¹ The National Security Strategy of the United States of America, 20 September 2002, at <http://www.whitehouse.gov/nsc/nss.pdf>

² The National Security Strategy of the United States of America, March 2006, at <http://www.whitehouse.gov/nsc/nss/2006/nss2006.pdf>

new NSS might have for the right of self-defence in article 51 in the UN Charter.

The questions I intend to answer in my thesis are as follow:

- How does the US' new national security strategy relate to the UN Charter's right of self-defence?
- Is there a right of pre-emptive self-defence in international law today?

Since my thesis will focus upon the right of self-defence and the possible effects of the NSS, I will concentrate on central parts regarding those aspects in the NSS, and not the entire agenda of it. In my thesis, I will include a short background to the principle of non-violence and the right of self-defence. However, I will not cover the situation of humanitarian intervention or intervention by invitation.

1.2 Method and terminology

Desk studying has been my basic method throughout this work, during which I have done a literature survey of doctrine and a reading analysis of the National Security Strategy. The right of self-defence is my central focus in the thesis, and I have used the US' strategy as material in investigating it.

The term "pre-emptive self-defence" is used in this essay to refer to cases where a party uses force to quell any possibility of future attack by another state, even where there is no reason to believe that an attack is planned and where no prior attack has occurred. Some writers also call this "preventive" self-defence or "preventive" war. It is to be distinguished from "anticipatory" self-defence. The latter is a narrower doctrine that would authorize armed responses to attacks that are on the brink of launch, or

where an enemy attack has already occurred and the victim learns more attacks are planned.³

1.3 Materials

My facts mostly come from books from different known international law experts, and I have tried to select known authors in order to get the views of recognized authorities in international law.

1.3.1 Sources on the internet

Some of my material has been brought from the internet and I have used official homepages as much as possible. I have also been of great help by different articles and subscriptions from recognized printed sources published on the internet.

1.4 Outline

In order to make this thesis as clear as possible I have chosen to plan my thesis by in chapter two first giving a brief summary of the international law today, regarding the use of force and the right of self-defence. Thereafter, in chapter three, I cover the relatively new development in the field of terrorism after the events on 11 September 2001. I continue my thesis in chapter four, by shedding light on the National Security Strategies of the US and their content. In chapter five, I deal with the international community's response and the supporting states of the doctrine. This is followed by chapter six, where I examine the strategy's compatibility with international law today and in the future. In the end, I finish my thesis by giving my final thoughts and comments on the subject.

³ Ochoa-Ruiz, Natalia, Salamanca-Aguado, Esther, *Exploring the Limits of International Law relating to the Use of Force in Self-defence*, The European Journal of International Law, Vol. 16, no.3, 2005, p 522

2 The UN Charter

2.1 Article 51

Perhaps the most basic principle in International Law is the one stated in article 2:4 in the UN Charter⁴, the principle of non-violence. Article 2:4 states that;

“All Members shall 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.”

However, international law and the UN Charter permit two exceptions from this basic rule. The first situation is when the Security Council under chapter VII authorizes the use of force in order to secure international peace and security. The second situation and the one most central for this thesis, is the one provided in article 51 in the UN Charter. Article 51 reads:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”

This means that all States have a right to self-defence by which the use of force is a legitimate exception to the general rule of prohibiting use of force.⁵ The force used however, must be proportionate, immediate and necessary.⁶

⁴ Charter of the United Nations, adopted June 26 1945, T.S. 993, in force October 24 1945, 1 UNTS XVI

⁵ Malanczuk, Peter, *Akehurst's Modern Introduction to International Law*, 7th ed, London, Routledge, 1997, p. 311

⁶ Linderfalk, Ulf, *Folkrätten i ett nötskal*, Studentlitteratur, 2006, p. 166

The “*inherent right*” in article 51, is usually interpreted as if there is a principle established in the international customary law, and that the exact meaning is not defined in the UN Charter but by custom and practice.⁷ There is, however, a disagreement amongst the Member States and experts regarding the circumstances under which force can be used lawfully in the exercise of self-defence.

There is one problematic term in article 51 - the wording “*armed attack*” is not precise. What actually constitutes an armed attack and when the right of self-defence in that case rally arises, has caused much debate between experts.

2.1.1 Extensive interpretation

Some experts consider that article 51 should be interpreted extensively, that the “*inherent right*” must not be restricted or limited. This in turn means that there does exist in customary international law a right of self-defence over and above the specific provisions of article 51, which refer only to the situation where an armed attack has occurred.⁸ The academics who advocate this extensive interpretation of article 51 also regard pre-emptive self-defence as permitted within the article’s limits, especially in an age when WMD are more current than ever. It would not be reasonable to expect a country to await an initial attack that might jeopardise the country’s entire existence.⁹

2.1.2 Restrictive interpretation

While some academics are of the more extensive opinion, the majority of experts and states advocate a restrictive interpretation of the article and its

⁷ Bring, Ove, Mahmoudi, Said, *Internationell våldsanvändning och folkrätt*, 1:a uppl., Stockholm, Norstedts juridik, 2006, p. 81

⁸ Shaw, Malcolm N., *International Law*, 5th ed., Cambridge: Cambridge University Press, 2004, pp. 1025-1026

⁹ Bowett, Derek, W., *Self-defence in international law*, Manchester, Manchester University Press, 1958, pp. 118-92

meaning.¹⁰ They believe that article 51 should be interpreted true to the letter and that self-defence is only allowed if, and only if, an armed attack occurs.¹¹ They support their view by referring to different delegations' propositions and statements in the preparatory work to the UN Charter. These clearly indicate that the authors of the Charter meant to limit single states' right of use of force to situations where an armed attack has occurred. They also consider that the prohibition of the use of force in article 2:4 in the UN Charter is absolute, and means that a state cannot use force unless it is under the explicit exception in article 51.¹² This approach is adhered by those who fear an uncontrolled expansion of the use of force on loose grounds and in self-interest. They also regard/consider pre-emptive self-defence as an extreme case of self-defence not included in the meaning of article 51.

