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E-Content

The present lecture (e-content) forms a part of M.A. Political Science, Semester IV, Paper V(a) *International Law*. War is an important topic which is discussed and debated thoroughly in International Law. Pre-emptive Strike is one such dimension of modern warfare, which in contemporary times, was given fillip by the U.S. action in Iraq in 2003. The recent American action in gunning down the Iranian General Qaseem Sulemani is being seen as an extension of the US Iraqi action. The present write-up by this author seeks to examine the validity of pre-emptive strike in International Law- both customary and treaty-based and its application in the Iraq war in 2003. Besides, catering to the Political Science syllabus on International Law, this e-content is also significantly expected to benefit all those interested in knowing about more about the unabated new mysteries and controversies happening almost on daily basis in International Relations and which are directly impinging on International Law.

Pre-emptive Strike as a War instrument: Judging the American action in Iraq under International law

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In the run-up to the 2003 Iraq war, the Bush administration raised the issue of launching "preemptive" military attack on Iraq to defend its national security. President George W. Bush, in a speech given to the graduating class of West Point on June 1, 2002, contended that given the "nature and type of threat posed by Iraq," the U.S. had a legal right to use force "in the exercise of its inherent right of self defense, recognized in Article 51 of the UN Charter". Given that the U.S. had not been previously attacked by Iraq, that contention raised controversies about the permissible scope of the preemptive use of force under the international law. He declared that the U.S. would reserve the right to attack any nation pre-emptively that it deems to be a threat to its own national security and interests. A few months later, the administration formalized the speech in the form of a document, entitled, *National Security Strategy of the United States of America, 2002*.

The document represents a set of foreign policy guidelines that outlines a broad new phase in US foreign policy that would henceforth place a greater emphasis on military pre-emption, military superiority ("strength beyond challenge"), unilateral action, and a commitment to "extending democracy, liberty, and security to all regions". It heralds a marked departure from the policies of deterrence and containment that generally characterized American foreign policy during the Cold War and the decade between the

collapse of the Soviet Union and 9/11. The Doctrine provided the policy framework for the U.S. invasion of Iraq in 2003.

The strategy outlined in the document is couched in forceful language and demonstrates its resolute determination to counter the enemies of the U.S. and its allies with a heavy hand. It says, "given the goals of rogue states and terrorists, the U.S. can no longer solely rely on a reactive posture as we have in the past... we cannot let our enemies strike first. As a matter of common sense and self-defence, America will act against such emerging threats before they are fully formed."

It further says: ". . . as a matter of common sense and self-defense, America will act against such emerging threats before they are fully formed. We cannot defend America and our friends by hoping for the best. So we must be prepared to defeat our enemies' plans, using the best intelligence and proceeding with deliberation. History will judge harshly those who saw this coming danger but failed to act. In the new world we have entered, the only path to peace and security is the path of action".

Justifying the administration's policy of pre-emption, the document asserts that the world drastically changed on September 11 (2001) and the U.S. stands confronted with new challenges." The proliferation of weapons of mass destruction and terrorist networks", says the document, "armed with the agendas of fanatics and....new threats are so novel and so dangerous that we should not hesitate to act alone, if necessary, to exercise our right of self-defense by acting pre-emptively."

The document has come to generate an intense international debate primarily because of its linkage with the unilateral military aggression of the United States against Iraq. It has become controversial as it marks the beginning of a new American hegemonistic policy of spreading its influence by intimidating, attacking or subduing states that dare challenge the American might.

Before analyzing the validity of the U.S. action in Iraq, it would be worthwhile to know, in brief, about the background of pre-emption. Pre-emptive strikes are not new to international politics. They have been resorted to by various nations, including the U.S., at various points of time in history. For instance, before the War of 1812, James Madison authorized military operations in Spanish Florida in an attempt to preempt the British from using it as a base from which to attack the United States. The Monroe Doctrine that was proclaimed shortly afterwards, too aimed at preempting renewed European military intervention in the Western Hemisphere. In 1898, the United States launched a preemptive attack on a Spanish fleet in the Philippines even though that target and locus had nothing to do with the origins of the Spanish-American War. NSC-68 (1950) explicitly accepted the idea of a preemptive nuclear attack if a Soviet attack was known to be on its way or about to be launched.

During the Cold War too, this strategy was made use of by the U.S., which engineered the covert (e.g., Guatemala, Iran) and overt (e.g., Grenada) overthrow of regimes it believed were facilitating the spread of Soviet power and influence in the region. U.S. intervention in Vietnam was justified as a means of preventing the other Asian

“dominoes” from falling to communism. The U.S. action during the Cuban Missile Crisis of 1962 was preemptive to the extent that the U.S. naval “quarantine” of Cuba and threat of nuclear retaliation against the Soviet Union were aimed at forestalling the establishment on the island of a permanent force of Soviet medium-range nuclear ballistic missiles. President Kennedy found a way out of the crisis short of war, but he did warn “we no longer live in a world where only the actual firing of weapons represents a sufficient challenge to a nation’s security to constitute maximum peril”.

Coming to more recent years, in 1967 Israel launched a preemptive attack on Egypt and other Arab states after President Nasser moved his army across the Sinai toward Israel, forced the UN to withdraw its peacekeeping force from the Sinai border, and closed the port of Aqaba to Israeli shipping, and after Syria, Iraq, Jordan, and Saudi Arabia all began moving troops to the borders of Israel. In six days it routed Egypt and its Arab allies and had occupied the Sinai Peninsula, the West Bank, and the Gaza Strip. Israel claimed its attack was defensive in nature and necessary to forestall an Arab invasion. Both the Security Council and the General Assembly rejected proposals to condemn Israel for its “aggressive” actions.

Likewise, on June 7, 1981, Israel bombed and destroyed a nuclear reactor under construction in Iraq. Justifying its pre-emptive strike, Israel asserted that it was in response to the fact that Iraq considered itself to be in a state of war with Israel, that it had participated in the three wars with Israel in 1948, 1967, and 1973, that it continued to deny that Israel has a right to exist, and that its nuclear program was for the purpose of developing weapons capable of destroying Israel. Israel claimed that “in removing this terrible nuclear threat to its existence, Israel was only exercising its legitimate right of self-defense within the meaning of this term in international law and as preserved also under the United Nations Charter”(UNSC,1981). Nonetheless, the Security Council unanimously “condemned the military attack by Israel in clear violation of the Charter of the United Nations and the norms of international conduct” and urged the payment of “appropriate redress”.

In 1986, the U.S. attacked Libya after Libyan agents blew up a Berlin discotheque in 1986 killing one American soldier. Terrorist attacks on U.S. embassies in Kenya and Tanzania led to the hitting of Sudan with Cruise missiles as pre-emptive attacks. During the eighties and nineties of the previous century, the U.S. and Britain laced the notion of pre-emptive doctrine with nuclear weapons to be employed against their potential enemies of Warsaw Pact group. NATO was even ready to cross the nuclear threshold first, to terminate the attack. The US further invoked the right of self-defence when it attacked Afghanistan in the aftermath of the terrorist attacks on US in 2002.

But what is new in this doctrine is that it goes beyond by reserving the right to military strikes even without an imminent threat. The document openly contemplates preventive attacks against groups or states, even in the absence of any likely attack. It legitimizes this kind of first strike option, and it elevates it to the status of a core security doctrine. It declares the transcendence of the U.S. right to pre-emptively block an imminent attack to the right to preventively engage in war. Disregarding norms of international behavior, the Bush strategy asserts that the United States should be exempt from the rules we

expect other nations to obey. This doctrine, thus, marks a significant shift from beliefs that had dominated Cold War strategic thought (CRS, 2002). In simplest terms, the Bush doctrine refers to the right of the U.S. to attack any country it defines as a threat.

It was under such a doctrine that President Bush and his administration sought to justify the invasion and occupation of Iraq. It was justified, in accordance with the Bush Doctrine of “preemption,” as a means to prevent a terrorist attack on the U.S. The U.S. Government asserted that the Iraqi regime possessed weapons of mass destruction (WMD) which could possibly be used against the U.S. or its allies, or, given their previous use of chemical weapons, could be passed on to the terrorists, including al Qaida. By exercising the option of preemption, the U.S. proclaimed its moral objective of bringing about a regime change in Iraq.

On March 19, 2003, the U.S., aided by Great Britain and Australia, initiated a military invasion of Iraq. Both the U.S. and Great Britain contended that they had sufficient legal authority to use force against Iraq pursuant to Security Council resolutions adopted in 1990 and 1991. However, the U.S.-led attacks generated an intense global debate about its validity under the international law. It also sparked off a series of controversies within the U.S. about the constitutional and ethical issues involved in implementing the Bush doctrine.

