Working Paper

Published by
Konrad Adenauer Foundation

No. 121/2004

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PREEMPTIVE STRIKES

A new security policy reality?

Sankt Augustin, February 2004

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Executive Summary

In its new national security strategy the United States is claiming the right to use preemptive military force. Such an option is necessary in the American view, in order to be able to react to the new security policy realities after September 11th. The increasing proliferation of weapons of mass destruction coupled with long-range delivery systems (rockets, cruise missiles, drones) puts more states and non-state actors in the position of being able to project destructive power over great distances. Parallel to this the amount of time that defenders have to react to such attacks is becoming shorter. If though the NATO principle of waiting for proof of the intention to attack before military defenses are deployed was valid during the Cold War, this principle is increasingly becoming questionable. Under today's conditions the proof of the intention to attack might possibly be the detonation of a chemical weapon in a city. To wait for such a case would not be acceptable in view of the potential numbers of victims. Instead, in extreme situations such threats must be fought before they become acute.

Up until now there has been no such debate in Germany. One reason for this has been, among other things, that the *general* discussion about preemption ignited by the American President coincided with the *specific* case of Iraq. Despite this special case, what the debate is actually about is redefining the understanding of "defense" in view of the reality of a changed security situation. This thought is meeting an ever-larger international resonance. Even countries like France, Russia, Australia, and even Japan have in the meantime spoken out for the right of preemptive defense. Likewise, NATO does not reject this concept in principle and the EU has even discussed the preemption question in detail.

Regardless of the plausibility of preemptive action from a security policy standpoint, the problem of its permissibility under international law still remains. Strictly interpreted, the United Nations Charter forbids military intervention and confers the highest priority to both state sovereignty and a ban on the use of force. This interpretation of international law, however, has softened somewhat; the Kosovo war, which was fought without a mandate from the UN Security Council, is one of the most prominent examples.

A growing number of experts are representing the position that International law, in its current form, is not sufficient. What is needed is the possibility of preemptive action. Not only to protect from the dangers that arise through weapons of mass destruction or humanitarian needs, but, perhaps, in extreme cases even the protection of natural resources could also justify military preemption. A consensus about the prerequisites and conditions for such a decision, such as the immediacy of the threat,

the plausibility of the threat, and proportionality of the means, does not exist and would still have to be developed. Some criteria, however, can already be identified.

Besides the assessment of its legality, the other question that presents itself on the matter of preemptive military strikes is the political-practical decision. When is a threat urgent enough in order to justify a preemptive strike and with what source of information will this decision be made? For the urgency question at least a few vague criteria present themselves. The opponent's intention to cause damage must be evident. Additionally there must have been preparations that show that the intention was there to actually realize this intent. Finally, it must be plausible that the consequences of inaction substantially increase the possibility that later attempts will be unable to remove the threat.

None of these criteria are exactly measurable or enforceable. The list of legal and political conditions is also not complete. This debate must take place within individual countries and also in the United Nations in order to achieve the widest possible consensus over to how the security situation of the coming years can be reacted. This is particularly important with respect to the possible misuse of preemptive action. Even if the criteria are specified for preemptive military deployment, the judgment on the legal standard and suitability of such an action will always be subject to interpretation in practice. Thus abuse cannot be excluded in principle. But when political decision makers have to justify their actions to a critical and informed public, in democratic states at least, and have to accept the consequences of inaccurate decisions, this creates a hurdle to the carefree use of military might. If the public declines engage in such a debate, then it gives up a substantial instrument of control against its government.

Introduction

With George W. Bush's speech to West Point cadets in June of 2002, the option of preemptive strikes suddenly entered the public arena. The American President made the case for using military intervention, in extreme cases, before an opponent is able to attack in view of the danger that weapons of mass destruction, rogue states, and a worldwide terrorist network pose. Critics saw this as a breach of the ban on use military force and wars of aggression in the United Nations Charter. It was said that the law of the powerful would replace the power of law.