2.2 International customary law

The traditional definition of the right of self-defence in customary international law dates back to 1837 in the famous *Caroline Case*.¹³ In this case, the American foreign minister, Daniel Webster, formulated a nowadays classic statement of when self-defence is allowed: "...*the necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment of deliberation.*"¹⁴ International customary law might arise if states act in a certain way several times and in similar manner, thereby showing their opinion juris. The problem however, is how to assess customary law compared to article 51 in the UN Charter. The

¹⁰ Concerning states opinio juris; see e.g. the Security Council debate on Israel's bombing of the Iraqi nuclear reactor in 1981, 20 ILM, 1981, pp. 965-967; footnote from Shaw, *supra* note 8, p. 1029

¹¹ Dinstein, Yoram, *Self-defense in an age of terrorism*, American Society of International Law, Proceeding of the Annual Meeting ABI/INFORM Global, 2003, p. 148, also; Brownlie, Ian, *International law and the use of force by states*, University Press, Oxford, 1963, pp. 270-272

¹² Bring, Ove, *FN-stadgan och världspolitiken – om folkrättens roll i en föränderlig värld*, Upplaga 4:1, Nordstedts Juridik AB, 2002, pp. 72, 73

¹³ Jennings, R. Y., "The *Caroline and McLeod Cases*", 32 AJIL, 1938, p. 82

¹⁴ *Ibid*, p. 89

International Court of Justice in the *Nicaragua Case*¹⁵ did not accept the argument of the US that the norms of customary international law concerned with self-defence had been “subsumed” and “supervened” by article 51 of the UN Charter. The Court emphasised that even though a treaty norm and a customary norm have the exact same content, the customary international law continues to exist, separately from international treaty law.¹⁶

Customary law can change. A state can breach the current customary law, and form a new legal claim. If several states act in similar manner and express a concurring opinion, thereby showing an *opinion juris*, a new customary law can arise after some time. The new concept of the exclusive economic zone in the Law of the Sea was developed this way, also under customary law.¹⁷ Although that case is far from the area of use of force, it still shows changes can be made. If the new Security Strategy in the US is aiming for such a change, awaits to be seen.

There are authors who claim that the strategy adopted by the US places responsibility upon a government for the acts of a terrorist group operating from inside its borders has led to a change in customary law. The right of self-defence now includes military responses against states, which actively support or willingly harbour terrorist groups who have carried out an armed attack against another state and who have planned more for the future.¹⁸

2.3 Pre-emptive self-defence

The question of pre-emptive self-defence in International Law has been debated ever since the beginning of the UN Charter in 1945. How far the

¹⁵ *Case concerning the military and paramilitary activities in and against Nicaragua* (Nicaragua v. United States of America), ICJ Reports, 1986, pp. 14, 103; 76 ILR, p. 437

¹⁶ Shaw, *supra* note 8, p. 91

¹⁷ Bothe, Michael, *Terrorism and the Legality of Pre-emptive Force*, Journal of Environmental Law, Volume 14, No 2, Oxford University Press, 2003, pp. 227-240

¹⁸ Langille, B, *It's "Instant Custom": How the Bush Doctrine Became Law After the terrorist Attacks of September 11*, XXVI (1) BCICLR 145, 2003, available at (2007-04-02, 23.30 CET)

http://www.bc.edu/schools/law/lawreviews/meta-elements/journals/bciclr/26_1/07_TXT.htm

right of self-defence extends in International Law is not entirely clear and definitive. Israel has on two occasions interpreted article 51 so as to permit pre-emptive self-defence and used it as a reason for an armed attack. The first time was when they attacked Egypt in 1967 after Egypt's mobilization¹⁹, the second when Israel attacked the Iraqi nuclear reactor Osirak in 1981. The attack on Osirak was unanimously condemned in the Security Council and considered a violation of the Charter of the United Nations.²⁰ However, even though the resolution was unanimous, there was a difference of opinion regarding Israel's interpretation of article 51. The USA did not want to state a clear negative stand against the argument of pre-emptive self-defence, unlike the rest of the Security Council.²¹ This way, the US kept their options free, in case they ever wanted to use the argument of pre-emptive self-defence.

The general opinion however, is that under customary law a State is allowed to use force in self-defence in anticipation of an armed attack, if the danger of an attack is imminent.²² I will return to this matter later in my thesis.²³

¹⁹ For more on this event, study Shaw, *supra* note 8, p. 1029

²⁰ Security Council Resolution 487, June 19, 1981

²¹ Bring, Ove, *FN-stadgan och världspolitiken: om folkrättens roll i en föränderlig värld*, 4:e uppl. 2002, Stockholm, Norstedts förlag, p. 169

²² Brownlie, *supra* note 11, p. 257

²³ See chapter 5.3

3 Terrorism – the new threat

3.1 Introduction

Terrorism usually means actions using illegal and systematic violence, often aimed at non-military targets, in order to reach a political goal.²⁴ The definition of terrorism however, has caused much debate. Still today, the UN and the General Assembly has not been able to reach a consensus about a resolution defining terrorism. One suggestion for the UN convention against terrorism meant that terrorism would be defined as criminal acts with purpose to cause a reign of terror, combined with a claim that these acts under all circumstances were illegitimate. Many governments have found this definition too vague and extensive, and different opinions regarding the allowed measures against foreign occupation have made it impossible to proceed.²⁵

When the UN Charter was established in 1945, the founders probably did not consider international terrorist groups as a threat. The charter only regulates relations between states where the attacker is known and the right of self-defence is exercised directly after the attack. However, international terrorism has become an increasing problem and reached a new level. Since terrorism is not actually an action by a state, the international community has used only legal methods to fight it, and restricted it to national concerns. Nonetheless, because of the increasing problem, more cooperation that is of international character was necessary.²⁶ The UN has since the 1960s adopted several conventions concerning terrorism in order to create a universal jurisdiction for terrorists.²⁷

²⁴ Kushner, Harvey, W., *Encyclopedia of Terrorism*, Thousand Oaks, Calif., SAGE, cop. 1998, p. 359

²⁵ Gustavsson, Jakob, Jonas Tallberg (red.), *Internationella relationer*, Studentlitteratur, 2006, p. 362

