
PREEMPTIVE USE OF FORCE: A REASSESSMENT

Panel 3: The Legal Framework

Moderator: Alan Henrikson

Panelists: Hans Binnendijk, Antonia Chayes, Robert Litwak

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HENRIKSON: Ladies and gentlemen, shall we begin? My name is Alan Henrikson. I'm a member of the faculty at The Fletcher School of Law and Diplomacy, and I'm very pleased to chair this session on politics and diplomacy. It occurs to me that one can think of this task in two ways. First of all, we can address the politics and diplomacy of preemption. That is, conceiving of preemption as a kind of overarching approach, which has a politics and a diplomacy.

We can also look upon politics and diplomacy as two of the possible tools in the toolkit that can be used. Those who were with us last night will remember that Under Secretary John Bolton stated that preemption is not a doctrine; it's not a strategy; it is simply a tool. He was, very possibly, influenced in making that statement in the way he did by the actual text of the Bush Administration's

National Security Strategy. It states: “To defeat this threat we must make use of every tool in our arsenal, [including] military power, better homeland defenses, law enforcement, intelligence, and vigorous efforts to cut off terrorist financing.” The document goes on to speak about the war on terror, especially terrorists with global reach.

What I would emphasize is that the phrase is “every tool in our arsenal,” not every tool in our toolbox. Now, this document does not discuss politics or diplomacy. It only focuses on the military-related tools, which will be, presumably, a focus of our next panel this afternoon on the military and operational aspects of preemption. One can view a focus on politics and diplomacy as an attempt to address two of the possible tools—military intervention being another one—within the context of the strategic environment.

I see preemption somewhat more broadly, and wonder whether my fellow panelists will as well. In the National Security Strategy there is an observation which parallels, to some degree, what Stephen Walt in particular said this morning: that the United States today enjoys a position of unparalleled military strength and great economic and political influence. In keeping with our heritage and principles, we do not use our strength to press for unilateral advantage. We seek instead to create a balance of power that favors human freedom. This, plus some other statements in this document, suggests that the U.S. government now sees a historical opportunity, given that China is in transition, Russia is in transition, and the United States has an opportunity to shape the policies and attitudes of those governments. Perhaps, by acting decisively, even preemptively, the United States can set things right.

In other words, what might be done now might have world order-building consequences. So I would suggest that this subject can be viewed, and probably will be viewed, much more broadly, and not simply as a discussion of political instruments and diplomatic instruments alongside the military instrument. Preemption may be seen as an approach that is much broader.

There are several questions we might consider. I’m not suggesting that all of our panelists will touch upon these, but you in the audience might wish to think about these matters as well, in relation to the politics and diplomacy of preemption.

A first question would be something like this. What would seem to be, a priori, the advantages and disadvantages of publicly stating a policy of preemption? One advantage presumably would be, in a democratic society, to let the people, the voters, the citizenry, know what the government is intending to do. I believe it was Steve Flanagan this morning, in a question, making the observation that one of the purposes of the National Security Strategy was to alert Americans to the possibility of a nuclear 9/11. Presumably, this document does have that advantage.

Michael Glennon suggested yesterday, I thought very provocatively, in his opening remarks to the conference, that if there is emulation of strategy, policy, or tool of preemption, and if it is regarded, or comes to be regarded, as a universal principle, this widespread adoption may actually discourage aggression or terrorism—if everybody adopts it. In other words, if we think of it using Stephen Walt's expression, not just in strategic terms but in world order terms, it might actually have a systemic effect.

But this is really an *a priori* speculation as to what one of the advantages of preemption might be. The disadvantages have already been touched upon, and we'll probably hear more discussion about them. It might indicate a certain hair-trigger reactivity on the part of the United States. I feel I should mention what Kofi Annan observed on this subject when he stated: "My concern is that if it were to be adopted—that is, a right of preemption—it could set precedents that resulted in a proliferation of the unilateral and lawless use of force, with or without credible justification." I mean that were that proliferation to occur—interesting use of proliferation, by the way—then that would be a clear disadvantage.

Then we might touch upon some further questions: what have been the actual effects of the statement, the broadcasting, the putting in bright lights of this policy? What have been the reactions from other governments, from foreign commentators, to the President's issuing this policy so starkly and openly? How was the diplomacy of it handled within NATO, within the coalition of the willing, in relations with Russia and China, as well as possibly with some of the countries of the south in the developing world?

One could further ask what the possibilities are of a multilateralization of this preemption policy. What have been the discussions at the United Nations? Kofi Annan has set up a special high-level panel on threats, challenges, and change to address this set of issues. So it's conceivable that there could be, by some kind of international process of consensus, through diplomacy, an effort to arrive at a common understanding.

Finally, and this has been mentioned before too, what is the danger that other governments, now and in the future, might incur by emulating the United States and adopting preemption policies of their own? We've heard about statements that President Putin has made, we've heard references to Israel, to Iran, and to other governments that might claim a similar right to intervene—which would have an inhibiting effect on the United States in criticizing preemptive action on the part of those countries, which we may not see as being justified. Furthermore, I think that in discussing diplomacy, we should consider the public diplomatic aspects of the problem too. I would mention that some of the news media of the world, like Al-Jazeera, have highlighted this issue in ways that Americans might not fully recognize.

In Al-Jazeera, for example, a story is carried—and I cite this as just one

illustration—an Iranian Rear Admiral Shamkani said on Al-Jazeera television, “We will not sit with arms folded to wait for what others will do to us. Preemptive operations which the Americans talk about are not their monopoly. America is not the only one present in the region, we are also present, from the coast to Kandahar in Afghanistan. We are present in the Gulf, and we can be present in Iraq.”