The outbreak of the Iraq war seemed to confirm the critic's fears of a reckless deployment of military strength by the Bush administration that was against international law. Correspondingly strong was the strong public rejection of a military led regime change in Baghdad. The debate, however, was concentrated on the Iraq issue as such, which to a large extent overshadowed the fundamental questions of the pros and cons of a preemptive deployment of military troops. Even the majority of political decision makers avoided a discourse regarding the possible legitimacy of "preemptive strikes." In Germany, only a few voices demanded a partial reorientation of traditional understanding of international law in view of the new threats and exposed themselves thereby to the accusation of being patsies of the military and America. [1]

Regardless of these accusations, a fundamental debate about the pros and cons of preemptive military force cannot be avoided. The massive difficulties the United States has had of winning the peace after the military victory in Iraq should dampen American readiness to take such risks in future military actions. The general tendency of American politics after September 11, however, has not changed. The policy of attaching the highest importance to America's own security even to the point of considering controversial strategies such as military first strikes still remains. After all, the idea of preemption is not a discovery of the Bush administration. Even in the past the United States has often considered the use of a preemptive deployment of force in order to master looming threats. Already in the sixties the possibility was seriously discussed of using military force to destroy the growing nuclear weapons potential of China. [2] In 1989 the United States threatened to attack a Libyan chemical factory in Rabta, which according to American intelligence produced nerve gas. Libya's leader, Ghaddafi, closed the factory soon afterwards—with the official explanation being that it had burned down. In order to prevent North Korea from the continued production of weapons grade plutonium, the Clinton administration seriously

[1] See Wolfgang Schaeuble, Lektionen aus der Krise (Lessons from the Crisis), KAS-Auslandsinformationen, No. 4/2003, p. 14.
[2] See William Burr, Jeffrey T. Richardson, Whether to "Strangle the Baby in the Cradle": The United States and the Chinese Nuclear Weapons Program 1960 - 64, in: International Security, Winter 2000/01, p. 54.

discussed the possibility of destroying the atomic plant of Yongbyon with conventional precision strikes already in 1994.[3]

How can the employment of preemptive strikes be justified? What legal and political questions do they raise? How can the misuse of military power be prevented?

American Conceptions of Preemptive Strikes

The thoughts President Bush formulated at West Point were reflected in the new American National Security Strategy that was presented to the public in September 2002. Critics saw the document as a blueprint for a unilateralist policy, which, instead of diplomacy and deterrence, would focus exclusively on military first strikes – with or without United Nations sanction. What was completely ignored, however, was that in this document the Bush administration professed support for multilateralism and the inclusion of partners and allies. Even military actions make up only a small part of a comprehensive spectrum of measures for security and maintenance of stability. Thus preemptive strikes with military means is only one *option*, and in no way a *principle* of future American security policy.

Such an option of "anticipatory self-defense," is necessary according to the American view in order to be able to react to post September 11th security policy realities. The increasing proliferation of weapons of mass destruction combined with wide range delivery systems (rockets, cruise missiles) put more states and non-state organizations in the position of projecting destructive power over wide areas. A parallel development to this is that defenders against such attacks have less and less time to react. The NATO principle of waiting for proof of an opponent's intention to attack before activating military defenses (for example the dislocation of Warsaw pact in attack formations) was valid during the Cold War, but it is becoming increasingly questionable. Under today's circumstances the proof of an opponent's intention to attack might be the detonation of a chemical weapon in a major city. To wait for such a case would be indefensible considering the potential number of causalities. Instead, in extreme cases, such threats must be possible to fight before they become acute. A strategy of deterrence is not worthless according to this logic, but its value is rather limited, in the face of fanatic governments or faceless opponents such as terrorist organizations. The same is true for self-defense systems like missile interceptors, which can only offer a certain degree of safety against specific threats.
Currently, however, the distinction between *preemptive* and *preventive* strikes is made. One speaks of a preemptive strike when military action takes place against an