²⁶ Shaw, *supra* note 8, pp. 1048 - 1050

²⁷ *Ibid*; also at: <http://www.un.org/terrorism/instruments.html>

3.2 September 11

September 11 2001 has become a milestone in history. Never before has such a large-scaled terrorism act succeeded and cost so many innocent lives. However, it has also had an effect on international law. After the events on September 11, the whole world turned their eyes towards the USA and the culprits. Soon, a known terrorist cell called Al-Qaeda was seen as responsible for the attacks. From adopting different conventions and trying to coordinate international law to include terrorism, the UN now made a real effort in the war against terror. The day after September 11, the Security Council adopted resolution 1368,²⁸ where they referred to states' inherent right of self-defence according to the UN Charter and to combat by *all means*²⁹ (my italics) threats to international peace and security caused by terrorist acts.³⁰ This was the first time the Security Council linked the question of self-defence with the war against terrorism. It was determined that the attacks on September 11 constituted a "threat against international peace and security", a locution that can open the door for military measures according to article 39 in the UN Charter. This way, the international war against terrorism was lifted to a higher level in international law and given a military dimension. On the same day, the NATO member states for the first time invoked article 5 of the NATO statute and declared the terrorist attacks on the US an assault on all member states.³¹ On September 28, 2001, the Security Council adopted resolution 1373³², which reaffirmed the previous resolution and adopted a series of binding decisions.³³

²⁸ S/RES/1386 (2001), 20 December

²⁹ Contrast this to the more narrow meaning of "all necessary means" used for military measures.

³⁰ S/RES/1386 (2001)

³¹ Article 5 reads: "*The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.*"

³² S/RES/1373 (2001), 28 September

³³ Bring, *supra* note 12, p 316; also, Shaw, *supra* note 8, p. 1028

3.3 Post September 11

International law today is not, as so often in this area, precise when it comes to the subject of terrorism. The two resolutions adopted by the Security Council and states' opinion juris³⁴, suggest that a state might have the right of self-defence in case of a terrorist attack. Nevertheless, it is likely that the attacked state must be able to link the terrorists to a state, for example like Afghanistan, which harboured many base camps of Al-Qaeda's. This would also be in accordance with ILC-draft article 11.³⁵

This is also supported by two recent rulings by the ICJ. In the *Oil Platform Case*³⁶, the Court categorically underlined the traditional requirements of self-defence in international law and rejected the US argument of self-defence in a case that apparently had given the court the right opportunity to speak out on a possible extension of the right of self-defence.³⁷ More significantly, the Court in its advisory opinion concerning *Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory*³⁸ referred to the Israeli argument that the Security Council Resolutions 1368 and 1373 have clearly recognized the right of states to use force in self-defence against terrorist attacks. The Courts made it clear that self-defence can be invoked only against an attack that is imputable to a foreign state, and not terrorist actions of individuals or groups not directly associated with and supported by a sovereign State.³⁹

³⁴ Opinio juris was here shown by a mix of outspoken support from the West and Latin America, and passive tolerance from the rest of the world.

³⁵ Art. 11 ILC-draft: "Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own."

³⁶ *Oil Platform Case*, ICJ Reports, 6 November 2003, No 90, 42 ILM 1334

³⁷ *Ibid.* paras. 72-78

³⁸ *Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory*, ICJ Reports, 9 July 2004, No 131, 43 ILM 1009

³⁹ *Ibid.*, para. 139; However, Gray has a different opinion, read: *The Bush Doctrine Revisited*, 2006, p. 571

3.3.1 Iraq 2003

In 2003, the US and their “coalition of the willing” went in to Iraq by force, using the argument that Iraq posed a threat serious enough to trigger the use of force in pre-emptive purpose. The threat in this case, according to the US, consisted in that Iraq allegedly was developing WMD and harbouring terrorists. This was the first time President Bush and his administration put their doctrine on pre-emptive self-defence to test. Their reason for the intervention was vague according to many states in the international community, and it divided the support for the US.

4 The National Security Strategy 2002 and 2006

4.1 The Bush Doctrine

After the attacks on September 11, 2001, the Bush administration quickly set its goal on how to make the country safer. A step towards this was the development of a National Security Strategy, which was published in September 2002.⁴⁰ This was a formalization of the so-called Bush-doctrine, a set of foreign policy guidelines, first unveiled in President Bush's commencement speech to the graduating class of West Point in 2002. The doctrine's goal is to fight terrorism and other threats against the western society, even in pre-emptive purpose. Instead of the cold war tactics with deterrence and a wait-and-see-policy, a new challenge-and-attack-policy was introduced. What was once a policy of containment is now a policy of pre-emption.⁴¹

4.2 The National Security Strategy of the United States of America (NSS 2002)

This document, based on the Bush-doctrine, marks a shift in the foreign policy of the USA. This new strategy is based on an American internationalism that is supposed to reflect its values and national interests. The objective is not only a safer world but also a better one.⁴² According to the strategy, the number one priority will be first to disrupt and destroy

⁴⁰ "The National Security Strategy of the United States of America", 20 September 2002, at <http://www.whitehouse.gov/nsc/nss.pdf>

⁴¹ Facts from the Swedish National Encyclopedia's internet service, at: http://www.ne.se/jsp/search/show_section.jsp?i_art_id=AK6395&i_word=bushdoktrin&i_h_text=1&i_rphr=bushdoktrin%25, 2007-02-27, 11:43 EST.