Pre-emptive strike and the UN Charter

Pre-emptive strikes by individual nations or group of nations without the authorization of the Security Council is prohibited by the United Nations. The right of individual states to use force in anticipation of an attack by the adversary state does not enjoy the sanction of the United Nations. The Charter of the UN states in its Preamble that the UN was established “to save succeeding generations from the scourge of war”; and its substantive provisions obligate Member States of the UN to “settle their international disputes by peaceful means” (Article 2(3)) and to “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 manner inconsistent with the purposes of the United Nations”(Article 2(4)). In place of the traditional right of states to use force, the Charter creates a system of collective security in which the Security Council is authorized to “determine the existence of any threat to the peace, breach of the peace, or act of aggression” and to “decide what measures shall be taken ... to maintain international peace and security” (Article 39). Although the UN Charter seeks to deny the individual use of force by States against their adversaries, it does recognize a right of nations to use force for the purpose of self-defense. Article 51 of the Charter provides:

“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.”

But this right to individual or collective self-defence comes into play only when an armed attack has already occurred and the Security Council has not been able to take the necessary measures to thwart the attack. Thus, Article 51 precludes the preemptive use of force by individual states or groupings of states and to reserve such uses of force exclusively to the Security Council. Measures in self-defense, in this context, are legitimate only after an armed attack has already occurred.

The exact scope of the right of self-defence, however, has been made a subject of controversy and an ongoing debate. It has been contended that Article 51 should not be construed so narrowly and that “it would be a travesty of the purposes of the Charter to compel a defending state to allow its assailant to deliver the first, and perhaps fatal, blow”. It has been said further that to read Article 51 literally, would tantamount “to protect the aggressor’s right to the first strike” (*ibid*). Consequently, to avoid this result, some assert that Article 51 recognizes the “inherent right of individual or collective self-defence” as it developed in customary international law prior to adoption of the Charter and preserves it intact. The reference to that right not being impaired “if an armed attack occurs against a Member of the United Nations,” it is said, merely emphasizes one important situation where that right may be exercised but does not exclude or exhaust other possibilities.

The advocates of this view additionally contend that the literal construction of Article 51 simply ignores the reality that the Cold War and other political considerations have often paralyzed the Security Council and that, in practice, states have continued to use force preemptively at times in the UN era and the international community has continued to evaluate the legitimacy of those uses under Article 51 by the traditional constraints of necessity and proportionality.

Though the UN Charter does not allow nations the right to pre-emption, the norm has quite often been violated by nations on grounds of national security. For instance, in 1962 President Kennedy, in response to evidence that the Soviet Union was installing medium range missiles in Cuba capable of hitting the United States, imposed a naval “quarantine” on Cuba in order “to interdict ... the delivery of offensive weapons and associated material”.

But the principal controversy that arose during the Iraq war was whether the phrase ‘if an armed attack occurs’ rules out self-defence before an attack occurs? Or in other words, does international law allow ‘anticipatory’ or pre-emptive’ self-defence? The US position on this issue was set out in September 2002 by President Bush in the National Security Strategy of the United States of America wherein he said, “For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of pre-emption on the existence of an imminent threat—most often a visible mobilization of armies, navies, and air forces preparing to attack. We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries.

Rogue states and terrorists do not seek to attack us using conventional means. They know such attacks would fail. Instead, they rely on acts of terror and, potentially, the use of weapons of mass destruction—weapons that can be easily concealed, delivered covertly, and used without warning ... To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively”.

This position was further elaborated in an address by Condoleezza Rice, President Bush’s national security adviser:

“Extremists who seem to view suicide as a sacrament are unlikely to ever be deterred. And new technology requires new thinking about when a threat actually becomes "imminent." So as a matter of common sense, the United States must be prepared to take action, when necessary, before threats have fully materialized ... Pre-emption is not a new concept. There has never been a moral or legal requirement that a country wait to be attacked before it can address existential threats ... But this approach must be treated with great caution. The number of cases in which it might be justified will always be small. It does not give a green light – to the United States or any other nation – to act first without exhausting other means, including diplomacy. Pre-emptive action does not come at the beginning of a long chain of effort. The threat must be very grave. And the risks of waiting must far outweigh the risks of action”.

Members of the Bush Administration argued that while a literal reading of Article 51 of the UN Charter suggests that self-defence is only lawful after an attack occurs, this would be absurd if it means that a State must let itself be harmed, perhaps fatally, before it can respond with force. In the 1986 case *Nicaragua vs the United States* (ICJ, 1986), the International Court of Justice did not dismiss the possibility of some limited form of anticipatory self-defence out of hand – it merely stated it ‘expresses no view on ... the lawfulness of a response to the imminent threat of an armed attack’ as the issue was not raised by the parties”.

The international community, overall, is yet to recognise any general acceptance of a pre-emptive self-defence doctrine within the UN beyond possibly ‘interceptive’ self-defence, i.e. an action of sufficient magnitude that clearly has a hostile intent can be ‘defended’ against before the aggressor’s forces actually execute the attack. But questions have been raised whether there can be any situations falling short of this that would attract a legally valid exercise of self-defence under Article 51? In response to this, it is said that there have been very few cases where a State has sought to legally justify the use of force on grounds of pre-emptive self-defence. Probably the most striking case of this kind was the 1981 Israeli airstrike on the Osirak nuclear reactor in Iraq. Israel contended:

[that in] removing this terrible nuclear threat to its existence, [it] was only exercising its legitimate right of self-defence within the meaning of this term in international law and as preserved also under the United Nations Charter.

But the UN Security Council condemned Israel's action as 'a clear violation of the Charter of the United Nations' (UNSC, 1981). Even the then UK Prime Minister, Margaret Thatcher, termed the airstrike 'as a grave breach of international law'.

Scholars have argued that the phrase "armed attack" must be construed in a broad sense so as to allow some anticipatory response. Although actual occurrence of armed attack is must to launch a counter-attack in self-defence, but a pre-emptive strike can be made depending on the gravity of the threat from the other side. Sir Robert Jennings, the great scholar on international law, thus, writes:

“while anticipatory action in self-defence is normally unlawful, it is not necessarily unlawful in all circumstances, the matter depending on the facts of the situation including in particular the seriousness of the threat and the degree to which pre-emptive action is really necessary and is the only way of avoiding that serious threat; the requirements of necessity and proportionality are probably even more pressing in relation to anticipatory self-defence than they are in other circumstances.

In support of his contention, he reiterates the formula as laid down in the famous Caroline case :

The use of armed force and the violation of another state's territory, can be justified as self defence under international law where:

(a) an armed attack is launched, or is immediately threatened, against a state's territory or forces (and probably its nationals) (b) there is an urgent necessity for defensive action against that attack (c) there is no practicable alternative to action in self-defence, and in particular another state or other authority which has the legal powers to stop or prevent the infringement does not, or cannot, use them to that effect (d) the action taken by way of self-defence is limited to what is necessary to stop or prevent the infringement, ie to the needs of defence

Thus, a nation, before it launches a pre-emptive strike, is under a self-imposed obligation to ensure whether all other means, including diplomatic efforts – which also includes attempts to persuade the UN Security Council to authorise the use of force under Chapter VII to disarm 'rogue states' and/or terrorist organisations, particularly in terms of any WMD capacity, have been exhausted and that there are no options left before it. Under such compelling circumstances, “if the threat to international peace and security posed by a particular 'rogue state' or a terrorist organisation refusing to demonstrably give up WMD is indeed grave, the record of the UNSC over the last decade or so suggests that it would be prepared to give authorisation for the use of force”.

But the issue of “exhausting all possible options” is also debatable since if the UN Security Council refuses to sanction the use of force it is presumably because it does not agree with an assessment of the threat and/or the method of dealing with it. In such

circumstances, it would be hard to term military action as an 'urgent necessity' under the Caroline formula. However, if a resolution on the use of force is supported by a majority of the 15 member Council and only defeated on the veto of a permanent member, a strong case of urgent necessity may be made out, depending on the circumstances.

In the background of the above arguments and taking into account the clear language of Article 51, the American attack on Iraq in 2003 appeared to be clearly in violation of the right to individual self-defence since this right exists only if the affected country has no time to take the matter to the UN. Since there was no proof that an attack by Iraq on America was imminent, an attack in self-defence amounted to usurpation of the Security Council's role. Although America accused the Security Council of failing to act against Iraq, it failed to show how Iraq constituted an immediate threat to the United States. The US accusations against Iraq that it was producing Weapons of Mass Destructions (WMDs) which was a threat to the national security of the US could not be substantiated by the report of the UN inspectors who nowhere found any evidence that Iraq was amassing, producing or hiding Weapons of Mass Destruction (WMD). Hence, it can be concluded the American invasion of Iraq clearly fell short of the right to self-defence.

Pre-emptive strike under the customary law

In addition to justifying its unilateral use of force against Iraq under Article 51 of the UN, the US also justified its actions under the customary international law too. Notwithstanding the US assertion, there appears to be a difference of opinion among scholars about the justification of the use of anticipatory strike under the customary law. One group of scholars contends the right of states to use force against the adversary state in self-defence even before the actual occurrence of attack from the opposite party. Until recent decades customary international law deemed the right to use force and even to go to war to be an essential attribute of every state. As one scholar summarized:

"It always lies within the power of a State to endeavor to obtain redress for wrongs, or to gain political or other advantages over another, not merely by the employment of force, but also by direct recourse to war".