[3] See M. Elaine Bunn, Preemptive Action: When, How and to What Effect, Strategic Forum No. 200/2003, National Defense University, Washington 2003.

enemy whose attack is imminent (i. e. who is about to attack in the immediate future) In contrast, a preventive strike is made on the assumption that an offensive attack by the enemy will occur sooner or later.[4] While preemption used as defense in circumstances of imminent danger can be quite legitimate, a preventive war which uses military means to assert a country's own interests is much more difficult to justify. In practice, however, the suitability of this distinction is limited. On the one hand these definitions are disputed, in fact, some European international law scholars use these definitions to mean exactly the opposite. On the other hand concrete dangers and scenarios, which, in any case, are to a certain degree open to interpretation, could only rarely be assigned one of the two categories. While the state that uses military force will always present its actions as *preemptive*, the critics will always mark the action as *preventive* or simply as aggressive.[5]

One of the most substantial reasons for the hesitancy to rationally discuss the preemption issue in Germany lies in its current relationship to the Iraq question. The American action in Iraq has been frequently classified as preventive military action (in the above mentioned sense) and thus was contrary to international law. Even if one recognized the danger posed by the Saddam regime, an imminent military threat neither existed to the United States nor its remaining coalition partners. The need for a rapid, preventative military strike thus did not exist. The attack on Baghdad, according to this logic, was thereby illegitimate, as was the preventive bombardment of the Iraqi atomic reactor by Israeli combat aircraft in 1981.[6]

This popular line of argument misses the crucial point, however, that the United States did not justify its attack of Iraq, legally speaking, as preemptive or preventive self-defense. While the political reasons for the war changed many times (sometimes it was the danger of Iraqi weapons of mass destruction sometimes the possible connection of Saddam's regime to the terrorist organization Al-Qaeda), the legal justification was UN-Resolution 687 from 1991. This decision of the Security Council was the basis for the cease-fire with Iraq after its defeat in the second Gulf War and required the regime in Baghdad to give up all of its production facilities for weapons of mass destruction and to allow a complete verification of this. The United States further legitimitized its case by citing the previous Security Council Resolution 678, which laid the basis for the expulsion of Iraq from occupied Kuwait and allowed for the use of military force for the support "of all subsequent relevant resolutions." [7]

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[4] See Walter B. Slocombe, Force, Pre-emption and Legitimacy, in: Survival, Spring 2003, p. 124.
[5] See Richard K. Betts, Striking First: A History of Thankfully Lost Opportunities, Carnegie Council of Ethics and Intenational Affairs, New York 2003.
[6] On June 7, 1981 Israeli F15- and F16 fighter bombers destroyed a 500 megawatt reactor under construction in Iraq. It was Israel's concern that this reactor was designed to produce weapons grade material for the Iraqi nuclear weapons program.
[7] See Ruth Wedgwood, Legal Authority exists for a strike on Iraq, in: Financial Times, March 15, 2003.

Howsoever one judges this interpretation of international law or the actions of the United States against Baghdad, the Iraq crisis does not present a basis for a sober discussion of the preemption question.

Preemption – an International Reality?

Beyond the heated row over the sense or nonsense of the Iraq war, it is noteworthy that a growing number of countries and organizations have accepted the argument for preemptive strikes in extreme situations – even key opponents of the American-British action in Iraq and countries that one could hardly accuse of being fundamentally militaristic. And so France, which not only rejected a military strike against Saddam Hussein but also rejected the discussion over the principal option of preemption within the framework of NATO, in its new "Programmation Militaire" explicitly mentions "capacité d'anticipation" and the necessity of the option of a preemptive strike in certain situations.[8] The prime minister of Australia, John Howard, expressly called for a change in the UN Charter to allow for preemptive military strikes against terrorist threats.[9] Russia also reserves the right to preemptively act in the case of a vital threat. Even Japan, which in the past had committed itself to a very narrow interpretation of self-defense, is meanwhile discussing on the government level preemptive military deployment.[10]

