4
Bush and the Use-of-Force

Released in 2002, the *National Security Strategy of the United States of America* – and the lesser-known *National Strategy to Combat Weapons of Mass Destruction* – defined the Bush administration’s strategic response to the events of 11 September 2001. In essence, the controversial documents made two significant declarations. First, “WMD – nuclear, biological, and chemical – in the possession of hostile states and terrorists represent one of the greatest security challenges facing the US.”1 Second, “[o]ur enemies have openly declared that they are seeking WMDs…the US will not allow these efforts to succeed…as a matter of common sense and self defense, America will act against such emerging threats before they are fully formed.”2 Taken together, these two assertions – that the most vital threat to the national security of the United States was the linkage of “radicalism and technology” and that such developments needed to be destroyed “before” they were “fully formed”3 – created the basis for what became known as the “Bush doctrine.” Created via an assortment of post-9/11 speeches, particularly at West Point in 2001 and the State of the Union speech in January 2002, and formalized with the release of the *National Security Strategy of the United States of America* (hereinafter NSS 2002) of September 2002, the Bush doctrine came to dominate US international political discourse as political leaders, academic scholars, analysts and the general public debated the ramifications of this broad and contentious initiative.

The most controversial aspect of the doctrine’s global “War on Terror” was its preparedness to use preventive/preemptive military action. In the Bush use-of-force prescription, the terms skewed the *jus ad bellum* right to initiate violence as a means to prevent “rogue” states from acquiring WMD capabilities, either to use themselves or to pass on to “sub-national” actors. In assessing the legal context of prevention/preemption as defined in the Bush doctrine, this chapter will necessarily engage with the conceptual difference between the doctrine itself and current prevailing international conceptions.
as discussed in Chapter 2 – that of the temporal dimension of self-defense or, more specifically, the requisite imminence of the threat permitting forcible measures of anticipatory self-defense. It will be demonstrated that there is a significant difference between the concepts of imminence underlying the preventive and preemptive resort to force, despite the two terms often being used loosely – and intentionally – as interchangeable. As will be shown, in standing international law – specifically, the UN Charter *jus ad bellum* regime – the Bush administration’s “interpretation” and equivocation of prevention/preemption posed some serious questions and immense challenges to the international regime governing the use-of-force.

**Preceding considerations of prevention/preemption**

In statements made before the publication of the NSS 2002, it was evident that the Bush administration considered prevention/preemption a viable option in its counterproliferation strategy. Speaking in South Carolina on 23 September 1999, the then-presidential candidate Bush indicated that under his presidency the United States would be prepared to take action in precluding future security challenges. In this context, when direct threats to the United States emanating from the “troubled frontiers of technology and terror” are discovered, “the best defense” will be a “strong and swift offense – including the use of Special Operations Forces and long-range strike capabilities.” Of course, it was the events of 9/11 that brought the option of “pre-emption” to the fore.

The administration’s first definitive articulation of preemption was incorporated in the statement of the *Quadrennial Defense Review* report. Issued 19 days after 9/11, the report argued that defense of the US homeland is the highest priority for the US military and that the United States “must deter, pre-empt and defend against aggression targeted at US territory sovereignty, domestic population, and critical infrastructure.” Secretary of Defense Donald Rumsfeld reaffirmed these sentiments, arguing that defense now required “prevention, self-defense and sometimes pre-emption.” Specifically, he argued, it is not possible to “defend against every conceivable kind of attack in every conceivable location at every minute of the day or night. Defending against terrorism and other emerging 21st century threats may well require that we take the war to the enemy. The best, and in some cases, the only defense is a good offense.” Similarly, Vice-President Richard Cheney cited with approval Israel’s 7 June 1981 preventive attack on Iraq’s Osirak nuclear facility near Baghdad as inflicting a “severe setback” to Iraqi President Saddam Hussein’s nuclear ambitions.

The rhetoric of the president also signified that he too was moving toward the explicit adoption of prevention/preemption as a key arrow in the United States’ security strategy: “[We] will not wait for the authors of mass murder to gain the weapons of mass destruction.” In his *State of the Union Address*