He further says: "An act of self-defense is that form of self-protection which is directed against an aggressor or contemplated aggressor. No act can be so described which is not occasioned by attack or fear of attack. When acts of self-preservation on the part of a State are strictly acts of self-defense, they are permitted by the law of nations, and are justified on principle, even though they may conflict with the ... rights of other states".

Hugo Grotius, the seventeenth century scholar and father of international law, also justifies the use of force in anticipation of an attack in self-defence. He asserts that "it be lawful to kill him who is preparing to kill"(Grotius, 2004: 1625). Similarly, another noted

authority on international law, Emmerich de Vattel, asserted a century later: "The safest plan is to prevent evil, where that is possible. A Nation has the right to resist the injury another seeks to inflict upon it, and to use force ... against the aggressor. It may even anticipate the other's design, being careful, however, not to act upon vague and doubtful suspicions, lest it should run the risk of becoming itself the aggressor".

The right of preemptive attack, as stated above, was elaborated in the famous Caroline case in 1837 in which the US Secretary of State Daniel Webster, in the course of the diplomatic exchanges through letters, articulated two conditions essential to the legitimacy of the preemptive use of force under customary international law- one, that an intrusion into the territory of another state can be justified as an act of self-defense only in those "cases in which the necessity of that self-defense is instant, overwhelming, and leaving no choice of means and no moment for deliberation"(Webster, 1842). Second, he asserted that the force used in such circumstances has to be proportional to the threat. He said, "It will be for [Her Majesty's Government] to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it"(Webster, 1841). Thus, to legitimize the preemptive use of force in customary international law, both elements – necessity and proportionality– have been deemed essential.

However, there is another section of scholars who do not see the right of states to launch pre-emptive attacks against enemy states on grounds that this would require the existence of a norm of customary law that is recognised by states as having binding status. The international community of states is yet to recognise the existence of a customary norm warranting 'military intervention in rogue states to disarm and overthrow military dictators'. In the Nicaragua Case (1986), the International Court of Justice (ICJ) reiterated the prohibition on military intervention by states to overthrow foreign regimes. The ICJ ruled in that case, that the US had violated international law by its military intervention in Nicaragua without UN approval.

It is worth noticing that most European states initially regarded the war as illegal although later changed their stand and joined the American war efforts against Iraq. The initial veto exercised by France and Germany to the U.S.-sponsored resolution for launching pre-emptive strikes against Iraq is a testimony to this fact. In their bilateral and multilateral relations with other states, they give primacy to the rule of law and compliance with norms of international law. Geographically too, as European states are generally medium sized countries, they are politically and economically inter-dependent and thus, not in a position to dictate terms unilaterally.

In contrast to this, the U.S. as the sole superpower is less bothered by the rule of law. Its political and economic power enables it to negotiate trade agreements on a case by case basis. The U.S., it appears, is more concerned with developing those notions of customary law that reflect its immediate concerns, than with any compliance with rules that do not suit its purposes. Hence, the notion of a customary law right to intervene in

'rogue states' becomes attractive to America. But if this analogy were to be extended further, the U.S. would have the right under customary law to initiate the regime change in Libya, Syria, Iran and Pakistan too.

If the U.S. wanted to have a principled stand over the issue whether its pre-emptive strike against Iraq was going to be legal, it could have taken an advisory opinion from the ICJ. But the fact that the U.S. and its coalition did not approach the ICJ was in itself an admission of the reality that its aggression against Iraq was not legal and that international law would not have authorized such military intervention if it at all had gone to the world court. After America's experience before the ICJ in the Nicaragua Case, it was highly unlikely that the U.S. would have submitted such a matter to the world court.

Justification under Security Council Resolutions

The U.S. also tried to justify its actions against Iraq under the Security Council Resolutions. The U.S., along with the UK and Australia cite Security Council Resolutions 1441 and its predecessor Resolutions 678 and 687 as providing authorisation for the use of force against Iraq. However, their assertion was misplaced, as although Resolution 1441 did affirm that Iraq remained in material breach of Resolution 687, it did not authorise the use of force against Iraq even it was seen by the United Nations Security Council or any other State as committing a material breach. The resolution made it clear that there was no 'automatic trigger'. However, the U.S. asserted that even in the absence of such an authorization, it would keep its option open of unilateral military action against Iraq. This is sufficiently clear from the declaration of the US Ambassador to the UN, John Negroponte, made to the UN Security Council after the vote, wherein he said:

"if the Security Council fails to act decisively in the event of further Iraqi violations this resolution does not constrain any member state from acting to defend itself against the threat posed by Iraq or to enforce relevant United Nations resolutions and protect world peace and security".

Ambassador Negroponte, in a way, gave an indirect threat of using military force by the U.S. either in self-defence or to enforce UN Security Council resolutions, including 1441 in the event if there were no further UN resolution authorizing the use of force. Although Australia, a U.S. ally, expressed reservations with ambassador Negroponte's assertions, it did not rule out its support to America's military action even if the UN Security Council did not authorize the U.S. for the same. However, it emphasized further talks with the U.S. on this issue. In a speech, the Australian Defence Minister, Senator Hill said :

"Some would argue that it's time for a new and distinct doctrine of pre-emptive action to avert a threat. A better outcome might be for the international community and the international lawyers to seek an agreement on the ambit of the right to self defence better suited to contemporary realities. But in the

meantime those responsible for governance will continue to interpret self-defence as necessary to protect their peoples and their nations' interests".

Thus, the US view that it would be justified in forcing Iraq to comply with the relevant UN Security Council resolutions if the Council itself failed to do so was unilateral and without any tenable basis in international law. The issue of unilateral, or 'automatic', implementation was debated at the UNSC meeting, which led to the adoption of Resolution 1154. An eminent scholar has put the debate in the following words:

"No agreement was reached on this issue. The US and the UK did not receive support for the view that UN members would have such an automatic right. The other members of the Council, including the other permanent members, emphasized the powers and authority of the Security Council and in some cases explicitly rejected any automatic right for members to use force. Sweden emphasised that "the Security Council's responsibility for international peace and security, as laid down in the Charter of the United Nations, must not be circumvented." Brazil stated that it was "satisfied that nothing in its [the Resolution's] provisions delegates away the authority that belongs to the Security Council under the Charter and in accordance with its own resolutions." And Russia concluded that, "there has been full observance of the legal prerogatives of the Security Council, in accordance with the United Nations Charter. The resolution clearly states that it is precisely the Security Council, which will directly ensure its implementation, including the adoption of appropriate decisions. Therefore, any hint of automaticity with regard to the application of force has been excluded; that would not be acceptable for the majority of the Council's members".

The same stand was taken by France and Ireland on the passing of Resolution 1441. The American assertion that the UN Security Council resolutions on Iraq should be seen as 'implicitly' authorizing the unilateral use of military force too has been rejected by various international law experts.

The U.S. attempts to justify its actions under resolutions 678 and 687 is further difficult to be sustained because both resolutions were aimed at evicting Iraq from Kuwait following its illegal invasion of Kuwait and imposing sanctions on Iraq. Both Resolutions were superseded by subsequent Resolutions. Besides, in trying to obtain a new Resolution that explicitly authorised the use of force, the U.S. implicitly acknowledged its lack of legal authority under Resolution 1441. Further, when the Security Council adopted Resolution 1441, France Russia and China issued a declaration indicating that the Resolution excludes the authorisation of military force. Resolution 1441 authorized the Security Council to determine the future course of action against Iraq in case of its non-compliance with this resolution. This Resolution did not empower any country or group of countries to take unilateral action against Iraq in the event of latter's violation of the Resolution. But the unilateral action initiated by the U.S. beyond the scope of this Resolution sufficiently indicated that it was in absolute violation of the Resolution.

The foregoing analysis, thus, tries to establish the argument that the unilateral use of force other than in self-defence is a clear violation of international law, customary law and the treaty law. The U.S., UK and Australia are all members of the UN and are bound by its principles. Under Article 51 of the UN Charter, military force may only be used against another state in self defence or with Security Council authorisation where there is a threat to international peace and security (Chapter 7, UN Charter).

Implications of the Bush Doctrine

The Bush doctrine entails serious consequences for international peace and security. This is because the doctrine makes no distinction between the line separating justifiable preemption from unlawful aggression thus giving leverage to any country to take action against its enemy State. Since pre-emptive attacks are based on threat assessments made unilaterally by one state it will open windows of opportunity to others now checked by international laws. The Doctrine does not address certain crucial issues concerned with pre-emption, such as, determining the timing of any preemptive strike, especially if the goal is to preempt the acquisition of mass destruction weapons. Is construction of a nuclear plant sufficient reason (as Israel believed to be the case in 1981 when it attacked the Osirak reactor) or should one wait till fissile material production is actually underway? And what about chemical and biological weapons facilities? Are pharmaceutical or fertilizer factories too to be targeted for the pre-emption (as the former was in 1998, when the U.S. struck a facility in Sudan)? If that is to be done, then how to distinguish between process that is meant to produce legitimate products and those that do not? Sidetracking all these issues, the only yardstick the administration has adopted is the self-assessment of the threats. If the stock-piling of nuclear and biological weapons by its enemies is the primary measurement of the perceived threat by the U.S. as it used in the Iraq war, then more than Iraq, the bigger threat to the U.S. is North Korea which has already confirmed that it has an active nuclear weapons programme, has refused to open its nuclear programme to international inspection and verification and has violated all its previous international commitments and has an army of one million, 11,000 artillery pieces capable of striking South Korea's capital Seoul, where U.S. has substantial investments. Although the U.S. has far more information about North Korea, and that state is more arrogant, yet the administration has dismissed any talk of military action- preemptive or otherwise. "By any measure, totalitarian North Korea's possession of nuclear weapons is more dangerous than the mere possibility that Iraq is trying to develop them," says Jonathan Schell in the March 3, 2003 edition of the respected *The Nation* magazine published in the United States.