Not only have individual governments taken up the question of preemption, but alliances and organizations have as well. At its last summit in Prague in November 2002, NATO adopted a document (MC 472) in which, at least implicitly, preemption is discussed; the media, however, for the most part did not notice take notice. Although the terms "preemption" and "anticipatory self defense" are not explicitly quoted in the new military concept of the alliance for the fight against terrorism (above all because of the insistence of Germany and France); if the document is taken in its entirety, however, it is clear that NATO does not fundamentally rule out preemptive strikes against terrorist threats. The European Union has also considered preemption under the new security strategy parameters. In June 2003 a new security strategy was decided upon at the EU-Council of Thessaloniki and it was recommended that further discussions concerning the issue lead to a decision in December of that year. The first drafts of this strategy paper likewise contained clear references to the fact that

[8] See Bunn, (FN 3), p. 6.
[9] See John Shaw, Startling His Neighbors, Australian Leader Favors First Strikes, in: New York Times, December 2, 2002.
[10] General Shigeru, the director of the Japanese "Defense Agency" stated in January 2003 the readiness of Japan to launch a "counterattack" should North Korea bring its missiles into a "ready for takeoff" position. See Ishiba: Japan to "Counterattack" If North Korea Prepares to Attack, in: The Yomiuri Shimbun/Daily Yomiuri, January 25, 2003.

the EU also did not specifically forbid a preemptive use of military force. Even if the appropriate formulations were clearly weakened in the context of creating an internal European Union consensus, there was nevertheless an intense debate about the security policy realities and their associated consequences.

Thus the idea of preemptive military action is no longer, as some critics would have it, an overreaction of a single American president to the disaster of September 11. Instead the need to redefine the understanding of defense in light of new threats is being met with more and more international resonance.

The Question of International Law

Even if, in light of the changed security situation, plausible arguments for preemptive military strikes can be made, the question of the legitimacy of such actions in international law remains. The United Nations charter refers in its first chapter to the ban on force, outlaws wars of aggression, and claims a monopoly for the decision to use military means (except in cases of self defense) for the UN Security Council in chapter VII.

The question of states' acceptance of these regulations in practice, and therefore the validity of a strict interpretation of international law, did not first become a topic of discussion, however, with the beginning of the air campaign against Baghdad. Already in 1999 NATO conducted an outright attack against Slobodan Milosevic's regime, without a mandate from the Security Council and without a direct military threat from Serbia that would have justified preemptive self-defense. In the opinion of international law scholars, who tend toward a rather stricter interpretation of the UN Charter, NATO had clearly broken international law. The critics of NATO's actions, however, failed to describe how one could have otherwise ended the undisputed human rights violations in Kosovo.

The case of Serbia as well as Iraq show the fundamental problem with international law embodied in the UN Charter, which because of the history of its creation still regards conflict between states as the primary source of danger to international security. Concrete references to problems that need to be dealt with today such as violence within a state (expulsion, genocide), the decay of national authority (failing states), or the threat from non-state actors (terrorist organizations, drug cartels) are not mentioned in the Charter. The way out of this dilemma cannot lie in ignoring the rules of international law that the UN provides. In fact the US and its allies in the anti-Iraq coalition did not leave the framework of international law as is alleged by critics. Rather the new American security strategy actually argues within the bounds of international law. Beyond that, none of the states that took part in the war against

Iraq questioned the binding nature of the UN Charter. International law was, however, interpreted differently in each case. The challenge now lies in finding a consensus about the new interpretation and adjustment of the codified rights to the changed political conditions.

Actually, such an evolutionary adjustment can be observed for the last few years. Modern international law is based on a set of basic values such as:

- Sovereign equality of all states and their right to territorial integrity (i.e. the prohibition of the use of force and intervention);
- States right to self-preservation;
- The respect of elementary human rights;
- The right of self-determination of nations;
- The protection of natural resources.

