

Bush Doctrine of Preemptive War

President Bush's 2002 National Security Strategy (NSS) addressed many of the Nation's new security challenges in a post 9/11 world. The strategy advocates the use of many foreign policy tools and strategy goals. One of the NSS's more controversial policies, reemphasized in the 2006 NSS, is the advocacy of preemptive strikes – the practice of striking the nation's enemies before the nation's enemies can strike the United States. This policy has been dubbed the "Bush Doctrine". Critics of the doctrine assert that preemption is an illegitimate tool, basing their position on moral, ethical and legal arguments. Conversely, advocates of the policy equally employ moral, ethical and legal counterarguments to support its use. The intent of this paper is to attest to the policy's legitimacy based upon the standard that forms the foundation of those ethical, moral and legal arguments – the "Just War" Theory. This paper will deconstruct the preemptive strike elements of both the 2002/06 NSSs and evaluate the statements against modern "Just War" theory to demonstrate that the two are compatible and thus a legitimate tool of foreign policy.

"The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively."¹

¹ NSS 2002, 15.

This doctrine, as promulgated in both the 2002 and 2006 NSSs is not without domestic and international concern. This paper will concentrate strictly on comparing the policy, as written in the NSSs, with “Just War” Theory and not review the prudence of articulating such a policy in the Nation’s security strategy document.

Just War Theory

The concept of “Just War” Theory dates back to Aristotle and has been refined by lawyers and theologians of the likes of Cicero (106-43 BC), Augustine (AD 354-430), Thomas Aquinas (1225-1274), John Lock (1632-1702) to modern day scholar Michael Walzer(1935 -).² Modern Just War theory provides the commonly accepted set of standards and conditions to satisfy before initiating war in order for the war to be considered ‘Just’ and legitimate. Traditionally, the theory centers around two concepts “*jus ad bellum*” and “*jus in bello*”. *Jus ad bellum* offers criteria for going to war and *jus ad bello* provides criteria for conducting war.³

The Bush Doctrine articulates the policy of preemptively striking its enemies to eliminate threats. Accordingly, it is appropriate to evaluate this policy against the standards of *jus ad bellum*. Traditionally, *jus ad bellum* provides the following criteria, all of which must be satisfied before initiating aggression:

² The Morality of War, Brian Orend, 9-24.

³ IBID, 20.

- Just Cause
- Right Authority
- Right Intention
- Proportionally
- Reasonable Hope of Success
- Last Resort.⁴

The remainder of this paper will focus on evaluating the compatibility of the Bush Doctrine with the criteria set forth by *jus ad bellum*.

Just Cause

The *jus ad bellum* principal of Just Cause may be the most important. Aristotle wrote that we should wage war for the sake of peace.⁵ The standard has come to reflect that a “Just War” is one that serves the purposes of either self-defense or the defense of another; both with the aim of achieving or returning to a state of peace. To be acceptable, the post war peace must be preferable to the state of prevailing peace had the war not been fought. The concept of self-defense is not only the right of states, but also a primary obligation of states. It is not only an principal of “Just War” but also codified in the UN Charter in Article 51: “Nothing in the present Charter shall impair the inherent right of individual or collective-self defense if an armed attack occurs against a member of the United Nations.....”⁶

In a review of both the 2002 and 2006 NSS there is a good deal of harmony between the Bush Doctrine and *jus ad bellum*. The 2002 document

⁴ Bush doctrine and Just war theory Dale T. Snauwaert, 127.

⁵ Ethics of War and Peace, Douglas P. Lackey, 33.

⁶ UN Charter, Chapter VII, Article 51.

stipulates that “The United States has long maintained the option of preemptive actions to counter a sufficient **threat to our national security**.” And further states “... the more compelling the case for taking anticipatory action to **defend ourselves**,” and “The purpose of our actions will always be to eliminate a specific **threat to the United States or our allies and friends**.”⁷ The document clearly implies that preemption will be used for the purposes of self defense. The 2006 document is even clearer on this point. It states that “To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively in exercising our **inherent right of self-defense**”⁸ This document invokes the very principle encoded in Just Cause – self defense or defense of another. By a strict measure of the standard of using force only for the purposes of defending oneself or another, the Bush Doctrine is compatible with the “Just Cause” criteria of *jus ad bellum*.