This suggests something that hasn’t been mentioned so far, which is the whole phenomenon of the geographical distribution of countries. We’ve been speaking about preemption as a legal right, a general principle, without much reference to the actual geopolitical map. Countries that are immediately contiguous to a problem area, a so-called hot spot, presumably would have much greater motive, much greater incentive, for the use of preemption. So whatever the U.S. might say and do by example might in fact trigger action on their part, in ways that we could perhaps anticipate if we understood their situations better. So it’s very complex. I would like to turn now to our three panelists, who will speak in the following order.

First of all, Antonia Chayes, a colleague of ours at The Fletcher School, will speak. She is an international lawyer, and a specialist on international negotiation and conflict resolution. She has been a high official in the Pentagon, she is an educator, she has been a college dean; she is a very versatile person and a very thoughtful analyst of these matters. Next, Hans Binnendijk, a graduate of Fletcher, has a doctorate from the Fletcher School, and has served on the National Security Council. He is currently Theodore Roosevelt Professor at the National Defense University, where he heads the Center for Technology and National Security Policy. At the end of the table is Robert Litwak, who is at the Woodrow Wilson International Center for Scholars in Washington, where he heads the division of international studies.

With that brief introduction—and there’s more detail in the material that we have in preparation for the conference—I’d like to ask Toni to begin.

 ANTONIA CHAYES

Happily, but I want to disclaim that I'm an international lawyer. I'm an internationalist, and I'm a lawyer, but I reserve that title for my more experienced friends.

If I had a title for these few remarks, it would be "Presumptuous Preemption." I want to take the first branch of what Alan talked about, which is the politics and diplomacy of the preemption doctrine. In a sentence, I would say, referring to the U.S. from 2002 to the present, diplomacy can't make a wormy, rotten apple taste good. Then I want to go on and discuss why the apple is rotten and wormy.



We started this morning with a very good discussion of Article 51, 2(4), and 2(7) of the UN Charter. I thought it was a marvelous analysis of anticipatory self-defense, with some really new ideas.

I think Mike Glennon has argued forcefully, if not, to me, fully persuasively, that Article 51 had become incoherent from the Nicaragua case through the invasion of Afghanistan. As you know, as was stated this morning, Article 51 carves a very narrow exception to the Chapter 7 requirements. Of course, in its direct terms, it doesn't permit anticipatory self-defense. But there's a long history, and customary international law; and as Glennon himself said, ruling out anticipatory self-defense is fighting a losing battle with common sense. Recently, my colleague has gone even further, in a far deeper analysis—essentially saying that the UN Charter provisions, these ones that we were discussing, have died of desuetude.

Without taking on that argument, I would say that, after the growing terrorist threat, a serious worldwide discussion of the notion of preemption was ripe. Now it's overdue. That's how I segue to politics and diplomacy.

The situation has been crying out for an analysis, but the conversation did not really take place internationally. While we discussed this morning what rules might be fashioned to take account of the evolving threats of runaway WMD, non-state actors, and wanton attacks worldwide—which did not begin with 9/11—those conversations were lacking. The issues that we discussed, of proportionality of response and force as a last resort, those issues that were discussed between the candidates last night, were not discussed worldwide, and that is a terrible political and diplomatic vacuum. The context should have been the broad

one of a worldwide problem, a global problem, as Rudolf Scharping discussed, and others as well, for stalling terror attacks and the proliferation of weapons of mass destruction.

The United States should have, but did not, initiate that discussion; not after 9/11, nor fully after the war against the Taliban began, when, politically, there was worldwide support for the United States at a level that was unprecedented, perhaps since the end of the first Gulf War. Instead, the discussion of preemption began in the context of a preventive war on Iraq.

I don't want to repeat what Steve Walt said, because he said it far more eloquently than I plan to, about the conflation of preemption and prevention. But in any case, there we were, in that context, by the time that National Security Strategy was announced. This was in 2002, and there were already discussions about Iraq.

The broader issue of when and how it might be legitimate to anticipate and preempt an attack was so conflated that a full international public discussion, and even a [full] domestic discussion, could not take place. If you think back to the magnificent National Cathedral speech of President Bush on September 14, 2001, right after 9/11, he talked about a coordinated effort, working with allies, the context of exercising a right of self-defense. That was all in the context of rooting out al-Qaeda from Afghanistan, and understanding that often those that harbor terrorism have got to be attacked, even if they are not terrorists themselves.

That was announced, but there was not a great deal of discussion thereafter. By the time of the West Point speech and the announcement of the National Security Strategy, the language began to change. Quote: "A nation need not suffer an attack before they can lawfully take action that prevents an imminent danger of attack." But the work, the hard work, as we now all say, of diplomacy in gaining consensus, even among liberal democracies, was not done in those months.

The context so rapidly changed to Iraq that the attempt to gain international support for that preventive war was an entirely different subject. It was not about preemption. Where was the dialogue, where were the intense international political discussions? They were in the deliberations and negotiations of the language of Security Council Resolution 1441, and the arguments that you heard this morning made that very clear, I think. What you heard, particularly last night, was the argument that was going on when it was stated that Iraq was given a final opportunity, and then ultimately, the very deliberately ambiguous language of Paragraph 13 of the Security Council resolution, which stated that Iraq would face serious consequences.

Under Secretary Bolton says everybody knew that that was tantamount to an authorization for military action. I think everybody did not know, and I think the United States did not know. But that was the horseplay that was going on—was what the authorization was, if any. I think it was pretty clear that the second

resolution was required to trigger military action, that was the compromise, and the second resolution, as you know, was aborted. If you look then at the subsequent Resolutions, 1483 and 1511, all they do is broaden support for reconstructing Iraq, something that you've heard over and over again. At this point, regardless of the views held of this preventive war, the world cannot allow Iraq to fall apart, with all the consequences to the rest of the world of terrorism, chaos and another failed state.