In certain situations these fundamental values can compete with one another, for example the protection of human rights and the prohibition on intervention. The UN Charter avoids this competition problem by placing one of the fundamental values, namely national sovereignty, with the protection from intervention, above all others. According to the classical interpretation of the Charter each state is protected against external intervention, completely indifferent to whether or not it is an aggressive regime contemptuous of human rights or a failed state with an imploded social order. Such a strict interpretation which, for instance, had been defended in the past by Communist States who called for “noninterference in domestic affairs,” has been steadily weakened in recent years. The use of the common formulation “rogue states,” that has been used for the last few years, already breaks with the primacy of national sovereignty; the idea behind it is that by ignoring elementary fundamental rights a state can lose its rights. Also the humanitarian intervention of NATO in Kosovo contradicted the classic interpretation of the Charter. Priority had been granted to fighting the obvious human rights violations in the Balkans, rather than to the prohibition of force and intervention. The right to preemptive strikes, which a growing number of states are claiming, means a further step away from the absolute right to national sovereignty.

Here lies the key for the further development of international law. Instead of demanding formal rules, in the future more emphasis must be placed on discretion and good judgment. For each concrete situation the fundamental values of international law need to be weighed against each other. From this perspective not only challenges such as the threat from weapons of mass destruction or humanitarian requirements would justify preemptive military intervention. It would also be conceivable, in extreme cases, to intervene to protect natural resources necessary for life, for example

if there were a vital threat from ecologically irresponsible dam projects or uncertain nuclear power stations in the proximity of a border.

Almost inevitably certain insecurity about international law follows from a break with the formal interpretation of international law to an interpretive and deliberative mechanism. Just as inevitably hegemonic states are thereby favored, because they possess the appropriate political, military, and legal necessities to get their interpretation across. The Iraq war, however, was an example of how a hegemonic power such as the United States can completely fail at making its own interpretation and own actions plausible.

The insecurity with respect to international law resulting from the use of preemptive deployment of military force can be reduced if the decision to deploy is linked to certain conditions. Among these are:

- ***The Urgency of the Threat***
  The threat must be immediate and not possible to postpone. The application of military force is the "Ultima Ratio," after all political and diplomatic attempts have failed. It does not have to be the last measure temporally speaking, however, it is conceivable that preemptive deployment of force can prevent greater damage.

- ***The Plausibility of the Danger***
  A direct threat must also be plausibly recognizable by a third party – the state using military force must be able to convey the threat conclusively and convincingly. After Israel bombed the Iraq OSIRAK reactor it stated in great detail the threat it posed using scientific analyses to make the case. However, such methods of proof have only a limited ability to convince. In 1967 as Israel took military action against Egypt, the French President Charles de Gaulle saw this a naked aggression, whereas the majority of international law scholars regarded the stationing of Egyptian troops on the Israeli border as a plausible threat for Israeli security.

- ***The Proportionality of the Means***
  Naturally the dimension of the preemptive military action must be commensurate to the degree of threat and the actions may only include those that are necessary for the sustained removal of the threat.

None of these criteria is precisely measurable or enforceable. Additionally the list of conditions is not complete either. Here political debate must occur within individual countries and in the United Nations, in order to achieve as broad of a consensus as

possible as to how these threats can be adequately addressed in the coming years in light of the changed security situation.

Nevertheless such a consensus will not be able to completely prevent the misuse of military force. The danger that threats will be intestinally exaggerated in order to justify using military force against another state or a non-state actor cannot be ruled out. This problem, however, will not be solved by a rigid interpretation of the UN Charter either. There are enough examples in the last decades in which states have attempted to justify military action using questionable principles of legitimacy.