A Brookings Institution critique observes that the Bush Doctrine's "silence on the circumstances that justify preemption" raises the danger that other countries "will embrace the preemption argument as a cover for settling their own national security scores. . . . [U]ntil the administration can define the line separating justifiable preemption from unlawful aggression in ways that will gain widespread adherence abroad, it risks seeing its words used to justify ends it opposes"(Daalder, Lindsay, Steinberg, 2002: 8).

Noam Chomsky, the celebrated US author says that more than any country else, it affords an opportunity to the US to degenerate it into an excuse for attacking regimes it detests. The doctrine, he continues, gives the US a licence to intervene into the sovereign affairs of any country it subjectively deems a threat by allowing the United States the right to attack any country of choice, since the document only required an 'intent and ability' to develop weapons of mass destruction which lies 'in the eye of the beholder'.

Already western scholars are apprehending dangers arising out of the Bush doctrine of pre-emptive strike. It is feared that powerful nations having weak adversaries may take advantage of this doctrine to settle scores, such as China against Taiwan, India against Pakistan and Russia has already done with respect to Georgia. India could attack Pakistan on the charge of Pakistan's sponsorship of terrorism in Kashmir and China could justify its military strike against Taiwan to forestall its threatened independence or to prevent Taiwan to alter the military balance across the Taiwan Strait to the disadvantage to China. ".....Other countries would be likely then to see it as a danger", writes Thomas Franck, Director of the Center for International Studies at NYU Law School, "to themselves, because if the rules are bent to the extent that any country with the might to enforce its will on other countries is pretty much free to do it, then others - whether Bangladesh, China, Pakistan, Canada or whoever - are going to feel very uneasy about the destruction of a rule which they consider to be important to their own national security". Adds Henry Kissinger in a similar vein, "It cannot be in either the American national interest or the world's interest to develop principles that grant every nation an unfettered right of preemption against its own definition of threats to its security".

The Bush administration recognizes this problem, and has warned other countries, including India, not to "use preemption as a pretext for aggression." But the U.S. logic is misplaced as it grants to itself the right to use force whenever and wherever it believes the preemption of potential future threats warrants it while denying the same to others. "The U.S., according to Mr Bush, has the right to make a pre-emptive strike anywhere in the world to protect American lives, with or without global support".

The Bush Doctrine represents another threat when it refers to the removal of rogue states. It says that their dethroning by the U.S. would lead to the establishment of democracies in the Muslim states of the Middle East in the long run and that would make the world a lot safer. This implies that democracy is to come by force, not by practice. Critics have taken the administration's words more for a rhetoric since during the last six years, the Administration has hardly presented any substantial evidence that can be seen as promoting democracy in the predominantly Islamic societies. Rather, on the other hand, it has been hesitant to promote democracy in the Middle-East as a greater involvement in this exercise may lead to national debates in their societies calling for the rejection of democracy altogether and raise voice for greater Islamisation of their polity which would be clearly unacceptable to the US and may even further vitiate its relations with the friendly Muslim countries. The trouble can be more serious

with nuclear Pakistan as any kind of instability arising out of international pressure for democracy may lead to domestic as well as regional instability. Even with a non-nuclear state like Egypt, another front-line ally of the US, America can hardly afford to apply pressure to it for going democracy, as its geographical and strategic centrality is too significant for the US. In its quest for democracy, America would not like to hamper its relations with the Muslim states it has been enjoying over the last several decades. Further, the US logic of bringing democracy to Iraq lacks logic since without democratising Iraq's neighbouring countries- Iran, Sudan, Libya and Saudi Arabia, the issue of democracy would be hardly relevant to Iraq. When the whole Middle-East is besotted with Islamic governments practising non-democratic polity, how can Iraq renounce its religion-based polity and embrace democracy just in three years and that too which is imposed externally and unilaterally?

The administration's belief that by removing the tyrannical regimes and effecting regime change in Iraq and later in other Middle-East countries, it can stem the rising tide of Islamic fundamentalism and promote democracy has been falsified. It is said that in its zeal to accomplish this notion, the administration has unwittingly pushed certain middle-east nations into democratically electing the fundamentalists to power such as the Hamas in Palestine and Ahmediniazad in Iran, thereby relegating the moderates to the sideline. Writes *Caraley*, a noted political scientist, in the foreword of a recently edited book, "U.S. military interventions against rogue states and tyrannies will not necessarily result in the rise of democracies. There is as yet no evidence that even if a new democratic Iraq can be established, it will serve as a 'beacon' of democracy and freedom in the Middle East, resulting in the people of other nondemocracies in the region demanding democracies of their own.... Moreover, the overly optimistic approach to the Iraqi invasion, which assumed that a pro-Western democracy supportive of U.S. policies would be successfully imposed and that this new Iraqi democracy would become a pillar of security for the U.S. in the Middle East, has proven to be a mirage".

It is pointed out further that the administration has been driven more by the politics of regimes it is dealing with than by any abstract commitment to democracy, for instance its consistent opposition to Hugo Chavez in Venezuela and Jean-Bertrand Aristide in Haiti. The US is still obsessed by its Cold War policies of viewing leftist government as dangerous, while showing its readiness to embrace right-wing authoritarian and military regimes as in Pakistan and Myanmar. At other times, the policies of a particular leader have been unacceptable to the US although the leader may be enjoying the popular support. For instance, America refused to treat Yasser Arafat as a Palestinian's leader on the belief that he was unwilling to stop terrorism. Similarly, the US withdrew its recognition of Rauf Denkatash in Turkish Cyprus when he opposed proposals for reunifying the island.

When talking of "rogue states", the Doctrine does not present any standard of judging and proclaiming a State to be a rogue State. Rogue States are to be the automatic targets of preemption but what justifies an attack on Iraq but not on North Korea or Iran, which like Iraq, the administration identified as "axis of evil" states? Conjuring a hypothetical situation, scholars have tried to imagine what would have been the

scenario if the Bush Doctrine were there in the post- World War II period? Would it have been employed against the Soviet Union and Communist China, both of which met the new *National Security Strategy* definition of a rogue state and were pursuing the acquisition of nuclear weapons until 1949 and 1964, respectively? The US never attacked Stalin though "Stalin had nuclear weapons, was a worse sociopath than Saddam Hussein - and his record of atrocities against his own people was far worse than Hussein's". Again, the US took no action against Mao, the Chinese supreme leader, who was dreaded as a madman and a tyrant although in 1968 William Van Cleave, who later served for years as head of Reagan's Pentagon transition team, published a lengthy article justifying the rationale for launching pre-emptive strikes against China's nuclear facilities in *The National Review* magazine. But unfortunately his ideas were not given due respect by the then administration.

The Bush Doctrine is also seen as not being in tune with the United Nations. The administration's recommendation of the use of force unilaterally to uproot tyrannies and rogue States implies side-stepping the UN and the process of multilateralism. This poses a grave threat to the international peace and security, and at the same time, the stability and the credibility of the UN and the spirit of multilateralism inherent therein stands seriously threatened. The doctrine remains non-committal in engaging itself with the UN procedures while reiterating its tough posture against its adversaries. This points at America's, the sole superpower's, design of hegemonism, global dominance and empire in the form of a global *Pax Americana*. "It is disturbing to note", opines a scholar, "that the Doctrine calls for employing American military power and assertive diplomacy for defeating tyrannies, challenging a pernicious status quo and coercing states into abandoning weapons of mass destruction and support for terrorism - without worrying too much about legitimacy or formal multilateralism". The doctrine, it is said, is an attempt to promote the spread of American political and economic institutions by its aggressive willingness to use force preemptively, even preventively by dispatching threatening regimes. This hegemonistic message embedded in the doctrine reflects the influence of the neo-conservatives on the Bush regime.

In his latest book, "America at the Crossroads: Democracy, Power, and the Neoconservative Legacy", Francis Fukuyama opines that the Bush administration failed to anticipate the virulently negative global reaction to its exercise of "benevolent hegemony." The administration came into office with a strong ideological bias against the United Nations and other international organizations such as the International Criminal Court. Officials failed to recognize that they were pushing against a strong undertow of anti-Americanism that would be greatly exacerbated by their seemingly contemptuous brush-off of most forms of international cooperation. The emergence of a unipolar post-Cold War world had made the extent of American hegemony, as it turned out, a source of anxiety even to America's closest allies.