So I think we failed a real opportunity to have a political discussion, and I ask myself why. Is this an example of the two-level game? Is this an example of the fact that the President was only looking at domestic politics, and was uninterested in international politics? That the way it had to be expressed, and the very nature of such an overt expression of preemption as took place in the National Security Strategy, was to get support within the United States for the deployment of what was clearly going to be over 100,000 troops in harm's way, so that the interest in international support was diminished? And I don't know [the answers].

Look at the impact. I just would like to read to you some of the criticism that has taken place worldwide. Mandela said, "If you look at these matters you'll come to the conclusion that the attitude of the United States of America is a threat to world peace. Because what America is saying, if you were afraid of a veto in the Security Council, you can go outside and take action and violate the sovereignty of other countries. That is the message, and that must be condemned in the strongest terms."

Canada's Chrétien said, "If the Americans want to go there alone, they go there alone, but we say they must go with the authorization of the United Nations. If they don't, the international system of peace and security will probably be more destabilized than it need be." There was a discussion that should've taken place, as to whether the Charter could not anymore meet the needs. That discussion had to take place from the time of Kosovo, from the time of Rwanda. That discussion did not take place.

Putin said, "Military action against Iraq is a big political mistake. I've already referred to the humanitarian aspect, but the threat of disintegration of the established system of international security causes at least as much concern." Is he going to be talking out of the other side of his mouth, now that they have acted unilaterally?

The Foreign Minister of Sweden says, "War is always a failure. A war outside the United Nations Charter is a great failure. The haste to take a decision on military action ruined the chances for a peaceful solution. It weakened the UN, and thereby a stable world order."

Finally, Kofi Annan said, "Those who seek to bestow legitimacy must themselves embody it. And those who invoke international law must themselves submit to it." As Sean Murphy's article points out, we who very weakly justified

the attack on Iraq on the basis of a violation of 687 have got to stand up and justify our own actions on the basis of law.

In the end, the policy that we enunciated is unacceptable because of the context in which it was discussed, and I think we have to admit that the context is even broader, and even worse, than the Iraq invasion. That is because the context, as far as other liberal democracies and our other allies are concerned, also involved our behavior on a number of other things like Kyoto, the International Criminal Court, land mine conventions, various human rights conventions. What we face, I think, is diffuse reciprocity and a real disappointment in the United States for failure to have open discussions and to listen to others.

HENRIKSON: Thank you very much, Toni. Hans Binnendijk.

HANS BINNENDIJK



Thank you all. Let me begin by saying that, despite what John Bolton might have said, I think we really are discussing preemption as a doctrine, not just as an option. It's always been an option. But this has been raised to the level of containment and enlargement, the two previous national security strategies. The world is looking at it that way—it may be an accidental doctrine, but it is a doctrine nonetheless, it's seen that way, and so we have to respond to it that way.

Let me summarize what I'm going to say and then say it. I think that there is a strategic logic to a doctrine of preemption. Legally, I think it's ambiguous; we heard that from the earlier panel. Militarily, it's been very taxing so far, and promises to be more taxing in the future. Politically, it's been very divisive. Diplomatically, it's been counterproductive, and I'll spend most of my time today on that. Economically, it's been costly. If you weigh that balance, you conclude that we need to revise this doctrine. I wouldn't say we need to toss it, because there is some strategic logic there, but it needs to be revised.

Before I talk about the diplomatic responses to this doctrine and what has resulted from it, let me just say a few things on the security environment and on

the question of legitimacy, picking up one or two brief things from the earlier panels. First, about the security environment: during the last half-century we have had two other national security strategies. One was containment, and one was enlargement. They both were highly successful. With the fall of the Soviet Union and its empire, and NATO enlargement in the 1990s, we now have Europe whole and free.

We are now in a very different world strategically, where the risk is catastrophic terrorism. It's that mix of weapons of mass destruction, terrorism, and rogue states, and it's a very dangerous world. What we find is that the tools we used to get through the past 50 years and be successful in these other areas are unlikely to work particularly well in this new period. Deterrence, traditional defense, even engagement are less useful. The traditional institutions that we have been using, including the United Nations, are not readily adaptable to this new situation. That has created a very disturbing strategic environment, and it's probably no accident that Thomas Hobbes is one of the more popular philosophers today in Washington.

The world of Hobbes is a world in which the state of nature is a state of war. And the belief in Washington is that we are today in a state of war, and it's going to be a long war, and the United States itself is a battleground in that war. That's the strategic framework that you need to begin with. So if you take that Hobbesian view, you need a Leviathan to deal with it. We're searching for that Leviathan. It is in that context that a doctrine of preemption has emerged.

Let me now say a word about the question of legitimacy. I find it useful to break this down into four different categories. The first is the use of massive military force to preempt an imminent attack. This is very easy to justify. If you look back in the history of the last century, you find perhaps three examples when this actually was used. World War I is one; some have argued the case for the Chinese attack on the United States in Korea; and the 1967 Israeli attack on Egypt. While it's easy to justify imminent threat, it has not been used all that much in the last century.

The second category is the use of massive military force to prevent an eventual attack, and that is where the National Security Strategy, this new doctrine, has landed. They have significantly lowered the bar to get the flexibility to deal with this new strategic system that we're living in. The problem is that in lowering that bar you have not just the temporal problem that we discussed, which is a longer range threat, but you also are prepared, under the National Security Strategy, to act even if uncertainty remains. So you lower the bar for evidence as well. If you combine that with the bad evidence that we provided to the world in Iraq, you have a dangerous cocktail there.