⁴² NSS 2002, p 1

terrorist organizations of global reach and attack their leadership with all necessary means, both national and international.⁴³

The United States will use political, economical, diplomatic and other means to achieve its goal to spread democracy and fight tyranny all over the world. The administration will use its voice and right to vote in international institutions, be attentive to crimes against human rights, use sanctions affecting leaders in dictatorships, and not the civilian population. The US will support non-governmental organizations and encourage other countries to dissociate from dictatorships and use aid to advocate freedom and reward the countries that take a step towards a democratic form of government.⁴⁴

It is also here one of the most controversial items in the strategy is presented:

“While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of selfdefense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country.”⁴⁵

Although this might seem as a new intent from the US, it is not. The idea of pre-emptive self-defence was current already when Ronald Reagan was president. When the US bombed Libya in response to a terrorist attack against a discothèque in Berlin in 1976, injuring about 200 people amongst 60 were American citizens, Reagan meant that it was a response within the meaning of article 51 in the UN Charter. It was a pre-emptive action taken against Libya in order to reduce their ability to export terror.⁴⁶ The US reported their actions to the Security Council, according to article 51 in the UN Charter. The Security Council however, did not accept the US’

⁴³ NSS 2002, p. 5

⁴⁴ *Ibid*, p. 4; NSS 2006 p. 6,7

⁴⁵ NSS 2002, p. 6

⁴⁶ Bring, *supra* note 12, pp. 176-177

argument and a resolution draft was put forward which would have condemned the US' action as contradicting the UN Charter.⁴⁷ The resolution never passed however, since three of the veto entitled countries voted against the resolution.⁴⁸ Thereby, the action from the US never reached the level of a condemning council resolution. Nevertheless, this should not be interpreted as an *opinio juris* in favour of pre-emptive self-defence. The resolution was not condemned in the Security Council because of a triple veto, but no explicit support for the US' extensive interpretation of the right of self-defence was expressed. In addition, later that year the General Assembly adopted a resolution in which it condemned the military attack perpetrated against Libya by the US, stating that it constituted a violation of the UN Charter and of international law.⁴⁹

It is clear in this case that a great number of states rejected the US' position on the right of pre-emptive self-defence. It was not accepted as legal by most states, and pre-emptive self-defence was still considered as unlawful under the UN Charter.

4.3 The National Security Strategy of the United States of America 2006 (NSS 2006)

In 2006, the White House released President Bush's second term National Security Strategy,⁵⁰ which reflects the President's most solemn obligation; to protect the security of the American people. The 2006 National Security Strategy largely reaffirms the 2002 National Security Strategy and

⁴⁷ S/18016/Rev 1, 21 April 1986

⁴⁸ The vote was nine to five, with one abstention. The states voting against the draft were Australia, Denmark, France, the United Kingdom and the United States. France and Denmark voted against the draft because they believed the draft was unbalanced, since it did not mention Libya's responsibility for international terrorism; (from Yearbook of the UN 1986, p. 254)

⁴⁹ General Assembly Resolution 41/38, 20 November 1986

The vote here was seventy-nine for, twenty-eight against and thirty-three abstentions. (Yearbook of the UN 1986, p. 258)

⁵⁰ "The National Security Strategy of the United States of America", March 2006, at <http://www.whitehouse.gov/nsc/nss/2006/nss2006.pdf>

repeatedly refers back to its provisions on the use of force and other topics. Almost every section of the 2006 Strategy begins with a summary of the equivalent section of the 2002 Strategy.

The NSS 2006 is founded upon two pillars:

*“The first pillar is promoting freedom, justice, and human dignity – working to end tyranny, to promote effective democracies, and to extend prosperity through free and fair trade and wise development policies. Free governments are accountable to their people, govern their territory effectively, and pursue economic and political policies that benefit their citizens. Free governments do not oppress their people or attack other free nations”.*⁵¹

The second pillar of the strategy is confronting the challenges of our time by leading a growing community of democracies:

*“Many of the problems we face -- from the threat of pandemic disease, to proliferation of weapons of mass destruction, to terrorism, to human trafficking, to natural disasters -- reach across borders. Effective multinational efforts are essential to solve these problems. Yet history has shown that only when we do our part will others do theirs. America will continue to lead.”*⁵²

In the 2006 Strategy, the USA and its allies in the war on terror make no distinction between those who commit acts of terror and those who support and harbour them, because they are equally guilty of murder.⁵³

⁵¹ NSS 2006, introduction

⁵² *Ibid*

⁵³ *Ibid*, p. 12

Certain states are pointed out as “axis of evil”. These states are Iraq, North Korea and Iran. Iran, in addition, is according to the US the state that poses the biggest threat against them:⁵⁴

*“We may face no greater challenge from a single country than from Iran”*⁵⁵

In 2002, the Strategy identified the most serious challenges to US national security as emanating from the dual threat of rogue states developing WMD, and of terrorists who might acquire such weapons.⁵⁶ In the 2006 Strategy, however, the focus shifts to Iran and Syria as state sponsors of terror:

“Some states such as Syria and Iran continue to harbour terrorists at home and sponsor terrorist activity abroad”.⁵⁷

The 2006 Strategy repeats the 2002 position that in fighting terrorism, the USA can no longer rely on deterrence; the fight must be taken to the enemy. However, the 2006 National Security Strategy no longer refers merely to the threat posed by “shadowy networks of individuals” as the 2002 version did. It now tries to identify more precisely the nature of the terrorist threat. The main danger comes from “Islamic extremists”, although the Strategy nevertheless maintains that “the war on terror is a battle of ideas, it is not a battle of religions”.⁵⁸ Elsewhere, President Bush has been even more outspoken in blaming “Islamic radicalism” for global terrorism, and he has attributed a clear three-step political agenda to “Islamic extremists” or “Islamo-fascists”

⁵⁴ News broadcast on Swedish Chanel 3, “*Sveriges Radio - Ekot*”, available at (2007-05-31, 17:20 CET) <http://www.sr.se/cgi-bin/ekot/artikel.asp?artikel=817643>

⁵⁵ NSS 2006, p. 20

⁵⁶ *Ibid*, p. 14

⁵⁷ *Ibid*, p. 9

⁵⁸ *Ibid*

4.3.1 Main objectives

The President's National Security Strategy specifically focuses on the following areas:

Champion Aspirations for Human Dignity

* The United States champions freedom because doing so reflects their values. The US considers democracies as the most responsible members of the international system, and thus, promoting democracy is the most effective long-term measure for strengthening international stability, reducing regional conflicts, countering terrorism and terror-supporting extremism, and extending peace and prosperity.⁵⁹

Effective Democracies

* Effective democracies honour and uphold basic human rights, including freedom of religion, conscience, speech, assembly, association, and press.