Right Authority

The Right Authority criterion stipulates that war must be waged by a legitimate authority. Since the treaty of Westphalia (1648) the authority to wield the instruments of national power is commonly recognized to be the state. Both the 2002 and 2006 NSSs state that preemptive strikes may be used by the United States. This can be interpreted that force may be applied by the properly elected political sovereign powers – the Executive and Legislative bodies of the US government. Nowhere does the NSS suggest the preemptive application of

⁷ NSS 2002, 15-16.

⁸ NSS 2006, 18.

force through means other than constitutionally designated authorities. By this strict measurement, the Bush Doctrine is compatible with *jus ad bellum*.

However, the criterion of right authority further stipulates that “right authority also requires an official declaration of war, which includes a bill of particulars that clearly articulates the moral justification and aims of the war.”⁹ The NSS poorly assuages concerns to meet this criterion by stating that the US will “coordinate closely with allies to form a common assessment of the most dangerous threats”¹⁰ But, the 2002 NSS clearly states “The reasons for our actions will be clear, the force measured, and the cause just”.¹¹ The Bush Doctrine does not advocate violating US law and should be understood in the context of applicable national legislation. The War Powers Act requires consultation between the Executive and Legislative powers and states that armed forces can only be introduced into hostilities pursuant to a declaration of war.¹² While the potential for violating this criterion is high the Bush Doctrine does not appear intended to breach the nation’s laws requiring a declaration of war. Of further interest is that in the cases of preemptive strikes against terrorist threats (which is what the Bush Doctrine primarily addresses) the declaration of war is enunciated in the administrations’ “Global War on Terror” and further spelled out within both the 2002 and 2006 NSS where each clearly states that the United States will use force against terrorist and states that harbor terrorist.

⁹ Bush doctrine and Just war theory Dale T. Snauwaert, 131.

¹⁰ NSS 2002, 15-16.

¹¹ IBID.

¹² The War Powers Act of 1973.

One may suggest that in cases of strikes against terrorist, fair notice has been given.

Another concern with the Right Authority criteria is that a just war is by nature a defensive war and that the right to declare war rests with the highest authority able to provide for, or appeal to, for protection.¹³ Presumptively, this is the state. However, when states join the UN, they recognize the UN as the supreme authority to wage war and agree, by signing the charter, that they will wage war only in the pursuit of UN agreed upon purposes. UN Character, Article 2(4) is understood to state that nations will only use force (go to war) when UN interests are at stake and the UN agrees to the use of force - "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state with the purpose of the United Nations."¹⁴ In this context it would be inconsistent with the Right Authority criterion for the US to wage a preemptive strike or war without the consent and approval of the UN. While the Bush Doctrine does state it will consult with allies it does not subordinate its use of preemptive actions to the approval of the UN.

However, the UN Charter provides an escape clause or an exception known as the "inherent" right of self-defense, Chapter VII, Article 51 states that "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

¹³ What's Wrong with Preventive War, Kaufman, Whitley, 32.

¹⁴ UN Charter Chapter VII.

Nations.”¹⁵ With respect to Right Authority, it can be reasonably expected that no nation would give up its right for self defense unless there were sufficient assurances that the higher authority (the UN in this case) was capable of providing necessary force to protect the nation. With the current constraints imposed by the requirement for unanimous consent within the UN and the factors involved in deploying UN authorized force or forces, it is a reasonable expectation that nations are still empowered to apply force for self-defense. Thus the Bush Doctrine is not in violation of the Right Authority criterion. Although there are areas where the Bush Doctrine offers friction points with the Right Authority criterion of jus ad bellum, there is no clear violation of any of the principals and should be considered consistent in this context.

Right Intention

The criterion of Right Intention is a much vaguer and more difficult standard to apply in today’s contemporary setting. Right Intention calls for warfare to be based not only on self defense, but also founded in the right moral intention - pure motivations free of prejudices, personal or institutional gain or any of the multitude of sins for which war has been declared in the past. The standard is unaffected by a preemptive or retaliatory nature of aggression. Evaluating the doctrine, as espoused in both NSS, yields marginal compatible results. Because the Doctrine provides limited references to address Right Intention, one is left to evaluate the use of preemptive strike within the context of the entire NSS itself.