The administration's sidestepping of the UN and adopting strong-arm tactics to accomplish its goals will not be fruitful in the long run as it would end up inviting perpetual isolation and enmity for the US. "America's nascent neoimperial grand strategy, writes John Ikenberry, threatens to rend the fabric of the international

community and political partnerships precisely at a time when that community and those partnerships are urgently needed [to wage war against terrorist threats]. It is an approach fraught with peril and likely to fail. It is not only politically unsustainable but diplomatically harmful. And if history is any guide, it will trigger antagonism and resistance that will leave America in a more hostile and divided world (Ikenberry, 2002).

It has been argued that the increasing neo-conservative influence on the Bush administration, which this Doctrine is a product of, does not augur well for the UN as it is this influence that have led the Administration's disdain for treaties and coalitions that in any way seek to restrict American freedom of action, their perceived lack of equity on the Israeli-Palestinian struggle issue, their preoccupation with regime change in Iraq, and their push for the use-of-force and regime change in Iraq. This neo-conservative touch has given a feeling of confidence in the self-evident virtue of the U.S. and its political and economic values as the agents of global transformation. Iraq gave them an opportunity not only to destroy a tyrant but also demonstrate America's unprecedented power and to create a model state in Iraq for others in the region to follow. Beyond that, they seek to prevent the emergence of any military rival. Even before the Bush presidency, the neo-conservative ideology, has been committed to a hyper-activist foreign policy based on large increases in defense spending and a commitment "to challenge regimes hostile to our interests and values" and "to accept responsibility for America's unique role in preserving and extending an international order friendly to our security, our prosperity, and our principles".

The use of the Doctrine in the Iraq war has also established how intelligence could be distorted to justify the launch of pre-emption against the adversary. This is quite worrisome for the weaker states as they can be mauled by big powers at their will by manipulating the intelligence and fixing the charges against them. In the case of Iraq war, the U.S. allegedly manipulated the intelligence to its advantage to make out a case of invasion on Iraq. It is painful to note that neither the UN inspectors' team headed by Hans Blix nor the allied occupation forces in Iraq could find the much touted WMD, neither before, nor during and nor after the war, for which this great destructive war was fought. In the aftermath of the war, questions have been asked whether the intelligence about the WMD was faulty or the administration distorted it? It has been brought to light that before the war started in Iraq, the intelligence reports that pointed out to the non-existence of WMD was deliberately distorted to make them palatable to the higher-ups and to justify the administration's invasion of Iraq. Three months before the war, the National Intelligence Council warned that the aftermath of the invasion was not likely to be easy and that attacking might increase support for terrorists in the Islamic world. The unprecedented and unabated violence raging across in Iraq in the post-Saddam period is something what the NIC had feared most and is now actually happening.

Further, the Doctrine, does not bear well for the rising powers like China and India. It says that the U.S. will never allow any potential adversary to develop the military capability of challenging the US as the world's sole superpower. *The National Security Strategy Review, 2002* not only declares the American objective of "dissuading potential adversaries from pursuing a military build-up in the hopes of surpassing, or equaling,

the power of the United States but also sends out a veil warning to China, thought to be the upcoming challenger, against “pursuing advanced military capabilities . . . an outdated path that, in the end, will hamper its pursuit of national greatness”. This is a clear message that the U.S. will allow military progress and development of States only upto a point beyond which they do not challenge the U.S. military might and pose a threat to it.

The Doctrine’s Meaning for India

India neither heartily supported nor criticized the U.S. action against Iraq, instead adopted an ambivalent approach, keeping in view her national interest, regional scenario and her relations with big powers, mainly the U.S. However, when dealing with Pakistan, India claimed her right to launch pre-emptive strikes against Pakistan and this was demonstrated by India’s External Affairs Minister’s reaction on Pakistan in the aftermath of the killing of 24 Kashmiri Pundits by terrorists in Kashmir. Participating in the discussion in Rajya Sabha, the upper chamber of the Parliament, he remarked:

“India has a much better case to go for preemptive action [against Pakistan] than the U.S. had over Iraq...If lack of democracy, possession of weapons of mass destruction and export of terrorism were reasons for a country to make a preemptive strike in another country, then Pakistan deserved to be tackled more than any other country”. Later, George Fernandes, the Defence Minister of India, endorsed his views and stated, “Pakistan is a [more] fit case than Iraq for a preemptive strike”. But the government’s claim was promptly dismissed by his U.S. counterpart saying the right to a pre-emptive strike cannot be generalized and the U.S. took this action against Iraq as an exceptional case. Seizing the opportunity, Pakistan’s Ministry of Information circulated a report by the Washington Post saying, "The U.S. has strongly condemned India’s attempts to draw parallels between Iraq and the Kashmir situation and has warned India to restrain itself from using the U.S.-led preemptive war on Iraq as a pretext for an attack on Pakistan." It quoted State Department spokeswoman Joanne Prokopowicz as saying that the circumstances that made military actions necessary in Iraq do not apply in the subcontinent and should not be considered a precedent.

Not to be deterred by the U.S. admonitions, some vigorous pro-U.S. lobbying has been undertaken by a section of bureaucrats, influential academics and journalists in New Delhi who have been advocating the American far right ideologue Richard Perle’s thesis about the “shape of the world polity minus the encumbrance of the United Nations suits Indian interests, particularly as the demise of the UN would make the Kashmir resolutions of 1948-49 defunct”(Perle, Frum, 2006:33). He writes, "Saddam Hussein’s reign of terror is about to end. He will go quickly, but not alone: in a parting irony he will take the United Nations down with him. What will die in Iraq is the fantasy of the United Nations as the foundation of a new world order. As we sift the debris of the war to liberate Iraq, it will be important to preserve, the better to understand, the intellectual wreckage of the liberal conceit of safety through international law administered by international institutions”.

The pro-U.S. Indian section is studying the political and economic implications for India of a world without much UN clout and encouraging politicians at the policy and decision-making levels to consider the world, as it existed before the U.S. invasion of Iraq. Foreign policy experts supporting the idea of India abandoning the UN, along with the U.S. and joining the "coalition of the willing" are cautious in their views. Several officials close to the former Deputy Prime Minister Lal Krishan Advani, told Asia Times Online in January 2004, on condition, that this is a very serious move, and its implications are still being studied. One official said, "I am certainly advocating a reconsideration of Nehruvian foreign policy paradigms. The world has changed and we must change accordingly. After all, Saddam Hussain is paying the price for trading in euros and not doing business with Halliburton as the Taliban paid the price for not dealing with Unocal. Had Saddam built a business relationship with companies run by Dick Cheney, Donald Rumsfeld and George W Bush, he would have been sitting pretty at this moment, perhaps even gassing his own people with chemicals supplied by these same people".

In support of their argument that India should join the coalition of the willing and come out of the UN system along with the U.S., these officials further contended that Saddam had the audacity to cock a snook at the U.S., start trading in euros and refusing to deal with U.S. multinationals, while all the time being in "active, indeed proactive" compliance with UN resolutions. The result: his country is invaded and occupied, his regime decapitated. The U.S. violates the UN charter, devastates a sovereign country, in order, it claims, to uphold and implement one of the UN resolutions. On the other hand, Israel refuses to comply with any of the 29 UN resolutions against it, some of them asking it to vacate occupied Palestinian territory for 35 years. But since it is a close ally, the U.S. continues to use "unreasonable" vetoes to protect it.

The idea of India abandoning the UN in favor of the U.S.-led coalition of the willing, has been supported even by a section of media, particularly the Indian Express, the second largest chain of newspapers in the country. At a conference, its editor Shekhar Gupta, criticized Prime Minister Atal Bihari Vajpayee for having expressed India's commitment to the UN. He contended that "while we are one with whatever the UN decides' may be a useful line for so many Europeans and others loathe to oppose Bush or to side with him prematurely, it is the one thing we should have avoided. We can choose so many other formulations: That Iraq has to come clean; that the U.S. cannot decide unilaterally and so on. But can't we, please, and in our own supreme interest, go a bit easy in asserting such commitment to the UN?"

He reveals the fears that several officials and lawmakers have expressed in private conversation with the media. He asserts, "The danger in this lies not simply in the fact that at some stage the Pakistanis could remind us that since we had such faith in the UN, why don't we also express it by implementing the 1947-48 plebiscite resolution on Kashmir. The danger is greater. If the principle that the UN Security Council resolutions authorizing intervention in any situation that presents a global danger has universal legitimacy, what is to stop it from passing a similar resolution should Kashmir come to a boil yet again tomorrow? We will defy it, sure enough. But the touching words we speak today, expressing our faith in the Security Council, will come back to haunt us".

He adds, "Nobody should know better than us how unfair and ineffective the UN can be. In the past decade it has rubber-stamped every single thing the U.S. has demanded of it and while it does enjoy the momentary glow of the latest French Resistance, it is unlikely that institutionally it will ever be able to stand up to the powers that be. The world over it is known to be an inefficient, lazy, wasteful and ineffective organization. It has done more for perpetuating dictatorships around the world than for furthering democracy. Every September, thugs and despots from around the world congregate at its General Assembly to hold forth to the world, but also to their domestic audiences. Not one of them may have voted for you, but they cannot ignore the fact that when you speak, so many other heads of state listen".