They also exercise effective sovereignty and maintain order within their own borders, protect independent and impartial systems of justice, punish crime, embrace the rule of law, and resist corruption.⁶⁰

The US has a responsibility to promote human freedom. Yet freedom cannot be imposed; it must be chosen.⁶¹

Strengthen Alliances to Defeat Global Terrorism and Work to Prevent Attacks Against Us and Our Friends

* The US is a nation at war. They consider having made progress in the war against terror, but are in a long struggle. America is safer, but not yet safe.⁶²

The advance of freedom and human dignity through democracy is the long-term solution to the transnational terrorism of today. To create the space and time for that long-term solution to take root, the US will take four steps in the short term:

- Prevent attacks by terrorist networks before they occur;

⁵⁹ NSS 2006, p. 3

⁶⁰ *Ibid*, p. 4

⁶¹ *Ibid*, p. 5

⁶² *Ibid*, p. 8

- Deny WMD to rogue states and to terrorist allies who would use them without hesitation;
- Deny terrorist groups the support and sanctuary of rogue states;
- Deny the terrorists control of any nation that they would use as a base and launching pad for terror.⁶³

Prevent Our Enemies from Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction (WMD)

* The US is committed to keeping the world's most dangerous weapons out of the hands of the world's most dangerous people.⁶⁴

In 2006, the administration once again confirmed their position for pre-emptive action:

“If necessary, however, under long-standing principles of self defense, we do not rule out the use of force before attacks occur, even if uncertainty remains as to the time and place of the enemy’s attack. When the consequences of an attack with WMD are potentially so devastating, we cannot afford to stand idly by as grave dangers materialize. This is the principle and logic of preemption. The place of preemption in our national security strategy remains the same.”⁶⁵

⁶³ NSS 2006, p. 12

⁶⁴ *Ibid*, p. 18

⁶⁵ *Ibid*, p. 23

5 The international community's response

5.1 EU Security Strategy 2003: a secure Europe in a better world

The EU issued its first joint security strategy in December 2003.⁶⁶ This 14-page document was designed to be a counterpart to the US National security Strategy, and there are many similarities between the two documents.⁶⁷ The European Strategy also identifies terrorism and the proliferation of WMD as threats. However, the EES only mentions the word “war” twice, while the NSS mentions it 36 times. This is a significant difference, indicating not a war on terror, but more a fight from EU’s side.⁶⁸ While accepting the possible use of force as a last resort if diplomatic preventative measures and international relations failed, the EU insists that the UN Security Council should play a central role, indicating that it disagrees with the unilateral approach to pre-emption taken by the US, and instead prefers the security of multilateralism.⁶⁹ The EU strategy emphasizes the importance of international law and the role of the UN. In several important aspects - the support for pre-emptive self-defence, the references to international law, and the failure to acknowledge a role for the UN - the 2003 EU Security Strategy marks a contrast to the 2006 US National Security Strategy.⁷⁰ The EU does not condemn the idea of pre-emptive self-defence, but stays rather neutral and avoids the question, in contrast to the American document, which sees pre-emptive self-defence as something natural and as an adaptation to how the world looks and works.

⁶⁶ “*The European Security Strategy – A secure Europe in a better world*”, December 2003, available at (2007-04-02, 14:54 CET) <http://ue.eu.int/uedocs/cmsUpload/78367.pdf>

⁶⁷ Gray, Christine, *The Bush Doctrine Revisited: The 2006 National Security Strategy of the USA*, Chinese Journal of International Law, 2006, Vol. 5, No. 3, p. 564

⁶⁸ Berenskoetter, Sebastian, F, *Mapping the Mind Gap: A Comparison of US and European Security Strategies*, Security Dialogue, SAGE Publications, 2005; 36; 71; also found at (2007-03-31, 22.17 CET) <http://sdi.sagepub.com/cgi/content/abstract/36/1/71>

⁶⁹ Henderson, Christian, *The Bush Doctrine: From theory to practice*, Journal of Conflict & Security Law, 2004, Oxford University Press, Vol. 9 No. 1, p. 11

⁷⁰ Gray, *supra* note 68, p. 564

5.2 Supporting nations

The UK is a strong supporter of the US since the attacks in 2001. They also played a key role during the invasion in Iraq 2003, and support the agenda of pre-emptive self-defence still today. However, not even the UK has accepted purely preventive self-defence; some degree of imminence in a threatened attack is required.⁷¹ Nevertheless, the UK has taken a general and flexible line on the subject and the UK Attorney-General has stated that:

*“The concept of what is imminent may depend on the circumstances. Different considerations may apply, for example, where the risk is of attack from terrorists sponsored or harboured by a particular state, or where there is a threat of an attack by nuclear weapons”.*⁷²

The only country (except the US itself of course) that has expressed a clear stand for pre-emptive self-defence is Australia. In light of the terrorist bombings in Bali on 12 October 2002, when so many Australian citizens were killed and injured, the Prime Minister, John Howard, endorsed the Bush Doctrine and asserted the right to make a unilateral pre-emptive attack. Mr Howard said that Australia was ready to take pre-emptive action against terrorists in neighbouring Asian countries and that international law could no longer cope with the changed circumstances confronting the world where the most likely threat to any nation’s security was non-state terrorism.⁷³

Israel, a close allied to the US in politics, must also be seen as positive to the Bush-doctrine. They themselves have used the argument of pre-emptive self-defence in the past⁷⁴. The former Prime Minister Benjamin Netanyahu

⁷¹ Gray, Christine, *A crisis of legitimacy for the UN collective security system*, article in *International and Comparative Law Quarterly*, 2007, Volume 56, No 1, pp 157-170, Oxford University Press

⁷² ICQL, 2005, Oxford University Press, Volume 54, No 3, pp. 767, 768; quote from Gray, *supra* note 72, p. 163

⁷³ Article by Brendan Nicholson, National Security Correspondent for The Age, Australia, published September 20, 2004, available at (2007-06-06, 17:36 CET): <http://www.theage.com.au/articles/2004/09/19/1095532176122.html>