The third of these four categories is a limited strike to either preempt or prevent. The Osirak Reactor is a classic example, but our attack on the Shifa

Pharmaceutical Plant in Sudan might be another. We have contemplated this many times. Yongbyon in 1994 is one example. But these are examples of more limited strikes, and they're easier to justify and make legitimate, because they are limited and therefore more proportional.

Finally, the fourth category is regime change. I put this in the category of prevention or preemption, even though it doesn't necessarily mean an attack on the United States. We've done a lot of this, and we've been actually pretty successful, in locations such as Grenada, Panama, Haiti, Bosnia, Kosovo. We have tended to be able to make this legitimate because it's a humanitarian issue. Of these four categories, the Bush Administration has chosen the toughest to make legitimate.

Now why is it difficult diplomatically to deal with this preemption doctrine? There are two reasons. First of all, it has been associated with an array of other different elements of the Bush Doctrine, or at least Bush policy. You can't just look at it by itself. It has been associated with a degree of unilateralism: you're for us, or you're against us. It has also been associated with coalitions of the willing, rather than reliance on allies; an emphasis on military more than political responses; regime change; and this freely idealistic version of revolutionary change in the Middle East to use democracy as an antidote to terrorism. Some of these policies are attractive, but you have to take it as a package. You can't just analyze, diplomatically, preemption by itself.

The second thing is that preemption now is inextricably tied to Iraq, and it probably historically will rise or fall based on the ultimate success or failure of what happens in Iraq. So we can't just look at it on its own.

What has been the impact in the United States of preemption? First, we are overstretched militarily, both the active force and the reserve force. The reserve force has been called up—its active duty days are five times what they were five years ago. So we're really stretching the reserve force. We have shifted in the United States from worrying about satellites and high technology to expeditionary operations. Now there is a new emphasis on the need for stabilization and reconstruction operations to do the post-conflict operations.

It's also clear we need some dramatic changes in the intelligence world. Beyond creating a new National Director of Intelligence, we have to get better human intelligence, and we have to be able to find weapons of mass destruction. It's a very hard thing to do now in North Korea.

So the first thing on the U.S. side is a lot of shifting in capabilities, and we're overstretched.

Preemption has also been a very divisive doctrine in the United States. In May 2003, a Pew poll asked Republicans, "Is preemptive force often or sometimes justified?" Seventy-nine percent of Republicans in May of 2003 said yes. The Democrats were asked the same question; 58 percent said yes. That's a 21-

point gap. One year later, asked the same question, that gap grew to 44 percent. This is a highly divisive issue.

Finally, in terms of the impact on the United States, as Dean Bosworth said, I think it's affecting our willpower. It may well be that, by declaring this doctrine and acting on it the way we did, we will be unable to in fact implement this doctrine in the future when we need to. We had, after Vietnam, a Vietnam Syndrome where we were essentially paralyzed for about ten years. After Somalia there was a Somalia Syndrome, and as a result of that we couldn't engage in Rwanda when we really needed to. I think we are seeing the beginning of an Iraq Syndrome, which will make it very tough to act, and perhaps Sudan will be the first example of that.

As for Europe, let me begin with some Marshall Fund polling, which asked, "Do you support the U.S. for global leadership?" Here are figures that demonstrate the drop in the polling from 2002 to 2004. This is a drop in support for U.S. leadership. France saw a 25 percent drop in support. Germany, a 31 percent drop in support. That's old Europe. What about new Europe? I'll include Italy as new Europe: a 22 percent drop for Italy. Our close allies, the British, saw an 18 percent drop. This is dramatic, and it has consequences.

Let's take a look at some of those consequences. First of all, we need our allies more now than ever, which is so evident from Afghanistan and Iraq. They are helping in Afghanistan, but it's been like pulling teeth. We need more NATO allies in Afghanistan, and it's very hard to get them mobilized. It's even harder to get them mobilized in Iraq. We have NATO allies training Iraqis now, and we need many more of our allies to participate. There is very little indication that they're going to be there. That's one consequence.

The second consequence is that this is accelerating a process in Europe of ESDP, European Security and Defense Policy. This is essentially a European identity, a European military and security cooperation. It was there before the pre-emption doctrine, but has been significantly accelerated, as the polling data shows. So when we look back in a minute to figure out how we modify this doctrine, the place to start, in my view, is to engage our European allies in order to come to a common view on how to do this.

Former NATO Secretary General Javier Solana, to his credit, who is now running foreign policy for the EU, has tried to do this. The National Security Strategy for the EU—actually started out using the words "preemptive engagement." He tried to take the American word, and put it into the European National Security Strategy. By the time it came out of the process, it was preventive engagement rather than preemptive engagement. But there is a possibility there.

Several consequences have to do with Russia. There is increasing paranoia in Russia, especially in the military. Regarding NATO enlargement they rolled over twice. They rolled over regarding abrogation of the Anti-Ballistic Missile

Treaty. They rolled over on preemption, but there is a growing angst about American intentions. I think that's not justified. But it's there, and that affects our ability to cooperate with the Russian military.

Secondly, preemption has gone nuclear. There was a discussion yesterday in the presidential debate about low-yield deep earth penetrators. You can see that as a way to enhance deterrence, or you can see it as a preemptive weapon. The problem is that by raising preemption to the level of doctrine, there is a risk that that weapons system is seen as a preemptive nuclear capability, and that would be dangerous, especially at a time when we need Russian cooperation to deal with fissile material and loose nukes.

