I want to suggest this evening that the doctrine of preemptive war is here to stay and that it is a realistic and morally justified response to dangerous new security challenges in the 21st century. I want to develop my argument by demonstrating two things. First, that the rise of preemptive warfare has come about because of the globalisation of security and the revolution in military affairs it has created. The second strand of my argument is based on the proposition that, while the world of strategy has been forced to adapt to the harsh realities of global change; international law has failed to adjust to new conditions. As a result, the United Nations Charter is increasingly unable to provide a legal framework to guide the use of force in the 21st century.

If international law, as embodied in the Westphalian principles of the UN does not meet the challenge presented by the rise of the Bush Doctrine of preemption, then the UN, like the League of Nations before it, will fade into irrelevance. The core of my argument, then, is that the rise of a strategy of preemption is a symptom of both a changing security order and of the failings of international law to provide a realistic basis for collective security.

**The Globalisation of Security and the Revolution in Military Affairs**

The globalisation of security and the military revolution it has spawned manifested itself with surreal power on our television screens on 11 September 2001. On that terrible day we saw demonstrated the reality that it is now possible to organise violence outside a state structure on a scale that is potentially devastating to an entire society. The rise of mass-casualty terrorism has challenged the 20th-century paradigm of modern war in which armed conflict was the monopoly of states and governments. Since the Peace of Wesphalia in 1648 our entire apparatus of diplomacy, war and international law have all been predicated upon armed conflict as a phenomenon that occurs between sovereign states.

Today the Westphalian nation-state model of statecraft that links military power to legal sovereignty and territorial borders has been challenged by the four great new realities of the age of globalised security. First, recognition of universal human rights now requires adherence by all countries, irrespective of a particular state’s internal laws and physical sovereignty. In the 1990s in the wake of such Balkan massacres such as Srebrenica, we have seen the rise of a new doctrine of humanitarian military intervention based on the conviction that, if a state permits the slaughter of its citizens, its forfeits its rights of sovereignty. Like preemption, such a doctrine challenges normative principles of international law based on non-intervention. We saw this doctrine enunciated in the war over Kosovo, a war fought by the NATO powers against Yugoslavia to prevent the Serbs from ethnically cleansing the Kosovars.

Second, there is the reality of a proliferation of global and transnational threats such as mass-casualty terrorism, weapons of mass destruction and ballistic missiles. These new threats bypass the barriers of national geography and state borders and undermines the nation-state’s monopoly over violence. In short, the modern state has lost its basic ability to ensure the safety of its citizens from non-state forces and transnational dangers. In this way the military balance between state and non-state organisations has changed. Third, there is the reality of a global economic

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1 The views expressed in this paper are those of the author and should not be seen as official representations of the Australian Department of Defence
system that ignores national frontiers. The global economy brings with it the trappings of Western modernity, yet creates widespread social dislocation that fuels armed conflict.

Fourth, there is the reality of a global communications network that penetrates all borders electronically, ensuring that a modern sense of global consciousness will be resisted by countervailing forces of cultural and religious fanaticism. It is a striking irony that the interconnectedness of our new age provides a web of networks and nodes for the creation of extremist and clandestine non-state armies such as al-Qa’ida enabling their cadres to wield destructive power through non-territorial space.

The above trends from the globalisation of security have been recognised by strategic analysts and defence policy makers from Washington through Moscow to Beijing. In 1999, the bipartisan US Hart-Rudman Commission on American Security in the 21st Century reported that, as a result of the globalisation of security, the Cold War strategies of nation-states – notably deterrence, containment and mass military forces – were increasingly irrelevant to the maintenance of international order in the new millennium. The leading American strategic analyst, Phillip Bobbitt, has observed that in the 21st century, ‘national security will cease to be defined in terms of borders alone because both the links among societies as well as the attacks on them exist in psychological and infrastructural dimensions, not on an invaded plain marked by the seizure and holding of territory’. Bobbitt has crystallised the strategic revolution in the a striking passage:

We are at a moment in world affairs when the essential ideas that govern statecraft must change. For five centuries it has taken the resources of a state to destroy another state; only states could muster the huge revenues, conscript the vast armies, and equip the divisions required to threaten the survival of other states . . . This is no longer true, owing to advances in international telecommunications, rapid computation, and weapons of mass destruction. The change in statecraft that will accompany these developments will be as profound as any that the State has thus far undergone.