¹⁵ IBID.

Within the preamble of the 2006 NSS, President Bush bases the strategy on a pillar of “promoting freedom, justice and human dignity – working to end tyranny, to promote effective democracies and to extend prosperity through free and fair trade and wide development policies.” While some may argue that this NSS pillar is counter to their moral belief with respect to the proper form of governance (religious oligarchy) or economic practice (nationalized monopolies), there is an equally compelling case supporting this intention as “right” or moral by those who espouse these values. At face value, there is no conflict with the Bush Doctrine and Right Intention criterion. However, it may prove more fruitful to evaluate each act of preemption resulting from the application of the doctrine for compatibility with the Just War theory as opposed to the doctrine itself.

Proportionality

The Proportionality criterion cites that there must be due proportion between the damage inflicted and the universal (not purely the state’s) benefits achieved. “The amount of harm that is morally permissible to produce in pursuit of a just cause should be a function of the moral importance of the cause.”¹⁶ Clearly, this too, is difficult to evaluate. Proportionality is the one criterion that is applied equally in *jus ad bellum* and *jus in bello*. This is important to note in that one must measure the extent or degree that force is applied as well as the plan or intention on how much force will be applied. This standard is difficult to gauge when the full extent of the threat is unknown, as the NSS states “...we do not rule

¹⁶ Ethics of War and Peace, Douglas P. Lackey, 41.

out the use of force if uncertainty remains...¹⁷ For example, how can one measure the universal good achieved by destroying a baby food manufacturing plant based on the potential that chemicals produced there may one day be used to threaten the security of the nation? It is entirely conceivable that the death of the local populace, the elimination of the business, the harm to the local economy and the assault on national sovereignty is insignificant compared to the impact of placing those chemicals in the drinking waters of major metropolitan cities. It is incumbent upon the nation applying preemptive force to demonstrate, irrefutably, that a similar or acceptable result could not be achieved by diplomacy, economic sanctions, international criminal proceedings, threats of the use of force, a more limited use of force or any of the multitude of other responses possible that would achieve the benefits at a lower level of harm.

Preemptive strikes and the Bush Doctrine appear to be on slippery ground when applying this criterion. However, evaluating the Doctrine as espoused in the NSSs, one finds no explicit incompatibility. The NSSs clearly states that “We will always proceed deliberately, weighing the consequences of our actions.” We will “continue to transform our military forces to ensure our ability to conduct rapid and precise operations to achieve decisive results.”¹⁸ Furthermore it states, “We will always proceed deliberately, weighing the consequences of our actions. The reasons for our actions will be clear, the force measured, and the cause just.”¹⁹ Although not an entirely convincing endorsement of the proportionality

¹⁷ NSS 2002, 23.

¹⁸ NSS 2002, 15.

¹⁹ NSS 2006, 23.

requirement, much as in the Right Intention criterion, the actual use of force applied preemptively must be evaluated as the Doctrine itself grudgingly acknowledges the necessity to weigh consequences with the actions. However the Doctrine itself does is not incompatible with this criterion.

Reasonable Hope of Success

This criterion revolves around the avoidance of undue suffering. Those who wage war must have a reasonable expectation of success in obtaining a durable peace. The precept is to avoid committing a nation to war when it can not win and when doing so wastes the lives and capital of the nation achieving no favorable results. Interesting enough, this criterion, unlike many of the others, is not codified in international law. History is replete with examples of smaller, less capable forces defeating overwhelming odds to secure peace for their nations. In spite of numerous available examples to the contrary, none-the less, the moral code stands. A reasonable hope of success must imply that the authorities are sufficiently informed as to the nature and extent of the threat so that a reasonable evaluation can be conducted to the hopes of achieving success - peace. However, while evaluating the Bush Doctrine as articulated in the NSSs, it recognizes the prudence of awareness and states “To support preemptive options, we will: build better, more integrated intelligence capabilities to provide timely, accurate information on threats, wherever they may emerge.”²⁰ At face value, the doctrine does not violate nor present incompatible elements with this criterion.

²⁰ NSS 2002, 15.