Third, the Russians are already using our preemption doctrine as their own. We've seen the Russian Chief of Staff, Putin and Ivanov all say this. There's going to be a consequence, and I suspect it's going to be Georgia. They've already launched a couple of strikes against the Pankisi Gorge, and I suspect we're going to see more military action there.

What about the Middle East? Countries there may be the target of preemption, so they're naturally going to react fairly negatively. Here is some polling data. A Zogby poll for 2004 asked, "What's the negative attitude toward the United States?" These all jump from 2002 to 2004. Egypt is 98 percent negative. Morocco is 88 percent negative. Saudi Arabia is 94 percent negative. It's pretty overwhelming.

If you look at Iraqi public opinion polling, 81 percent of Iraqis in a recent Oxford Poll said they had little or no confidence in the current coalition. This polling also has an effect. In his book, Dick Clark raises the specter that this is all playing into al-Qaeda's hands. The negative attitude towards the United States in the Arab world raises recruiting potential for terrorism.

What about rogue state behavior? The evidence cuts both ways here. Let's take two cases; the first is Libya. We already saw in the late 1990s that negotiations were underway to try to lift sanctions. I think preemption has had a very positive effect here. It has made it clear to the Libyans that they could be the next target, and it may well have had a very beneficial effect.

North Korea is the opposite case. In 2001, there were perhaps up to two nuclear weapons in the North Korean arsenal. There are today perhaps eight. That's an important difference. In part, that is a result of the collapse of the 1994 agreed framework. But I think when they were faced with preemption, their judgment—I'm putting myself in their place—I would get that fissile material, get those fuel rods out of the pool and distribute them so they're not the target for a preemptive attack. I think that in the North Korean case, the doctrine of preemption had a negative consequence.

Just to sum up, if you look at that balance, there has been a fairly negative diplomatic impact to the way the doctrine has been laid out and implemented.

But there is a strategic rationale for moving away from where we have been for the last 50 years. So what we need to do is to think together about how to modify this doctrine, whether it's just law, as we heard this morning, or some other set of criteria. I've got mine, but others have theirs. We need to figure out together how to modify this doctrine.

I would start, frankly, not with the United Nations, but with our European allies. We need to have that conversation with them and then take the result to the world. Thank you.

HENRIKSON: Thank you, Hans. Rob Litwak.

ROBERT LITWAK

Thank you very much, Mr. Chairman, and thank you to Michael Glennon for organizing this conference and inviting me to participate. Kofi Annan has called for a security dialogue on preemption. He tacitly acknowledges what President Bush has made specific, and that is that because the United Nations, in the past, has not stepped up to fulfill the obligations that its founders had intended, the issue of preemption in the new era of vulnerability after September 11 has been accorded increased emphasis in U.S. strategy as an option. President Bush has made that explicit in his June West Point speech, and then in the National Security Strategy.



The question I'd primarily like to focus on is whether an international consensus is possible on this issue of preemption. Let me lead with my conclusion. Iraq will likely turn out to be the highwater mark of the Bush Administration's preemption policy. In the aftermath of Iraq, the chances of achieving Annan's goal of developing an international consensus on preemption are virtually nil. The more realistic, related question is whether force can be integrated into strategies of coercive diplomacy in dealing with the future hard cases, such as Iran and North Korea.

A major source of confusion and controversy about the preemption doctrine stems from its timing. The Bush Administration enunciated the National

Security Strategy in September 2002, as a general doctrine, in the same month that President Bush went to the United Nations General Assembly to make the case against a specifically bad actor, Iraq, a state with which we had over a decade-long history.

Iraq was not an example of preemption in two respects. One has been dealt with extensively in the discussions: it lacked the criterion of imminence. But it was not an example of preemption in another important sense, and this really relates to the following panel: the term preemption is quite often used synonymously with counterproliferation, a counterproliferation strike on WMD facilities, such as the 1981 Israeli raid on Osirak. There's been scant reporting out of the 2003 conflict, and there's not been an analogue to the Gulf War Air Survey that was commissioned after the 1991 conflict, but from the scant reporting on the issue it would appear that during major combat operations there were few, if any, strikes on suspected WMD sites.

Consider that. We're now talking about possible use of force against Iran, North Korea, in the context of proliferation. But it may well turn out to be that in the context of a war, in which many options are on the table that are not in non-war conditions, the United States eschewed strikes on suspect WMD sites because of a concern about collateral damage in particular—that it would spew toxins into the suburbs of Baghdad, etc. Now, this is striking.

I'd like to go on to highlight a second consequence of the Iraq war, which relates to a point that Steve Walt made this morning about balancing. The U.S. preemption policy, in the context of Iraq, did produce a degree of balancing against American power, balancing that had not occurred during the 1990s, contrary to what the realist theorists would've predicted. There was a parallel debate on the two sides of the Atlantic, two versions of what was going on. In August 2002, Vice President Cheney, addressing the Veterans of Foreign Wars, argued that Saddam Hussein's Iraq posed a threat that the United States would address unilaterally, if necessary. He said that in the new era of vulnerability ushered in by the 9/11 attacks, the United States would not be encumbered by the United Nations. The Cheney speech was a robust, controversial statement of the preemption doctrine, which apparently had an effect on the German elections. The next month, President Bush went to the United Nations General Assembly and gave a speech about Iraq that President Clinton could've given. It was an internationalist argument for enforcing Security Council resolutions through the use of force, if necessary.