⁷⁴ See chapter 2.3

has said that he would support a pre-emptive strike against Iran's nuclear program.⁷⁵ He also expressed Israel's support for an American pre-emptive action against Iraq in 2002. In the same statement, Netanyahu clearly shows a sharing view of unilateral action, without the support of the world community and the UN;

“If a preemptive action will be supported by a broad coalition of free countries and the United Nations, all the better. But if such support is not forthcoming, then the United States must be prepared to act without it. International support for actions that are vital to a nation's security is always desirable, but it must never constitute a precondition. If you can get it, fine. If not, act without it.”⁷⁶

5.3 The UN

Whilst there are signs of acceptance of pre-emption in the format of the Bush Doctrine, the international community as a whole has not been so accepting. At the UN General Assembly in September 2003, although President Bush did not talk expressly of the Bush Doctrine, Kofi Annan, the UN Secretary General at the time, stated that the doctrine:

“. . . represents a fundamental challenge to the principles on which, however imperfectly, world peace and stability have rested for the last 58 years . . . If it were adopted, it could set precedents that resulted in a proliferation of the unilateral and lawless use of force, with or without justification.”⁷⁷

⁷⁵ <http://web.israelinsider.com/Articles/Briefs/7178.htm>, article by Associated Press, published in israelinsider, December 5, 2005

⁷⁶ Mr. Netanyahu address in a hearing hosted by the House Committee on Government Reform, "Conflict with Iraq - An Israeli Perspective", 12 September 2002, available at (2007-06-06, 17:40 CET) <http://www.netanyahu.org/con1.html>

⁷⁷ "The Secretary General: "Address to the General Assembly", 23 September 2003, at <http://www.un.org/webcast/ga/58/statements/sg2eng030923.htm>

Not surprisingly, the UN advocates a multilateral approach to end crisis between states. Most of the member states in the UN agrees, and are of the opinion that a widened right of self-defence might be a dangerous path to choose. The UN has firmly rejected any wider right of pre-emptive self-defence going beyond anticipatory self-defence in the face of an imminent attack, and if there were no imminent threat then it would be for the Security Council rather than individual States to take pre-emptive action.⁷⁸

The High Level Panel, set up by the UN Secretary-General, discussed the difference between anticipatory self-defence and pre-emptive self-defence in their meeting in 2004. They drew a distinction between anticipatory action against an imminent attack and purely preventive action. On the first, the Panel said that Article 51 of the UN Charter on self-defence needed neither extension nor restriction of its long-understood scope:⁷⁹

*“. . . a threatened State, according to long established international law, can take military action as long as the threatened attack is imminent, no other means would deflect it and the action is proportionate.”*⁸⁰

Following this, the Secretary-General issued his own report, *In Larger Freedom*, 2005.⁸¹ The Secretary-General did not agree completely with the High Panel, and did not say that imminent threats was covered by international customary law, but by article 51 in the UN Charter. However, both reports firmly rejected any wider right of pre-emptive self-defence going beyond anticipatory self-defence in the face of an imminent attack. If there were no imminent threat then it would be for the Security Council rather than individual States to take pre-emptive action.⁸²

⁷⁸ Gray, *supra* note 68, p. 566

⁷⁹ Gray, *supra* note 72, p. 160

⁸⁰ Report: *A More Secure World: Our Shared Responsibility*, UN Document A/59/565, para 188, available at (2007-04-02, 12:49 CET) <http://www.un.org/secureworld/report.pdf>

⁸¹ UN Document A/59/2005, 21 March 2005, available at (2007-04-02, 12:17 CET) <http://www.un.org/largerfreedom/>

⁸² Gray, *supra* note 68, p. 566

What is interesting here, is that they both avoid using the terms “anticipatory” and “pre-emptive”, probably because it is such a controversial subject. However, both the Secretary-General and the High Panel said that there should be no expansion of self-defence to cover purely preventive action in the absence of any imminent threat. If the attack is instead latent, the Charter gives full authority to the Security Council to use military force.⁸³

The High Panel’s and the General Secretary’s statements concerning pre-emptive self-defence and an extended right of self-defence in international law do not make much difference for the US and the National Security Strategy. The US is content as long as no one criticizes the doctrine of pre-emptive self-defence more precisely. Neither does the report from the EU give reasons for more discussion nor does it produce any different result than previously achieved. Instead, the different reports only confirm what has already been said. No exact comments regarding the National Security Strategy and the doctrine of pre-emptive self-defence are made; instead, general comments and statements about international law and the use of force are repeated. This shows clearly the continuing deep divisions between States on the law on the use of force.

⁸³ Gray, *supra* note 72, p. 161

6 Conclusions

6.1 De lege lata

The US has introduced their new policy of pre-emptive self-defence not only in theory, but in the highest degree in practice as well. Although there are states that support this form of expanded self-defence, far too many states are of the opposite opinion. As long as no more than a handful states regard the principle of pre-emptive self-defence as lawful in international law, no new *opinio juris* can arise and thereby no new customary law either.

Even though some writers consider resolutions 1368 and 1373 as a green light to use pre-emptive self-defence against any terrorist attack, the ICJ stated in its cases *Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory* and *Oil Platform Case*⁸⁴, that the right of self-defence against a terrorist attack is a restricted one. If the terrorist attack is not associated with a state, as if the act were the state's own, then no right of self-defence exists.

Terrorist attacks are not seen as continuing after the actual attack itself, which means that self-defence would only be in pre-emptive purpose. An act of pure vengeance or reprisal is not allowed in international law⁸⁵, and since there is not a consensus among states regarding the use of pre-emptive self-defence, then the use of it today by the US is not in conformity with international law.

The ongoing American operation in Iraq is definitively a sign that the international community is divided regarding the use of pre-emptive self-defence. As long as states do not show signs of accepting this behaviour and thereby no new international customary law rules the question, the American doctrine of pre-emptive self-defence is contrary to today's

⁸⁴ See section 3.3

⁸⁵ Shaw, *supra* note 8, p. 1023

international law. During the years, it has become clearer that a restrictive interpretation of the right of self-defence is the one most supported among international law experts. Even more importantly, the same opinion exists among most states and in their praxis. This means that the international customary law today only allows self-defence after an armed attack, with very restrictive exceptions for anticipatory self-defence.