Such views of international security trends are not confined to Americans. British, French and Russian defence experts now speak of the rise of multi-variant warfare. They speak of a spectrum of conflict marked by unrestrained ‘Mad Max’ wars in which symmetric and asymmetric wars merge and where Microsoft coexists with machetes and stealth technology is met by suicide bombers. Chinese strategists, meanwhile, have developed the theory of unrestricted warfare in which they state, ‘there is no territory that cannot be surpassed; there is no means which cannot be used in war; and there is no territory or method which cannot be used in combination’.

What the above views of security have in common is a conviction that, in the age of globalised security, the greatest danger to advanced technological nations is no longer the threat of military invasion of the territory of the sovereign nation-state, but an assault on its modern complex, networked societies by non-state organisations. Faced by a spectrum of global threats that know no geographical boundaries, we are compelled to move towards a new strategic paradigm.

This new strategic paradigm does not abandon deterrence and containment but supplements both, at least in the US and many Western arsenals, by adding new policies of military prevention and preemption. As Secretary of State, Colin Powell, put it in September 2002: ‘A doctrine of preemption in our strategy is appropriate . . . but don’t see it as a new doctrine that excludes or eliminates all the other tools of national security’.

It is then, the globalisation of security that provides the essential background to the 2002 Bush Doctrine and the US National Security Strategy, that elevate preemption to the centre of American strategic thought. President Bush has simply articulated what many professional strategists now accept: that Western nations face a new threat that emanates from ‘the perilous crossroads of radicalism and technology’. Nor should we be surprised by the statement that, ‘America is threatened less by conquering states than we are by failing ones. We are menaced
less by fleets and armies than by catastrophic technologies in the hands of the embittered few’. Many defence intellectuals in both Britain and Australia, America’s two closest allies, now accept such a view.

The Bush Administration’s philosophy reflects a growing strategic consensus that, in an era of globalised security, prevention and preemption are necessary because we cannot deter or contain an attacker whose armed struggle is existential and millenarian and expressed through mass-casualty suicide terrorism against innocent civilians. Nor can we ignore the quest of non-state fanatics for nuclear, chemical and biological weapons to maximise their means of destruction. Such a dangerous adversary must be subject to preemption by both the intelligence services and the armed forces.

International Law and the New Strategic Environment.

The realities of the new strategic environment I have outlined have not been matched by necessary changes in international law. Preemption, or anticipatory self-defence, has not yet been adapted to meet the non-state threat of new weapons technology and mass-casualty terrorism. Instead, the rules of preemptive war remain governed in customary international law by the famous 1837 Caroline Doctrine enunciated by US Secretary of State, Daniel Webster after a dispute with Britain over the use of force against Canadian rebels on American soil.

The Caroline Doctrine states that a preemptive war is justified only when a state faces a threat that is ‘instant, overwhelming . . . leaving no choice of means and no moment for deliberation’. Webster’s formulation, that emphasises the imminence of threat, served to set the standard for permissible preemptive action until the formation of the UN in 1945. Under the UN Charter, Article 2(4) and Article 51 justify anticipatory self-defence only if special conditions of necessity and proportionality are met.

Anticipatory self-defence has of course, a long history. The doctrine was used during Cuban Missile Crisis of 1962, it was employed by the Israelis to forestall Arab attack in the 1967 Six Day War and to prevent the Iraqi nuclear reactor at Osirak from becoming operational in 1981. The rise of preemption since the end of the Cold War however, has much to do with the rise of the deadly trinity of weapons proliferation, rogue states and terrorism that was first identified as a serious global danger by the Clinton Administration in 1993.

Indeed it was President Clinton who brought preemptive strike to the fore by seriously considering destroying North Korea’s Yongbyon nuclear reactor in 1994. In 1998, Clinton actually employed preemptive strikes using cruise missiles against Saddam Hussein’s weapons’ sites in Operation Desert Fox and against al-Qa’ida facilities in Sudan and Afghanistan. Clinton justified the use of preemptive strikes against both Sudan and Afghanistan by stating, ‘these strikes were a necessary and proportionate response to the imminent threat of further terrorist strikes’.

Given this background, and the reality of 9/11, it is not surprising that the Bush Administration should have formally adopted a doctrine of preemption. The philosophical challenge that the Bush Doctrine poses to the international community is that of adapting the concept of imminence embodied in the Caroline Doctrine and Articles 2(4) and 51 of the UN Charter to meet new 21st century strategic realities. The September 2002 US National Security Strategy throws the gauntlet down when it states, in a key phrase, ‘we must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries’. How does a state define the concept of imminent attack when the enemy is faceless, indiscriminate and suicidal and may be armed with weapons that can kill thousands of people?