Demonstrating their resentment against the policies of the UN concerning India, a member of parliament from the State of Jammu and Kashmir, asked, "In any case, what has the UN done for India? A country of a billion people is not even a permanent member of the Security Council. How can we forget that throughout the Cold War it was the Soviet veto alone that saved us on numerous occasions?"

She asserts, "We are the biggest democracy in the world and the second largest population. Yet we often have less power in the present UN system than several small dictatorships. When we went to the UN in 1948, complaining that our land had been invaded by Pakistan, instead of getting justice and support, we were simply embroiled in a debilitating dispute and have remained entangled since. The Damocles sword of the two plebiscites resolutions has remained hanging over our heads since. It is not without reason that we do not even acknowledge the presence of the UN Observers' Group in Kashmir. Indeed, only last year we refused to give a visa to [UN secretary general] Kofi Annan as he had seemed inclined to mediate on the Kashmir question. I am all for restructuring of the UN or some other such solution that gives India its due."

However, opponents of the advocates of foregoing views argue that even if India joins the coalition of the willing, it is hardly likely to be allowed to practice the Bush doctrine of preemption. This was clear by the U.S. rebuff to Jaswant Singh's, the former external affairs minister of India, remarks in Washington when he stated, "Every country has the right to preemption and the doctrine is not the prerogative of any one nation". The government's claim was promptly dismissed by his US counterpart saying the right to a pre-emptive strike cannot be generalized and the U.S. took this action against Iraq as an exceptional case.

But apart from the U.S. rejection of Indian aspirations of emulating its doctrine, the dominant view among a vast section of scholars, intellectuals, media and even foreign policy experts in India has been that the unilateral U.S. invasion of Iraq has made the UN more and not less relevant. In their view, the UN would have become irrelevant if it had succumbed to the U.S. threat either to legitimize its invasion or become irrelevant like the League of Nations. By standing up to the world's only superpower, the UN has acquired a new relevance and has emerged as a new beacon of hope for smaller countries. The repeated but failed attempts by the U.S. to secure legitimacy for its

invasion through a UN resolution is an indicator of the UN's strength to oppose great powers against their imperialist invasions.

The debate, thus, continues about the significance of the Doctrine for India with scholars deriving different meaning out of it. As of now, the Indian leadership is yet not ready for a pre-emptive strike against Pakistan for the latter's support of terrorism in India. To materialise, however, such a strike, India will need to win the confidence of the international community, precisely America.

Refutation of the Doctrine's critics

The Doctrine's exponents have rubbished most of what has been said against the Bush Doctrine. Rather, they have lauded Bush's initiative in no uncertain terms Norman Podhoretz, long-time editor of *Commentary* and one of the founding fathers of neoconservatism, gives full credit to President Bush and describes him as "the right man for this war; the right president at this juncture in history".

Radical Islamists, argues Podhoretz, are descended from the major totalitarian movements of the 20th century — Hitlerian Nazism, Mussolini fascism, and Stalinist communism — the last of which we battled through WWII. The U.S. is now fighting to preserve its freedom and liberty against the latest "ism." In doing so, Podhoretz firmly believes that the United States has answered "history's call," and that we must not swerve.

Podhoretz holds that prior to Bush, U.S. presidents were "paper tigers" in their failure to effectively respond to terrorist attacks overseas or at home. This collective U.S. failure emboldened Osama bin Laden and set the stage for 9/11. Fortunately, President Bush has changed all this. He, thus, describes Bush as a courageous politician with a clear vision for America, one that rests on the four "pillars".

Commenting on the success of this document, he says, " after all Iraq has been liberated from one of the worst tyrants in the Middle-East; three elections have been held; a decent constitution has been written; a government is in place; and previously unimaginable liberties are being enjoyed. By what bizarre calculus does all this add up to failure? And by what even stranger logic is failure to be read into the fact that forces opposed to democratization are fighting back with all their might?".

Paying rich tributes to President Bush and comparing the doctrine to the Truman doctrine, he says that the "Bush Doctrine is no more dead today than the Truman Doctrine was cowardly in its own early career. Bolstered by that analogy, I feel safe in predicting that like the Truman Doctrine in 1952, the Bush Doctrine will prove irreversible by the time its author leaves the White House in 2008. And encouraged by the precedent of Ronald Reagan, I feel almost as confident in predicting that, three or four decades into the future and after the inevitable missteps and reversals there will come a President who, like Reagan in relation to Truman in World War II, will bring

World War IV to a victorious end by building on the noble doctrine that George W. Bush promulgated when that war first began”.

Scholars see a sense in the Bush Doctrine as they say that with the disintegration of the Soviet Union and the end of the Cold War, challenges for America have not come to an end. Rather, soon new anti-Western “movements of rage” with new ideologies, leaders, and strategies would appear; and that consequently America would need a new conceptual map and operational strategy to deal with the world’s new political and ideological geography. As such, a radical revision of American foreign policy and consequently a radical revision in America’s global role in the post-Cold War period is required and this is supplied by the Bush Doctrine. They hold that the identification of possible hostile targets and preemptive-strike doctrine amount to an operational strategy designed to map and militarily respond to the very different types of violent threat emerging in the aftermath of the Cold War. “The Bush administration’s doctrine—imperial or not—is a positive response to the likely proliferation of wildcat violence in a context of state disintegration and dangerously unpredictable states (such as North Korea and Iraq) that may offer movements of rage access to insidious weapons. If the Bush administration’s policy is one of identifying, intimidating, and possibly eliminating wildcat violence with global reach and horrendous consequences, then I favor it—even if that effort includes new imperial notions of extraterritoriality and spheres of influence (but not, except in the most exceptional of circumstances, prolonged occupation of entire countries). But I add one crucial proviso that we make every effort to have Western or Western-like countries (e.g., Turkey) share this effort”.

Writers have hailed the Bush Doctrine for its initiative for democratization of the “once totalitarian, quondam authoritarian, and persistently tribal societie” and also for not only dismantling the menace of terrorism and rogue states but also ensuring that they never return by reconstructing their societies along democratic lines.

Political scientists James W. Ceaser and Daniel Di Salvol opine that the Bush Doctrine has become exclusively identifiable with the Republican Party and the conservative movement. Bush’s appeal, in their words, to “the universality of democracy and human rights” is a watershed moment in the history of American politics, with enormous significance for the Republican Party and the conservative movement. “Not since Lincoln has the putative head of the Republican party so actively sought to ground the party in a politics of natural right.....President Bush has identified the Republican party with a distinct foreign policy, which he has justified by recourse to certain fixed and universal principles—namely that, in his words, ‘liberty is the design of nature’ and that ‘freedom is the right and the capacity of all mankind”.

Where has the Bush doctrine led the world ?

Notwithstanding the Doctrine’s getting accolades and criticisms coming from various quarters and going strictly by the events, it appears that the Bush Doctrine has endured

rough weather ever since it began its journey in 2002. Although under its aegis, the U.S. won the war against Iraq but that was of little credit as Iraq was too weak a nation to stand up to the U.S. aggression. "The Iraqi war", opines *Caraley*, "proved only that U.S. military superiority can be guaranteed against small states that lack nuclear weapons, and even that does not guarantee that after victory over a state's military forces, there will be compliance by the defeated state and opposition attacks will stop,". He warns that the United States cannot succeed militarily when "going it alone".

The doctrine's tough words and resolute American determination to thwart the development of WMD and nuclear weapons by its enemies has failed to deter Iran and North Korea from continuing to develop their nuclear weapons, rather contrarily has put the U.S. today on an eyeball-to-eyeball confrontation with these nations over their nuclear programs. It appears that in having taken the Iraq initiative unilaterally for a regime change, it has overstretched its military and economic capacities. The quantum of precious human lives lost, including the American troops, and the extent of property and civilization destroyed in the Iraq war, followed by a virtual civil war and the inability of a weak government is a telling story of the success of the doctrine. Much before the war had come to an end, observers had expressed doubts about its success. "Iraq has proved to be a telling demonstration both of the extent of American power, and of its limits..... We saw the extent of that power in March and April as U.S. forces removed Saddam's regime, and we have seen the limits in the months since then..... it is not too soon to say that success in Iraq will absorb all America's energy and resources for a long time to come. As long as it needs to sustain - and that means indefinitely - 140,000 troops in the country America will not have the forces to undertake major ground operations elsewhere. And you cannot build democracies with air power".

The application of the Bush Doctrine in Iraq has also proved to be devastating in so far as the rise in Islamic fundamentalism, jihadi attacks and sectarian violence is concerned. Before the war started, the administration had claimed that it would get Iraq rid of terrorists, which had become a safe haven for the terrorists operating globally and being financed and armed by Saddam Hussein. In his speeches, President Bush had claimed that if it had not undertaken its Iraq venture there would have been more terrorists "plotting and killing Americans across the world and within our own borders". But three years down the war, the administration's own National Intelligence Estimate on *Trends in Global Terrorism: Implications for the United States*, circulated within the government in April 2006 and partially declassified in October, has conceded that "the Iraq War has become the 'cause celebre' for jihadists...and is shaping a new generation of terrorist leaders and operatives." However, unmoved by the reports, administration officials have refrained from accepting this bitter reality.