6.2 Development since 2002

One can tell from the Strategy of 2006 that it has been written over four years and a war later. It is much more detailed in the 2006 version and after the revelation that Iraq did not seem to have any WMD, which was the main reason for the invasion in 2003; the Bush administration has now focused more on democracy and how they liberated a suppressed people from the evil tyrant Saddam Hussein. This is now an absolute must if President Bush is to have any chance to redeem the loss of confidence he and the US has suffered after Iraq. Peace and democracy in the Middle East is now a high priority, since this is the only way to legitimize the presence of foreign troops there. The question is if that is enough to cover the debacle in Iraq.

Compared to the 2002 strategy, today's "first pillar" of US national security strategy is: "promoting freedom, justice, and human dignity – working to end tyranny, to promote effective democracies, and to extend prosperity through free and fair trade and wise development policies." Democracy has become the key to every other goal in the 2006 version: international stability, an end to regional conflicts, ending terrorism, and ensuring economic growth. This is a very significant difference.

The 2002 strategy was, I think, more of a war strategy. This view is easier to understand when one reads what George Bush expressed late in 2001, shortly after the events on September 11:

*“You are either with us or you are against us”*⁸⁶

The 2002 strategy came out a week after the President addressed the United Nations, a few weeks before the Congress authorized the use of force against Iraq, and a few months before the actual beginning of the war. The 2006 document is not that clear, and focuses more on democratisation instead. However, as in the 2002 NSS, the 2006 strategy still leaves the US as the chooser of where the danger lies and when the moment to strike is, even the selection of the evidence that justifies the use of force. The pre-emption doctrine is still a central part of the strategy, although not as clear as previously.

6.2.1 Democracy

The Strategy from the US seeks to introduce democracy into the Arab world, in an attempt to erase terrorism in those areas. However, there is no guarantee that a democracy is more peaceful than a non-democratic state, and definitively not a guarantee that all terrorists will disappear, faced with a democratic government. Al Qaeda and like-minded groups are not fighting for democracy in the Muslim world; they are fighting to impose their vision of an Islamic state.

The process of trying to impose democracy in the Arab world also affects the stability in the area, and this conflict with the US' interests. In some of the areas in the Middle East, democracy is not the way. However, there was some stability and that helped providing basic security and to prevent fragile

⁸⁶ News conference on 6 November 2001, President Welcomes President Chirac to White House, available at (2007-04-02, 16:48 CET): <http://www.whitehouse.gov/news/releases/2001/11/20011106-4.html>

states from descending into chaos. This changed stability has forced the US to back away from its goals in the strategy. The US now has to accept the postponement of municipal elections in Egypt and back off on pursuing democratization in Saudi Arabia and Syria.

6.3 Foreign political situations

Although most states regard the doctrine of pre-emptive self-defence as unlawful in international law, the situation in Iraq still shows that the doctrine is already being put to use. Many states are critical to the invasion in Iraq and have clearly stated their opinion against it. However, the situation is still at hand, and even worse, still ongoing. The Iraqi people are not helped by condemnations, stopped by a veto in the Security Council, nor by strongly put language from state leaders. Had it been another country being invaded, the US would be standing on the opposite side, defending the invaded country.

Iran and North Korea were named together with Iraq as “axis of evil”. If every nation has the right of pre-emptive self-defence – which I suppose not even the US can oppose – it would mean that Iran and North Korea have the right to attack the US in a pre-emptive purpose. Given the ongoing tensions between Iran and the US, and the fact that Iraq has already been attacked, Iran could very well argue it is justified to attack pre-emptively. I highly doubt this is what the US had planned for when introducing their security strategy, and they will definitely not sit idle by and accept Iran’s or North Korea’s own interpretation of the right of pre-emptive self-defence.

The US is trying to picture Iran and North Korea as evil regimes with plans to mess develop WMD with intent to create a world war. In Iran’s case, their stern resistance to comply with the US’ demands makes the US even more eager to try out their doctrine once again. The international community does not want WMD in the hands of Iran, and may therefore be more reluctant to condemn the US in case of a violent escalation. On the other hand, what is

Iran supposed to do? Sit passively and await an invasion, or comply with all the US' demands without question? Iran knows they stand a bigger chance by using the old cold war tactic of deterrence. This is easiest achieved by the possession of WMD, and thereby both sides contribute to the increasing tension between the two states. An interesting point here is that it feels as if the US does not consider themselves being in the possession of WMD, but of a nuclear deterrence. In the eyes of the US, it is only rogue states that posses WMD.

6.4 Disadvantages with the doctrine

The major concern of the Bush Doctrine is that there is no way of regulating such a unilateral right and it is open to unpredictability and subjectivity. The danger here lies not so much with the US, but with other states that could immediately follow the example set by the US and twist a policy of pre-emption to their advantage. For example, China could use it to justify an attack on Taiwan, India could use it to pre-empt any Pakistani nuclear threat and Israel could use it to justify harder strikes into Palestinian territory. What would this do to the international legal regulation of the use of force? The problem, as I see it, to allow one is to allow all.

The problem with not being able to regulate how or when pre-emptive self-defence is allowed, creates a difficult situation for the international community. The new situation would mean a fundamental change in one of the ground pillars in international law – the regulation of the use of force. It is extremely difficult to change such a basic rule, and so it should be, without opening the door for unacceptable misuse. If there is such a right to use force, then does this arise only in relation to attacks by terrorists, or does it apply to all irregular forces?

If a state considers itself threatened to the point where pre-emptive self-defence, according to the threatened state, would be permissible, how can anyone ever estimate if that self-defence is proportionate and immediate to

the awaited attack? The situation is still just a threat. If there has not yet been an attack, then how can the response be immediate to the attack and in proportion to the injury suffered? How can a military response ever be proportionate in that case, and who would be the judge of it? If the threatened state is to be the judge of the perception of the threat, then, considering the far from convincing evidence of WMD in Iraq before the conflict and the fact that they had nothing to do with the attacks of September 11, it is hard to justify pre-emptive self-defence. How could it ever be justified?