On the other side of the Atlantic, there was a parallel debate. Tony Blair gave a brilliant internationalist brief for intervention in Iraq, in March 2003, in the House of Commons. It was a reprise of Bush's September 2002 UN speech. Then there was the reaction of other European allies, including Chirac, Schroeder,

and Putin. Their response seemed to have been more of a response to what Vice President Cheney was saying, than what President Bush was saying. In other words, the message from the other European states was, if what's going on is the Cheney version, a unilateral American preemption, then we're going to do what we didn't do in the 1990s when confronted with this hyperpower America, the sole remaining superpower in the 1990s: We're going to balance your power. The French President referred to multipolarity, which raised hackles in Washington.

But that was the structure of the debate, a curious parallelism. In the aftermath of the war, there were high incentives on both sides for convergence again, if possible. On the American side, there's recognition that allies provide not only legitimacy but utility, and on the European side, there's a recognition that multipolarity in a liberal international order is a dead end. There is no multipolar option for the Europeans. There's the liberal international order, in which America is a dominant actor in a global trading system. They can engage in some type of balancing, on the margins of the existing international structure, but they can't create another in the way Osama bin Laden would like to, through a clash of civilizations. In other words, they must operate within the structure.

The Bush Administration depicted the war to oust Saddam Hussein as a demonstration conflict, exemplifying a new National Security Strategy. This doesn't sound like preemption is just an option and not a doctrine. One official said, "Iraq is not just about Iraq, it is of a type." But in what respect is Iraq a type? The answer was unclear in Washington because of the mixed message from the Bush Administration. Hard-liners viewed the war as a stark example that could compel the other Axis of Evil members to forego WMD, lest they share the same fate. After the fall of the Saddam Hussein regime, there were indicators that this muscular approach would continue. A senior administration official, when asked what the implications of the Iraq War were for Tehran's theocratic regime stated, "Take a number."

On the other hand, pragmatists within the Administration, primarily in the Department of State, were concerned that the preventive war precedent was being characterized as the new paradigm under the National Security Strategy, and not as an extraordinary remedy for a uniquely bad actor. In so doing, the pragmatists were concerned that the Iraq example would create an incentive for North Korea and Iran to accelerate, rather than roll back, their nuclear weapon programs, in order to deter an American attack. We cannot control decision making in Pyongyang and Tehran. But I think the United States should minimally take itself off the table, in terms of why other states decide whether to acquire nuclear weapons.

At the heart of this debate is a fundamental and persisting policy tension about whether the American objective toward these two "Axis of Evil" members is regime change or behavior change. There is a related issue, which I can discuss

in the question and answer period, about whether regime change in itself leads to durable non-proliferation, as was argued by the Bush Administration during the debate preceding the Iraq war. The lead proliferation indicator is not regime type, it is regime intention, which is not synonymous with the character of the regime.

In the aftermath of Iraq, before the intractable problems of occupation even set in, the administration was facing major constraints on the use of force, and on the possibility of bringing about regime change in North Korea and Iran. In the face of these constraints, the administration is executing a pragmatic pivot: a shift from its preferred option of regime change and preemption to the alternative of deterrence and reassurance of regime survival.

The Libyan case is consistent with this analysis. There was the surprise December 2003 announcement that Libya was foregoing its WMD programs. There is no doubt that the Proliferation Security Initiative and the interdiction of a ship with nuclear components bound for Libya was a factor. But the crux of the deal, the condition without which it would not have occurred, was an assurance of regime survival. The administration was willing, as one former official put it, to take yes for an answer. The Bush Administration was willing to reintegrate Libya in the family of nations.

The Libyan case offers a model for dealing with Iran and North Korea, and the Bush Administration has raised the possibility of a security assurance, which we heard mentioned last night. But for a president who said, "I loathe Kim Jong-il," a security assurance is not going to come easily, and for the North Koreans and the Iranians, there's a question of whether they would find security assurances coming from the United States credible.

So, in this context, what is the possibility of some degree of international agreement on preemption? As mentioned in other presentations, preemption is a subset of the broader question of the role of force in international relations, and of this vexing issue of intervention. Sir Adam Roberts, from Oxford University, has called intervention the worm in the liberal international order.

In the case of Iraq, I think it's an open question as to whether under *any* circumstances the Security Council would've authorized the use of force, because the Bush and Blair administrations were making the case that enforcement of Security Council resolutions entailed regime change. In 1991, President Bush's father had a far easier task because Saddam Hussein had done the one thing that all states can agree on as a cardinal sin: he murdered another state.

In 2003, the Bush and Blair governments were really swimming upstream all the way because they were making the case that the enforcement of Security Council resolutions required the negation of Iraqi sovereignty. After all, Iraq under Saddam Hussein still had the seat in the General Assembly.

So let me close with [this]: is some degree of concurrence on preemption possible? I think the chances are virtually nil, because of a phenomenon that

Michael Glennon referred to last night. He didn't call it by the phrase "preemption paradox," which was coined by Mitchell Reiss, but it basically is getting at the fact that preemption is easiest when the technologies are immature. But, at that point, it's the most difficult politically. Preemption is most difficult when the technology is very mature, as in the case of North Korea. It's politically easier, but militarily much more difficult.

There will be differences, divergent views of capabilities, and divergences over intentions. You'd think capabilities would be easier, but in the post-Iraq period, with the intelligence imbroglio, that's highly contentious as well. We have the Chinese questioning the U.S. assessment of North Korea's nuclear capability. Even if you could get some degree of concurrence, there's the question of intentions, and there you will always have one or another member of the P5 saying that the target state is containable, deterrable, and action need not be taken.

In this context, I think that one has to be modest in expectations, rather than look for a grand pronouncement or guidelines on preemption. Do some modest things which can be done; for example, if the Security Council embraced the Solana document that Hans referred to. The Security Council could endorse, and thereby confer legitimacy to, the Proliferation Security Initiative.