The difficulty we face is that the threat from mass-casualty terrorism is being judged by too many UN members according to outmoded legal standards drawn from Westphalian inter-state norms and according to the provisions of a UN Charter which was drawn up in 1945 for a very different world. Preemption, properly applied, is a legitimate aspect of a state’s apparatus of self-defence.
Thus, there is an urgent need for a broader interpretation of the issues of imminence, necessity and proportionality in dealing with non-state threats and the possible use of destructive technology.

We need a new calculus for preemption because it is absurd to expect any state to have to sustain mass destruction in order to prove an immaculate legal conception of self-defence. In the memorable words of Condoleezza Rice, if America waits for incontrovertible evidence of the smoking gun, it may instead witness a mushroom cloud hovering over one of its cities. Neither the US, nor its closest allies, Britain and Australia can permit the shield of state sovereignty, especially in rogue or failing states, to become a sanctuary behind which messianic Islamic terrorists can plan the destruction of Western democratic civilisation. Yet in stating this reality, how do we justify territorial intrusion without unleashing anarchy? Preemptive military action is akin to the practice of controlled burning in bushfire fighting – one wants to create an effective firebreak but not at the expense of a conflagration. Accordingly, nations need to undertake an international security dialogue in order to bring greater analytical and political clarity to the concept of imminence that is the key determinant of preemptive action.

As that distinguished scholar of the just war tradition, Michael Walzer, has pointed out, if a state faces the probability of unseen attack, ‘the line between legitimate and illegitimate first strikes is not going to be drawn at the point of imminent threat but at the point of sufficient threat’. And sufficient threat may involve a situation in which waiting, or inaction, greatly magnifies the risk of sudden attack. We need, therefore, to establish more intelligible criteria of the nature of threat in the 21st century that can provide a basis for collective preemptive action, whether by the UN Security Council or by a coalition of the willing.

Achieving an international consensus on preemptive military action will be a daunting challenge, but it is not impossible for three reasons. First, a close reading of the Bush Doctrine reveals that the document is not simply an appeal to unilateralism and American exceptionalism. Bush’s message upholds universal moral values in that it calls for all civilised nations to cooperate in order to make the world safe for democracy because otherwise democracy will not be safe in the world. The rhetoric used is thus neo-Wilsonian in tone; it is not couched in the language of Thucydides’ Melian Dialogue.

Second, an informed discussion on preemption can draw upon the precedent of humanitarian military intervention in breaching state sovereignty. After all, NATO’s action in Kosovo was technically illegal, but few would argue that it was not legitimate. The lesson of Kosovo is there may be circumstances in which acting illegally is more just to humanity than to fail to act at all. This moral logic is a useful basis on which to begin to discuss the legal complexities of preemptive military action.

Finally, we need to define the differences between preemption versus prevention, because much of the controversy surrounding the Bush Doctrine conflates preventive war with preemptive war. For instance, the recent war against Iraq was not preemptive but preventive in character. As Professor Adam Roberts has pointed out, military intervention in Iraq was based on an incipient contingent threat rather than a credible imminent threat. Ultimately, the war was justified by 12 years of defiance of UN resolutions 678, 687 and 1441 that compelled disarmament on pain of military force. However, it may also be, as Michael Walzer has suggested, that the gulf between preemption and prevention has so narrowed in practice, that there is little strategic or moral difference between them. If he is right, then the case for security dialogue and reform of the law of armed conflict is even more compelling.

**Conclusion**

In 1995, the leading French military intellectual, Philippe Delmas observed, ‘this world is without precedent. It is as different from the Cold War as it is from the Middle Ages . . . Tomorrow’s wars will not result from the ambitions of States; rather from their weaknesses’. Delmas has been
proven right, but our dilemma is that the international community has failed to come to grips with a new age of globalised security in which lethal, privatised non-state violence can penetrate borders and threaten entire societies.

As a result the United States and its closest allies will justifiably resort to the doctrine of preemptive military action if, and when, they can identify a deadly threat against themselves. There is little point in the UN complaining that such a course of action violates the traditional notion of sovereignty of the nation state, if there are no realistic post-Westphalian security procedures available to counteract the transnational nexus of terrorism, messianic revolution and advanced technology.

New security threats require new legal rules. Both the UN Charter and international law must be updated and modernised to reflect the underlying geopolitical realities of our age. In particular, the law must incorporate a more flexible justification for the role of preemptive action in the protection of a state’s citizens. Unless UN member nations meet the grave intellectual and ethical challenges posed by the lethal trinity of weapons proliferation, messianic terrorism and rogue states, they will begin to resemble a modern version of Cervantes’ Don Quixote. Like the Knight of the Mournful Countenance, they will be condemned to fighting windmills and to losing their way in the real world, while all the time risking the lives of the innocent and compromising the moral values of our democratic civilisation.

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