An essential problem the strategy has to deal with, I think, is one of time. If it is a war against terrorism the US has committed itself to, in what timeframe are we talking about a war? Will it continue for as long as the US thinks is enough, or until they believe all terrorism is gone? Terrorism, by the way, which is not even a psychical person, but a term. How is it possible to wage a war against that?

6.4.1 The UN

The Security Council has not once acknowledged that States have a right to preventative actions within the meaning of self-defence in the past. They have condemned such actions on several occasions, but they have also refrained from making a statement numerous times.

Nevertheless, the US does have a point when not putting too much trust in the UN. Recent years, the UN has proven to be not much more than a toothless tiger regarding international use of force. Sudan, Rwanda and ongoing Iraq are just some conflicts that have not been solved by the UN and the Security Council. Even if they do succeed at times, everything takes much too long. Politics rule most of the decisions in the corridors of the UN, and this affects the UN's credibility and ability to act. The veto right is the final reason to this situation, resulting in an organization that often cannot do much more than talk and sit idle by as the states either solve the problem themselves, or

suffer the consequences of a passive international community. These practical and political problems rather than any disagreement on the law will remain the main obstacle to an effective UN collective security system. Another problem with the UN is that it is built on a reality from the past. The biggest threat today is not attacks from single states, but chaos in the world as a whole. Today's religious fundamental terrorists do not care about a mandate from the UN. The only mandate they are interested in is the one from God - and that truly is a powerful one.

Nonetheless, unilateral action by states as the US diminishes the role for the Security Council and the UN. There is a risk that states might see the US action as an incentive to by-pass the UN and instead take unilateral action in self-defence. This would affect the Security Council's role as the primary body responsible for maintaining international peace and security. In order to prevent this potential threat against the UN, it is preferable for such action to be authorised by the Security Council.

6.5 De lege ferenda

Perhaps the National Security Strategy of the United States of America does not refer to international law, nor does it refer to the UN, because President Bush is not advocating *de lege lata*, but *de lege ferenda*. Whatever the case, the Bush doctrine on pre-emptive self-defence contradicts the established rules in international law today. The US has adopted the UN Charter and is required to follow its statute. The exercise of the right of self-defence is the only situation in which Member States have the right to engage in war without a mandate from the Security Council. Only in that specific case is unilateral action accepted by the Charter. However, even then is the Member State obliged to report its actions to the Security Council.

The regulation of use of force in international law and in international customary law has been very restricted since the creation of the UN in 1945. This is no coincidence, but rests on careful consideration, deliberation and

negotiation between states and law experts. To change it today or during the next years would be like opening a dam filled with misuse and desires to act out aggressions, backed up by military power. I cannot see a development in international law that would permit the use of pre-emptive self-defence.

However, there is an important point to be made here. Although I cannot possibly see the doctrine of pre-emptive self-defence getting a strong foothold in international law, the US' action in Iraq surely must have made it easier for other states getting away with similar breaches of international law. It would be contradictory for the US to one day invade Iraq without the international community's support and the next day condemn a similar act made by another state, just because the US does not approve of it. How will the US from now on be able to tell other states not to engage in pre-emptive strikes?

6.6 Final reflections

My opinion is clear on the subject - the Bush doctrine with pre-emptive self-defence is unthinkable in international law. I have already listed many disadvantages with the doctrine, but I have a few more remarks.

First, how is the international community supposed to be able to prevent misuse of the right of pre-emptive self-defence? It would appear that the Bush administration is suggesting a rule that provides whenever, and wherever, a terrorist group or possible threat from a state is identified; it may be destroyed without necessarily having the support of the international community. The US has thereby the right to strike pre-emptively at any nation that it decides is developing weapons of mass destruction or supporting terrorism. In my opinion, this does indeed mean a *carte blanche* for a war on the world.

This leads me in to my next argument. It is no coincidence that the mighty US is the one proposing this new pre-emptive doctrine. I am reasonably

certain that this doctrine would hardly not have been considered, had it not been introduced by the US. The US is the only superpower left since the cold war and we live today in a Pax Americana world, with the US as the single hegemony. Because of the US' dominating position in world politics they can, within reasonable limits, do pretty much whatever they feel like. Because of its leading position, it is hard for other states and organizations to criticize the US, and even so, it often stops there – a statement in the Security Council or in the paper by a state's government that the US' behaviour is wrong and contradicting international law, but no real tangible consequences follows.

The doctrine opens up for imprecise conditions and uncertainties. A danger will always remain that states may use a new right of pre-emptive self-defence as a mean of removing unfriendly governments or pursuing their own strategic interests

The US only fuels the problems they intend to diffuse with their doctrine of pre-emptive self-defence. Violence always provokes more violence. This becomes obvious when one observes the current situation in Iraq. There is no chance that the US comes out of this conflict as a winner. It can be prolonged and it can be bloodier, but there is no way the US wins it. The US faces anarchy and chaos, exactly what they wanted to avoid. Or even worse – Islamic law and order.

The Bush administration's attitude to multilateral action, international law and the international community is well reflected by the following quote, and although a new and revised National Security Strategy, in my opinion this spirit still permeates the foreign policy of the US;

“...diplomacy if possible, force if necessary; the UN if possible, ad hoc coalitions or unilateral action if necessary.”⁸⁷

⁸⁷ Stelzer, Irwin, *The Neocon Reader*, New York: Grove Press, 2004, p. 10

If one insisted that a small state has to wait for a neighbour to attack it with nuclear weapons before the state is allowed to respond, it feels like it is an inadequate law. On the other hand, if you have a law that says any state that feels threatened is free to attack any other state from which it feels the threat is emanating, then you do not have a law at all.

International law is not static, but evolves constantly. The codified law, such as the UN Charter, is supplemented by new praxis and new conceptions of justice. However, the UN Charter regards the use of force as an exception, and exceptions must always be interpreted restrictively. Together with the fact that just a handful of states support the doctrine of pre-emptive self-defence, and the majority oppose it, this means that international law today does not allow the use of pre-emptive self-defence. The use of force outside the framework of the UN Charter does not evolve the law, it damages it.

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