I have a final set of remarks, which I'll leave for the question and answer session. During the morning session, Sean Murphy raised a question about non-state actors and how we get some leverage on those, and I have some ideas on that, but that's, as they say in the jazz world, a separate riff. So I'm going to close on that point. Thank you.

HENRIKSON: Well, thank you all very much. A kind of leitmotif, in a way, of all of the presentations we've heard is the theme of text and context. Toni Chayes pointed out that the presentation of the National Security Strategy occurred in the context of the Iraq problem. Hans Binnendijk emphasized opinion around the world. And Rob Litwak also mentioned just a moment ago the context within which we're discussing this.

If I could put just an initial question to all of you before opening the discussion up to the floor, it would be something like this. Could it be that the text, that is, the National Security Strategy as articulated in that document or some other document, is essential to negotiating an accord among our allies and other members of a coalition, including those in East Asia? In other words, is it perhaps necessary in order to reach the public and other organizations, to have an actual formulated position? It's very possible that nowadays, with public opinion being so much involved, you do need to have some articulated thesis, so to speak, in order to have an antithesis with some sort of resolution, whether it's in the United Nations, whether it's in the NATO Council, or in this high-level panel, or some other setting.

Or, can you rely, and this is a point that Rob Litwak mentioned at the beginning of his remarks, can you rely on arrangements which would make it possible to integrate force into a coercive diplomacy, with specific reference to Iran or North Korea, without having some broader, probably public discussion of a common framework of action? And can that be done without having a promulgated text of some sort? And, probably, the world's situation will never be quite right for doing it, will never be perfect, so maybe we're in a phase now of a process that just simply had to occur. Hans?

BINNENDIJK: It clearly was not intended for that purpose. I think this doctrine, September 2002, was intended to lay down the intellectual framework for what they were about to do in Iraq. So it was clearly not intended for that purpose. However, there is a certain Hegelian logic to your question. If the thesis is this new very dangerous world that we're living in, and the antithesis is this doctrine, then a new synthesis may be the right answer. So the problem with it is that it's been a pretty expensive Hegelian process, although it's not over yet, and I hope that we can engage our European and other allies and come out with a new synthesis. So there's something to what you said.

CHAYES: I think in this case the text was the wrong time and the wrong place. Do we need a text? I think there are many, many approaches to getting a conversation and dialogue started. Perhaps in this context it should've been informal, consultative; not a promulgation of a doctrine at all. Even if the abstract, if we had gone right after 9/11, I think still a consultation, a series of conferences, something along the lines that the Carnegie Commission did on prevention, bringing in world figures and trying to understand that a shift in the threat requires a shift in the strategy to meet it.

HENRIKSON: Rob?

LITWAK: I think that the optic should be pulled back a bit from the text. The National Security Strategy is a conflicted document, and in the NSC it's an annual requirement from Congress that the U.S. bureaucracy widely regarded as a paper drill. The reason that this one got a lot of attention was it was the first of the Bush Administration and the first since the 9/11 attacks.

It's a conflicted document. Paragraphs could have been written by the Clinton Administration, and probably were lifted, who knows, I haven't done a textual analysis. But one of the themes of the document is the role of integration, which was the centerpiece of the Clinton Administration's engagement and enlargement grand strategy: that we would integrate former Communist adversaries into the system, and the door was open even to other states, the rogues, if

they cleaned up their act. And that's basically what the administration asserts that it's doing in the case of Libya.

But there's this unresolved tension within the Bush Administration, and I think it's not just in the administration—it may be in the country's strategic culture as well. Some have argued that we should get back to basics and realize that the key to our success internationally has been this perception of America as a benign superpower exercising legitimate power. Others argue that in the post-9/11 period we cannot be bound by norms and institutions because of the dangers. I think that the challenge is how we balance, on the one hand, the realities of the new vulnerability, with recognition of what has been traditionally our key to international success.

HENRIKSON: At this point the floor is completely open. Yes, would you care to begin?

QUESTIONS AND ANSWERS

BETH CHALECKI, PH.D., FLETCHER

I'd like to ask the panel to leave the National Security Strategy aside now. I've been kind of surprised; one of the previous questioners mentioned the U.S. support for Israel and that being one of the driving reasons behind al-Qaeda's war on us, as their declared war has said. And yet we're not—as Robert Litwak pointed out, Iraq is not just Iraq, it's an unfriendly regime sitting on a lot of oil. And I've been very surprised to hear today that not once in any of the three panels that have gone by so far has the word oil even been mentioned, much less our need for oil, perpetuating our presence there in the Middle East.

Second of all, and this is a question for the entire panel, the whole conference, and the whole idea of prevention, and preventional war and preemption, is based on military strategy. And in fact the final panel is called "The Military and Operational Aspects of Preemption." Well, that reminds me of the old phrase: when you're a hammer everything starts to look like a nail. I'd like to posit to the panel that maybe the military is not the best way to fight a preemptive war. I'd like to ask them to use their imagination and to come up with some ways in which we can pursue our preemptive and our preventive objectives without using military operations. How do we deny al-Qaeda recruits? How do we raise our approval ratings among our allies and among the countries that we operate in, in the Middle East? How do we continue to fight the war on terror without actually fighting?

HENRIKSON: Do you yourself have an imaginative idea along those lines?

I have several, yes, but I'd like to hear what the panel wants to do.

HENRIKSON: Anybody want to?