Political Questions About Preemptive Strikes

The question of the legitimacy of preemptive force is closely linked to the practicality of such steps. Under what conditions can the political decision for the use of preemptive strikes be taken, and how can such decisions be carried through?

a) Options for Preemptive Action

Even if the debate usually concentrates itself around the question of a decisive military strike against a state, the spectrum of possible options is nevertheless substantially broader. Non-military as well as “semi-military” actions are just as conceivable against governments and non-governmental actors. These can take place on the soil of states, or, for instance, in international waters. They can include interrupting data networks, capturing ships, comprehensive blockading, or acts of sabotage. They can be accomplished by regular armed forces, by Special Forces, or by secret services. The targets of preemptive action can be production or storage facilities for weapons of mass destruction, as well as command centers for terrorist organizations or state structures. Each of these options has different levels of acceptability and effectiveness. Destruction of a terrorist training camp is more likely to meet with public approval, on both the national and international level, than the overthrow of a government.

Even nuclear preemption is, at least theoretically speaking, a conceivable option. Thus the United States in its relevant planning documents, for example the Nuclear Posture Review from 2002, does not fundamentally exclude the option the preemptive use of atomic weapons. In addition, the consideration of the Bush Administration (already conceived under President Clinton) of the possibility of developing new nuclear weapons to hit deeply buried targets, the so-called “Bunker Buster”, has given rise to more speculation about nuclear preemption scenarios. The option, however, of a preemptive use of atomic weapons is more of a hypothetical than a

practical nature. Authorizing the use of atomic weapons is probably one of the hardest decisions a president has to face; actually authorizing their use would mean breaking the 50-year-old nuclear taboo – the non-use of nuclear weapons since Hiroshima and Nagasaki. The consequences would be unpredictable. Such a step is only conceivable under extreme circumstances. Simply the need to effectively destroy an underground weapons storage facility alone would not serve as a sufficient motivation for the use of atomic weapons regardless of whether their use were preemptive or not.

b) The question of urgency

If one of the central criteria for the defensibility of preventive military action is the urgency of the threat, the question comes up of how this urgency can be defined and determined. Generally acting is considered imminent when an opponent's attack is impending and one can only avoid unacceptable damage through preemption. The threat from weapons of mass destruction leads to a serious dilemma in this understanding. If one decides as late as possible for a military strike, in order to demonstrate that the threat was obviously and without a doubt imminent, then the success of the action is possibly small. The attacker has by then probably fully developed his weapon arsenal and protected it by scattering and bunkering it. In extreme cases the fight can be can almost be impossible by the time the seriousness of the situation is recognized. If a threat is dealt with as promptly as possible, then the chances of lasting success are probably far better. Of course it will be clearly far more difficult to plausibly demonstrate urgency and receive public support in such a situation.

With regard to this dilemma it seems difficult to find a mutually acceptable definition of urgency. In the seventies there was already a debate in America over "just" and "unjust" wars and whether an imminent attack was the necessary legal standard for military action or if a "sufficient threat" might be more appropriate. [11] Even if such a limitation must remain vague, certain criteria can nevertheless be mentioned:

- The opponent's intention to inflict harm must be evident—for example the head of state or the head of a terrorist group declaring such intent.

- Preparations and relevant measures to realize this intention must be recognizable. Technological developments play a large role here. If the range of missiles increases and leads to ever shorter reaction time on the part of the potential victim, the threshold is thereby reduced with which preparation for attack can be tolerated.

[11] See Michael Waltzer, Just and Unjust Wars, New York 1977, p. 81.

- It must be obvious that non-action dramatically increases the risk or makes a later reaction almost impossible. Thus Israel specified June as the time for its attack on the Iraqi reactor, because it was to be loaded with nuclear fuel in the following month. Bombing a reactor filled with radioactive material would hardly have been possible.

c) Intelligence: the Basis for Decision

The core of the decision making process between the pros and cons of preventive action is a basis for reliable information, which is usually provided by intelligence services. This refers to strategic intelligence, which means information on the extent and intensity of the threat, and to tactical intelligence, i.e. the question of the feasibility and probability of success of a preemptive military strike. To reach an appropriate picture of the situation not only must the opponent's "hardware" (weapons, means of delivery and military personnel) be estimated as correctly as possible, but also the intentions and the "strategic culture" of the opponent. For example: Is there an actual intention to attack? Could weapons of mass destruction be given to a third party, i.e. terrorist groups? How will the opponent react to a preemptive strike?