In the aftermath of Iraq war, religious fundamentalism, violence and instances of suicide bombings in and outside Iraq have multiplied. A study shows that the Iraq War has generated an unbelievable sevenfold increase in the yearly rate of fatal jihadist attacks, "amounting to literally hundreds of additional terrorist attacks and thousands of civilian lives lost; even when terrorism in Iraq and Afghanistan is excluded, fatal attacks in the rest of the world have increased by more than one-third." The study reveals that the Iraq

conflict has greatly increased the spread of the Al Qaeda ideological virus, as shown by a rising number of terrorist attacks in the past three years from London to Kabul, and from Madrid to the Red Sea.

The report mentions that the rate of fatal terrorist attacks around the world by jihadist groups, and the number of people killed in those attacks, increased dramatically after the invasion of Iraq. Globally there was a 607 percent rise in the average yearly incidence of attacks (28.3 attacks per year before and 199.8 after) and a 237 percent rise in the fatality rate (from 501 to 1,689 deaths per year). A large part of this rise occurred in Iraq, the scene of almost half the global total of jihadist terrorist attacks. But even excluding Iraq and Afghanistan—the other current jihadist hot spot—there has been a 35 percent rise in the number of attacks, with a 12 percent rise in fatalities.

In one of his speeches in 2005, President Bush had claimed that terrorists would be put down with a heavy hand and that would lead to the lessening of terrorists activities, the results have been otherwise as jihadists have not let the Iraq War distract them from targeting the U.S. and its allies. The rate of attacks on Western interests and citizens has risen by almost 25 percent, while the yearly fatality rate has increased by 4 percent, a figure that would have been higher had planned attacks, such as the London airline plot, not been prevented.

The U.S. aggression in Iraq has globalized jihad and martyrdom and this has grave implications for American security in the future. The growing hatred for the U.S. in Muslim countries has created thousands of Muslims ready for jihadist terrorism and this has increased the possibilities of heightened attacks on the U.S. in future. Jihadists are already leaving Iraq to operate elsewhere. There are apprehensions that terrorist groups in Iraq, which have raised several millions through kidnapping and oil theft, may now be in a position to help fund their jihadist brethren elsewhere. The war has generated anti-American sentiments and led to the fall in U.S. support in many of its ally Muslim countries such as Jordan, Lebanon, Indonesia, Pakistan and Egypt. The report says that Europe, the Arab world, and Afghanistan all saw major rises in jihadist terrorism in the period after the invasion of Iraq, although Pakistan and India and the Chechnya/Russia front saw only smaller increases in jihadist terrorism.

Even before the war had started, observers had warned that War in Iraq will not stop the spread of religious fundamentalism, but it will, in fact, perpetuate it it will provide political Islamists in the Middle East with further examples to stir hatred and promote terrorism against America.,. If America goes back to the Persian Gulf, it will send a clear signal to many in the Muslim world already predisposed to believe that we are interested only in securing our imperial interests. By continuing to press our political and military will in the Middle East, we sow the seeds of future generations of terrorists. What Middle Eastern country will sympathize with our "war" against terrorism while we drop more bombs on their neighbors, families, and friends?"

And now after the war, criticisms of the U.S. policy in Iraq continue from various political leaders. France denounced America saying the war has destabilized the entire Middle

East and allowed terrorism to spread. Jacques Chirac, the French President asserted "At Europe's gate, the Middle East has become an epicenter of international tensions crises are building up and spreading. As France foresaw and feared, the war in Iraq caused upheavals whose effects have not yet finished unravelling. The venture exacerbated the divisions between (Iraqi) communities and undermined the very integrity of Iraq," he said. "It weakened the stability of the region, where every country is now worried about its security and independence. It gave terrorism new terrain for expansion. Now, "more than ever, the priority is to return sovereignty to the Iraqis".

So much so for the U.S. attack on Iraq. If the latter carries out military strikes against Iran and North Korea, the other two rogue states as defined by the U.S., what would be the extent of death and destruction could be anybody's guess. If the Bush regime goes around attacking nations like Iran and N. Korea or any other nation that it deems a possible threat to itself in the future, then they would have to explain how U.S. military power can achieve the desired aims of disarming those nations and installing democracies. In view of its devastating impact on nations and peoples, critics have observed that instead of strengthening America, the continued use of the doctrine has weakened America, limited its options vis-à-vis the problematic states and has reignited the hotspots around the world. The Israeli-Palestinian conflict, the Iran nuclear stand-off, the North Korean missile crisis, the genocide in Sudan, the unprecedented economic growth of China, the regrouping of the Taliban on the Pak-Afghan border and the continuing mess in Afghanistan, all dangerous trends in their own way, have grown beyond America's capacity to control them. While the Bush administration has been singly involved with its Iraq policies and that too unsuccessfully, the administration failed to stem these disturbing trends that have overgrown in size and capacity. It is feared that the U.S. may be heading down the road again, as it was in the Balkans, Vietnam and now in Iraq, toward wars that will be even bigger and bloodier notwithstanding the fact that neither Iran nor North Korea could survive all-out war with the U.S.

SUMMARY

Scholars are divided over the future of the Doctrine although a large section of scholars and critics have already proclaimed the death of the Bush Doctrine. It would not be an exaggeration to say that the world in general is more hostile to it than its eulogy by some. But perhaps it may be too early to predict its end as future events, particularly from Iraq, will determine its course. But the death of the Doctrine is all the more desired because the Doctrine tries to circumvent the UN, which is too serious an issue. The world would plunge into an ocean of anarchy if every nation takes liberty in attacking their rival States just on the presumption of an imminent threat. Any radical deviation from the internationally laid down principles would invite unbound troubles difficult then to be controlled even by the U.S.. The UN charter itself affords nations opportunities to defend themselves and take unilateral action provided the threat is so urgent and imminent that it leaves no time for the nation to take recourse to the UN. The rules of

the game should be even and applied to all equally on a level playing field. History shows that the U.S. was the first country to criticize Israel when it attacked the Iraqi nuclear installations during the eighties on the assumption that Iraq was on its way to develop a nuclear bomb although the truth was that it was still in its infancy and there was no urgent or imminent threat from it to Israel. But in attacking Iraq unilaterally and breaking the rules of the game, the U.S. has opened afresh the doors for future wars since it cannot restrain big powers like China into attacking Taiwan, a U.S. ally.

Notwithstanding the sincere wishes of the critics wanting the end of the Bush Doctrine, it is, however unlikely to happen given the rising threat from Islamic fundamentalism to the Western world and specifically to the U.S.. So long as this fear persists, it is doubtful that the present or the future U.S. administrations would altogether dump the Doctrine. Though some amendments can be done by the present or the post-Bush governments but a radical departure from it is unlikely as the Doctrine gives a tough tool to the administration in responding to grave terror attacks on U.S. by its WMD-armed enemies.

The solution, however, does not lie in the continuation or the termination of the Doctrine. The safety, security and independence of nations can neither be left in the hands of one or few big and powerful nations, nor can the big powers be allowed to become the trend-setters or lay down principles of global governance by laying down exceptional principles that best serves their interests. Rather, the solution has to be searched within the UN, the agency which is the lynch pin for preserving the international stability and the security of the nations. There is a need to effect systemic changes in this world body since looking back at past events that occurred during the past one and a half-decade ago in Rwanda, Bosnia, Kosovo and now Iraq, it appears that the UN is no more strong enough to prevent the reoccurrence of genocides, wars and state-sponsored terrorism.

This is not to say that the UN charter is defective or incomplete, it is simply that the UN is already more than half a century old and the world has changed immensely since then. When the Charter was written there were only two nuclear states, the U.S. and the USSR, but now more than fifty years after it, there are scores of nations who have gone nuclear. Then the world was divided into two major power blocs, now the world is torn apart into several groups and subgroups, and these groupings include what the Doctrine calls the "rogue states" and terrorist organisations. Then nuclear proliferation was not the prime question, now it is the dominant issue facing the world and still more fearful because of it's landing into irresponsible hands capable of turning it into weapons of mass destruction. Then terrorism was physical in nature, today it is absent or invisible having the potential to cause unlimited damage with minimum casualties of terrorists or terror exporting states.

In the aftermath of the Cold War, global scenario has changed rapidly in two basic sense- the emergence of the U.S. as the sole superpower and the proliferation of sophisticated technology, including nuclear, chemical and biological, to irresponsible elements- states and terrorist organisations- who are determined to use it against the U.S. and other states who they consider are their bitter enemies. The falling of such a

high weapon-grade technology poses grave threat not only to the targeted states but the entire humanity. Given these truths and also given the fact that the UN is no more capable to deal with new forms of threat continuously arising from different quarters- some from states and some from organisations, nations no are longer willing to wait until it happens and causes unlimited loss of life, property and prestige like the 9/11, and are thus ever eager to destroy the threat at its primary level itself.