Last Resort

A just war is one that employs the use of force after all non-violent options are exhausted. Although there are many pro and con arguments supporting the extents to which the last resort should be interpreted, one sensible standard is that the proposed use of force is reasonable given the situation and the nature of the aggression.²¹ The Bush Doctrine is clear that it will not default to the preemptive use of force against threats. “The United States will not use force in all cases to preempt emerging threats.”²² This position is further refined in the 2006 NSS which states “The United States will not resort to force in all cases to preempt emerging threats. Our preference is that nonmilitary actions succeed.”

²³ On the surface, the Bush Doctrine is compatible with the “Last Resort” Criterion.

*Preemptive attack – An attack initiated on the basis of incontrovertible evidence that an enemy attack is imminent.*²⁴

*Preventive war – A war intended in the belief that military conflict, while not imminent, is inevitable, and that to delay would involve greater risk.*²⁵

However, there are further statements in the NSS that are troubling and may conflict with the criterion. The preemptive use of force is considered a legitimate foreign policy tool; the preventive use of force is not. The

²¹ The Morality of War, Brian Orend, 58.

²² NSS 2002, 15

²³ IBID.

²⁴ Joint Publication 1.02 DOD Dictionary of Military and Associated Terms, 12 April 2001 (as amended through November 2006), 424

²⁵ IBID, 427

distinguishing difference between the two is the incontrovertible presence of an imminent threat. A preventive use of force is force applied to those threats that appear to be potential or inevitable, but not imminent. When evaluating the Bush Doctrine with Last Resort criteria, one is forced to question if the doctrine allows for the application of all available non-violent measures before preemptively (or preventively?) applying force. If an attack against the US is imminent, there is no choice of means or time for deliberation before acting. However, if a threat is potential or perceived to be inevitable but not imminent, then the application of force may violate the Last Resort criterion. The NSS states that "... the more compelling the case for taking anticipatory action to defend ourselves, **even if uncertainty remains as to the time and place** of the enemy's attack."²⁶

President Bush further clarified this position during an interview where he said "... that when we see a threat, we deal with those threats before they become imminent. It's too late if they become imminent."²⁷ By applying President Bush's verbal standard to the application of force, it becomes preventive, not preemptive. There are many concerns that Bush Doctrine conflates preemption and prevention. This is not compatible with Last Resort.

Although his statements seem to intertwine the two concepts, one must also infer from President Bush's statement that when he says, "it's too late" that he means it. And if it's too late, then one must assume there are no other opportunities for recourse. Although perhaps he describes the Doctrine in

²⁶ NSS 2002, 16.

²⁷ Bush, George W. "Interview with the President George W. Bush on Meet the Press with Tim Russert.

preventive terms, the doctrine is not necessarily incompatible with applying all other measures before force – which is in alignment with “Last Resort”.

The terms throughout the documents and the President’s statements appear to be used interchangeable, further clarification is required. Michal Walzer, a preeminent, modern day scholar on “Just War” Theory offers further clarification of concept of imminence that helps deconstruct and make clearer the Bush Doctrine. An imminent threat is one that has:

- A “manifest intent to injure”, demonstrated by past history of the belligerents or through recent demonstrations.
- A degree of active preparation that makes the intent possible by the determined enemy.
- A situation in which applying any measure other than force against this threat greatly increases the risks of being attacked ²⁸

By applying these standards to President Bush’s comments and the context of the NSSs, the Bush Doctrine falls more in alignment with the preemptive use of force than preventive use of force. The NSS describes in considerable detail the demonstrated history of terrorist intent to injure the US; their active preparation; and that the consequences of any other course of action (when finally resorting to preemptive strikes) would result in unacceptably devastating results to the country and universal good. Although one may argue that the NSS and President Bush’s description of preemptive is confusingly articulated, when

²⁸ The Morality of War, Brian Orend, 75.

evaluated with Mr Walzer's imminent framework, it is not in violation of the Last Resort criterion.