One problem with making the decision can be the overload of information, which can lead to decisive evidence being buried. Such a situation occurred before the September 11th attacks. Also as precarious is the spotty basis for information from such isolated countries as North Korea. In both cases the challenge lies in selecting and interpreting the available information, remembering that a degree of uncertainty in the results is inevitable. This level of uncertainty should be as small as possible in the case of critical decision such as the use of military force.

The difficulty of such a demand was shown in the latest Iraq crisis. Although the United States possesses the highest developed intelligence capabilities, up until this point no definitive picture of Iraqi weapons of mass destruction capabilities has been drawn. Instead, clear misinterpretations have been proven. Even if one admits that possibilities of camouflaging and hiding military machines are good, (in the middle of the nineties it was not until Saddam's son-in-law defected that the inspectors were made aware of a chicken farm where material for biological weapons was able to be discovered) the findings so far give reason for concern. With regard to intelligence the Iraq was a comparably easy target.[12] The country was supported by the United States in its war against Iran, which led to appropriate secret service contacts, and

[12] See Gregory F. Treverton, Intelligence: The Achilles Heel fo the Bush Doctrine, in: Arms Control Today, July/August 2003, www.armscontrol.org/act/2003_07-08/treverton_julaug03.asp?print

for many years was under American and international surveillance after its defeat in the second Gulf war. The United States was not alone in its assessment however. Even in September of 2003 the German intelligence service was “absolutely convinced” that chemical and biological weapons were hidden in Iraq.[13]

Conclusion

A new understanding of preemptive military force is needed now that the security situation has been changed by the dangers of international terrorism, the spread of weapons of mass destruction, and the improvement in missile technology. If such preemptive strikes still remain the exception and are only used when all other possibilities of crisis prevention and diplomacy have been exhausted, they can, however, still be necessary in extreme situations. When such an extreme situation is considered to have presented itself, and which criteria need to be fulfilled to determine this, must be the subject of a wide-ranging national and international debate. A stubborn insistence on the formal interpretation of the UN Charter does not help and is not shared everywhere on the international level. The General Secretary of the United Nations is aware of this and has called for a discussion of the criteria for the use of coercive measures in the UN Security Council.[14] Because the influential members of the Security Council, such as the USA, France, and Russia have recently very clearly come out for the right to preemptively use military force, the position of the United Nation is likely to move away from a rigid interpretation of the prohibition of the use of force.

Up until now Germany has avoided a debate about the use of preemptive military force. A reason for this was, without a doubt, the fact that the debate that the new American security strategy caused about the *general* use of preemption has coincided with the *specific* case of the war with Iraq. The more states and alliances take on the issue of preemption, the less able will Germany be to avoid this question. Ascribing the problem of preemption to a “blindness to the rule of law,” or an “intellectually mediocre administration” in Washington, as some German observers have put it, [15] does not do justice to the issue.

In sum, a debate about the aspect of preventing a misuse of preemptive military power is urgently required. Even if the criteria are specified for preemptive military deployment, the judgment on the legal standard and suitability of such an action will

[13] See BND warnt vor neuem Terror (German Intelligence Service warns of new terror), in: Tagesspiegel, September 27, 2003.
[14] See Tomas Valasek, Pre-empting trouble at the United Nations, CDI Update, Centre for Defence Information, Brussels, October 8, 2003
[15] See the comment of Reinhard Merkel, Was Amerika aufs Spiel setzt (What America jeopardizes), in: Die Zeit, March 13, 2003

always be subject to interpretation in practice. Thus, abuse cannot be excluded in principle. But when political decision makers have to justify their actions to a critical and informed public, in democratic states at least, and have to accept the consequences of bad decisions, this creates a hurdle to the carefree use of military might. If the public declines engage in such a debate, then it gives up a substantial instrument of control against its government.