In the post-Cold War era, the Cold War security doctrines of deterrence and containment are hardly of any meaning. New forms of terrorism and their perpetrators have arisen. Nations today are much more threatened by unseen threats coming from the hidden terrorists and destructive elements. Given their very nature, the present day terrorists are difficult to be deterred as they do not have any country or populace to defend. And containment is an irrelevant strategy with dictators who obtain weapons of mass destruction who are ever ready to proliferate and share them with the terrorists who do not hesitate to inflict unimaginable damage to life and property across the globe. Other than the U.S., India and Israel are the other two countries, which have borne the brunt of terror attacks, both sponsored and individual. Under these circumstances, it is no surprise that nations have clamoured for the right to pre-emption to effectively counter the rising menace and prevent it even before it materialises. Hence, the Bush Doctrine asserts that America would not “keep sitting in the face of an attack by its enemy in the hope of getting the international sanction to respond to it. America would reserve the right to attack its potential enemies even before they attack the U.S.”. There is a point to it and the American claim should not be dismissed with disdain although an individualistic solution is not the end of the problem.

Like the U.S., India too, since the end of the Cold War, has witnessed a steep rise in the Pakistan-sponsored “proxy war” which it describes as its support to the “war of liberation of Kashmir from India” notwithstanding the fact that Kashmir has been a part of Indian federation for the past more than fifty five years. In this war, more than sixty thousand persons have been killed till now- both civilians and security personnel- leave aside the huge loss of public property. During the Kargil war of 1999, India was almost on the verge of using the pre-emptive option against Pakistan and then again in 2001 when Pakistan-backed terrorists and mercenaries attacked the Indian Parliament.

India has consistently maintained that so long as adversaries use devices such terror-campaigns, terrorist training camps and instigate and support terrorism into their neighbours, it shall retain the right to launch pre-emptive strikes. But where Israel, with the backing of the U.S., has, at regular intervals, taken to pre-emptive strikes against Iraq and other Middle-East countries at various points of times, India has so far restrained itself inspite of strong provocations, the major reason being the lack of international support, implying that of the U.S. This may be one of the reasons why India supported the U.S. action against Iraq in 2003, although it had little option than to fall in line as much as others like France, Germany, Russia and China who all initially opposed the U.S. move. In the aftermath of the war, India, on the U.S. mould, have demanded to go in for a pre-emptive strike against Pakistan on grounds of support to terrorism by the latter but have been denied the opportunity.

It is true that Pakistan has presented real dangers for India by its continuous overt and covert support to terrorism with an objective to disintegrate and unabatedly bleed India. The Kargil war of 2001 was an extremely compelling case for an Indian pre-emptive strike on Pakistan as the Pakistani intrusion into the Indian territory was so deep that any further delay in Indian response would have led to the permanent disintegration and occupation of the Indian territory by Pakistan. There were calls from various quarters within India, including the military, to go in for hot pursuit of the intrusionists and if that implied crossing over to the Pakistani side or launching a limited war on Pakistani, that too should be done. However, the political leadership decided against this general euphoria, on the apprehension, which was justified too, that if India launched a limited strike, surgical strike or hot pursuit, Pakistan's response too would be serious. It would have escalated the conflict between the two countries into an all out nuclear war between India and Pakistan. Further, the leadership had doubts about such a strike ensuring India's future security against a nuclear Pakistan or being able to destroy Pakistan's nuclear weapons or its missiles in entirety. Given such an Indian strike, Pakistan would not have hesitated to escalate the conflict into a nuclear one. Hence, scholars hold that "the attack on militant targets inside Pakistan or in PoK would have only aggravated the conflict situation and violence in Jammu and Kashmir. It would not have achieved any tangible military or political objectives for India". If one goes by the then statements of Pakistan's politico-military leadership and by that country's counter mobilization of troops all along the Indo-Pak border in 2002, any such action by India would have only aggravated its security situation rather than addressing it. Given the internal political conditions in Pakistan, the military would have been compelled to 'perform' against India, if the latter decided to escalate the situation'.

Besides, the internal political situation of Pakistan, which is unstable and pulled in different directions by the government and the opposition parties, would have got radically strengthened with any Indian preemptive attack. The then fragmentation between the ruling and the opposition parties would have been bridged once India exercised the military action. Qazi Hussain Ahmed, Amir of Jamaat-e-Islami had already announced that in case of any threat from India, it would stand by the military regime.

India, finally, not only successfully repulsed the intrusion but also successfully exposed the Pakistani hand behind terrorism and intrusion in India. In the post-Kargil period, there has been much lessening in the Indo-Pak tensions consequent to the US pressure on Pakistan in abandoning its clandestine operations into India. Confidence Building Measures (CBMs) have been announced both by India and Pakistan although this has not lead to the abating of terrorism in India, it has, to some extent, reduced the hostility between the two countries, which is very encouraging for the both the countries. The prescription, therefore, for India is not a pre-emptive strike but that "it should enter into a sustained and structured dialogue with Pakistan on all outstanding issues, including Jammu and Kashmir. This would strengthen the democratic forces and the liberal society in Pakistan, which yearns for peace. This would also serve Indian interests better than letting the rightist forces and the military come together".

Another lesson that comes out of India's engagement with Pakistan over Kargil issue is that a pre-emptive strike should be contemplated only and only as a last resort, if not to be finally dropped. Until all peaceful and political options are exhausted, the option of military strike should be kept in abeyance. This should be the general prescription for the all the countries, be it the U.S. or any other big power.

But as is well known that international politics is not practiced by nations in an idealistic manner and aberrations are more a rule than exceptions, a long-term solution for minimizing the use or misuse of power by individual nations has to be found at the global level and within the global organizations.

This refers to rewriting of the UN Charter so as to legitimize pre-emptive strikes under the UN. The redrafted Charter would specifically allow nations to undertake pre-emption option in case of severe and compelling threats arising out from terrorist organizations or rogue states. The various facets involving the circumstances, factors and the timing of pre-emption would be clearly defined and incorporated in the Charter and unless all those conditions are satisfied, no nation should have the right to undertake a unilateral aggression against any nation. Although nations would not wait to get a UN approval to attack if the situation is too urgent and compelling like India, but subsequently the responsibilities should be fixed and action initiated if such a pre-emptive strike falls short of the conditions mentioned in the renewed Charter. This alone can minimise the instances of unilateral aggression, if not finally halt, by powerful nations and at the same time will give an opportunity to deal with any challenge posed by a terrorist organisation or a rogue state. It is unfortunate to note that as the fear of unilateral aggression against certain countries increases, no discussions as yet have been initiated at the UN on this crucial issue.

The redrafting of the UN Charter would take into account the current geo-political reality and strive to develop a broad consensus among the UN member-States for legalising and allowing pre-emptive military action against countries suspected of launching or preparing to launch nuclear or biological attacks on their rivals, or sponsoring, supporting or exporting terrorism into another country with the intent of destabilising the political system or causing massive human carnage in their rival's populace. This alone can make the UN more viable and dynamic to confront the challenges posed by the twenty first century.

Although UK Prime Minister Tony Blair has supported the rewriting of the UN Charter, he has gone a step further in demanding for the right to intervene for countries even when they are not directly threatened. He says, "Regimes which brutalised their own people or posed a threat to the world should not be left to their own devices in the name of non-interference in other countries' affairs". He criticised the 'paralysis' in the UN over Iraq and said it must be reformed radically so that its "Security Council represents 21st century reality" and give it the "capability to act effectively as well as debate". "...Our worry is that if that if the UN — because of a political disagreement in its Councils-is paralysed, then a threat we believe is real will go unchallenged," he said.

But the demand for allowing countries to intervene even in the absence of any direct threats is too dangerous as it would open floodgates of illegal, unilateral and hegemonic intervention. This would further weaken the UN and destabilize the world besides setting a set a dangerous precedent for nations.

Pending the amendment of the Charter, if at all a unilateral intervention or a pre-emptive attack is to be undertaken as a last resort by any nation, then it should be solely under one condition, which as the UN Charter says, that the "threat is so imminent and urgent that it leaves no time to take recourse to the UN". Nothing short of it can justify pre-emptive strikes, far less to talk of its justification for granting rights to intervene or attack where countries are not directly threatened. Barry Schneider, thus, proposes in his scholarly paper the idea of pre-emptive, preventive strike only under certain clearly defined, extreme circumstances since ill considered pre-emptive strikes could backfire catastrophically" (Schneider, 1995). Hence, utmost care would have to be taken to ensure that the Iraq instance is not repeated elsewhere. Even if any action is to be initiated against Iran and/or North Korea, the same should be done only through the UN and under the existing provisions. Perhaps, the world would be much more safer if there are no more US-led or NATO-led wars but only the UN-led wars, if at all to be any.

The Bush Doctrine, in the final analysis, needs to be kept in abeyance, if not altogether dropped, in the lasting interest of the humanity and international order, otherwise the central conclusion, which would be drawn from the doctrine being put into practice, would be about the "pre-eminence of military power in the international architecture of coming decades. The doctrine would hasten and reinforce beliefs, amongst determined elements to develop, acquire or possess weapons of mass destruction".

It is high time the baton passes on from the U.S. to the UN which alone can guarantee international peace and order, if, at all, it is to be there in future.

(Sanjay Gupta)