Conclusion

"Just War" Theory forms the moral, ethical and legal foundations for the use of forces as a tool of acceptable foreign policy. Through the narrow lens applied by this evaluation the Bush Doctrine is compatible with the criterion of *jus ad bellum* and by extension is compatible with the "Just War" Theory. Therefore the Bush Doctrine is a legitimate foreign policy for the state. However, as demonstrated above there are many possible friction points between the "Just War" theory and the Bush Doctrine. While the Doctrine is legitimate it must, in the future, be further evaluated by those preemptive acts executed from within the framework offered by the doctrine. If the acts carried out in the name of the Bush Doctrine fail to achieve a consensus of legitimacy, then perhaps the Doctrine itself is a poor model from which to build a National Security Strategy. Thus far the pool of actions in the name of the doctrine is too shallow to know if the policy furthers the interests of the nation. One may be optimistic that because the policy is an effective deterrent to our enemies, that pool of preemptive strikes never grows.

Bibliography

Boot, Max. "The Bush Doctrine Lives." The Weekly Standard 9, 22(2004): 26-29.

Bush, George W.. "Interview with the President George W. Bush on Meet the Press with Tim Russert." MSNBC. 13 Feb 2004.

Council, National Security. The National Security Strategy of the United states
The White House, September 2002.

Council, National Security. The National Security Strategy of the United states
The White House, March 2006.

Crawford, Neta C.. "The Slippery Slope to Preventive War." Ethics & International
Affairs 17, 1(2003): 30-36.
(Crawford 30)

Daalder, Ivo H.. "Policy Implications of the Bush Doctrine on Preemption."
Council on Foreign Relations. 16 November 2002. Council on Foreign
Relations. 15 Jan 2007 <<http://www.cfr.org/publication.html?id=5251>>.

Dowd, Chris. "Unjust & Indefensible." Commonwealth 133, 17(2006): 16-21.

Enriquez, Lt Col Arnel B.. "The US National Security Strategy of 2002." Air &
Space Power Journal 18, 3(Fall 2004): 31-39.

Galston, William A.. "The Perils of Preemptive War." Philosophy & Public Policy
Quarterly 22 no 4(Fall 2002): 2-6.

Henhir, Reverend K. Bryan, New Challenges to an Ancient Ethic, Lecture to
United States Naval Academy, Center for the Study of Military Ethics,
Annapolis, MD. (<http://www.usna.edu/ethics/publications.htm>) (Accessed 3
November 2006).

Joint Publication 1.02 DOD Dictionary of Military and Associated Terms, 12 April
2001 (as amended through November 2006)

Kaufman, Whitley. "What's Wrong with Preventive War? The Moral and Legal
Basis for the Preventive Use of Force." Ethics & International Affairs 19, 303
Mar 2005 23-38. 3 Nov 2005.

Lackey, Douglas. The Ethics of War and Peace. Upper Saddle River, New
Jersey: Prentice Hall, 1989.

Laver, Harry S. . "Preemption and the Evolution of America's strategic Defense."
Parameters 35, 2(2005): 107-119.

Moore, John N. "Preemption and International Law." Center for National Security
Law. 01 Apr 2003. University of Virginia. 15 Jan 2007
<www.virginia.edu/cnsl/pdf/preemp~1.pdf>.

O'Hanlon, Michael E.. "The New National Security Strategy of Preemption." The

Brooking Institution Policy Brief Policy Brief # 113 December 2002 1-8. 15 Jan
<www.brook.edu/comm/policybriefs/pb113.pdf ->.

Orend, Brian. The Morality of War. Toronto, Ontario: Broadveiw Press, 2006.

Public Law 93-148, The War Powers Act of 1973, 93d Congress, H.H. Res. 542,
7 Nov 1973.

Snauwaert, Dale T.. "The Bush Doctrine and Just War Theory." Online Journal of
Peace Conflict Resolution 6.1 Fall 2004 121-135. 15 Jan 2007
<www.trinstitute.org/ojpcr/6_1snau.pdf>.

United Nations. Charter of the United Nations: Chapter VII, 26 Jun 1945.

Walzer. Michael, The Triumph of Just War Theory (and the Dangers of Success),
Lecture to United States Naval Academy, Center for the Study of Military
Ethics, Annapolis, MD. (<http://www.usna.edu/ethics/publications.htm>)
(Accessed 15 January 2007).

Will, George F.. "the Doctrine of Preemption." Adaptation of speech delivered on
May 23, 2005 at Hillsdale College National Leadership Seminar reprinted in
OrthodoxyToday.org. 17 Sep 2005. Orthodoxy Today. 3 Nov 2006
<<http://www.orthodoxytoday.org>>.