LITWAK: Well, that's an opening for remarks that pick up on a point that Sean Murphy made this morning, a question about what has been called the nexus by the Bush Administration between proliferation and terrorism, and the relationship between the state and the non-state actors. And Sean said, in the panel on international law, that we don't have leverage on non-states, but we can get some leverage on the states. And I think that's exactly right, that effective strategies at the state level are the prerequisite for dealing with a non-state threat. And if we get it right on the state level, it doesn't eliminate the non-state threat, but it changes its character.

There are three categories of states. There are states lacking capacity, and they're of a variety. There's a Somalia that can't control its territory, and you can get al-Qaeda or other groups operating on it; or a country like Russia that lacks the capacity to control sensitive technologies.

A second category is that of the acquiescers. Some of them are allies of ours, Pakistan and Saudi Arabia, which have often turned a blind eye to terrorism. So we need to have smart strategies and make the investment to develop capacity with those that lack it. For those that are turning a blind eye, read them the riot act, as Secretary Armitage did to President Musharraf after 9/11, to get them to be more compliant.

And then the third category, it's one that we focus most of our attention on, has to do with what Les Aspin referred to in social science terminology as "regional bad guys." The state sponsors; the rogue states. And there I think we do have some tools. Steve Walt referred to the role of deterrence. It is important to set clear red lines: the Clinton Administration established a red line that reprocessing in North Korea of spent nuclear reactor fuel rods would trigger a punitive response, but the North Koreans just blew right by that in January 2003 without any consequence.

I think our bottom red line of all red lines is transfer of WMD to a non-state actor, and whether that should be part of our declaratory policy: don't even think about it. If you transfer to al-Qaeda, then that creates a predicate for regime change. But in dealing with the sponsors, and this was the main point, in the case of Libya, the United States was willing to take yes for an answer. And it's not at all clear that we'd be willing to do the same with North Korea and Iran. And as long as that's the case, that we're hedging, and we can't resolve the fundamental tension in our policy towards these countries, they're going to hedge in ways that they can, to acquire capabilities and have clandestine programs.



HENRIKSON: Is this because of oil, in part? We take yes for answer from Libya because of their oil?

LITWAK: I think it's what maybe the Ph.D. candidate would call a correlation, not a cause, in my view. But—over to Hans. [laughter]

BINNENDIJK: Thank you. The first question really was about both why are we there and why are we being attacked by al-Qaeda and others. And the question is, is it Israel, is it oil, or if not, what is it? Well, it's a combination of an array of different security requirements that flow from this very troubled region. But what I like to say here is that basically the Western world has delegated to the United States primarily, and to our British allies, the responsibility to deal with this part of the world. They haven't traditionally been there, and so that makes us the target.

After Desert Storm, in retrospect, we probably should've kept going. Since Saddam remained a threat, we had to put new forces into the region, and keep them there on a more permanent basis. Then having the infidel there protecting the holy places—that became the theme, and that's why we have been a target. So in retrospect maybe we should've kept going after Desert Storm. That's the first question.

Second question, and you're absolutely right, one of the problems with a preemption doctrine is that it is essentially a military doctrine. That's why our European allies are uncomfortable with it in part. They tend to look at things

more politically. We need to unite the military and the political here, as we have done in other cases when NATO has been in trouble.

But there are things that we can do in the non-military arena. Islam has been hijacked. Moderate leaders in the region need to take it back. So we need to be working at that level. So there is an array of things in the non-military area that we ought to be doing. But the basic broader point is that we need to, in terms of broad presentation to the world, bring the military and the political-diplomatic together. And unfortunately, it's been presented primarily as a military problem.

CHAYES: Well, I just wanted to point out that Professor Henrikson did say at the very beginning of this panel to consider politics and diplomacy as tools. So it's not that it was totally ignored, but our brief was really something else. There's no question in my mind that the notion of prevention as has been studied, prevention of war in the civil war context that we've talked about from the beginning of the 1990s, is stood on its head when we talk about preventive war.

There's been a great deal of discussion about methods of preventing conflict and recurrence of conflict. The very fact of what has happened in Iraq, and the lack of civil-military planning, is a good example that this administration has not thought about the diplomatic and political and economic tools to prevent conflict from recurring, or to mitigate the conflict that's already there.

HENRIKSON: Let's have a question from this microphone.

UNKNOWN

Thank you. My question is about the utility of an international consensus, [on] the use of preemptive force. I think if you go with the assumption that preemptive force is an extension or a tool in anticipatory self-defense, which is an inherent right of any state, particularly given the time constraints in terms of the threats we face, to what extent would an international consensus on the notion really impact the calculus of a state when they're thinking about using preemptive force?

BINNENDIJK: I think a consensus like that should be formed in advance, and it should be general. It would include things like proper evidence, last resort, proportionality, effectiveness, the kinds of things that we talked about earlier today, relating to just war theory.

But that has to be laid out, I think in general terms, and in advance. But I think the burden of your question is right. You can't always go back and get an

international consensus every time you need it, because you may not have time. If you have time, we ought to. But if we don't have time, then we have to fall back on some general principles.

CHAYES: I would say the great utility of an international consensus is the legitimacy of an act that is questionable in the first place. And it may not be possible to get an international consensus under certain circumstances, but it should be sought for the very reason that wiser heads may think of alternatives to military action in the context of what seems like an imminent threat.

HENRIKSON: If I may just quickly add to that, in the case of the Cuban Missile Crisis, the consensus was really formed during the crisis itself by an effective presentation of the evidence. We've already heard—by Dean Acheson to de Gaulle and then to the public at the UN Security Council. Of course, the legal basis was partly formed by a vote of the Organization of American States. So a lot can be done with presentation of full, convincing evidence in the heat of the event itself.

LITWAK: Can I have a shot at that one? I think that—I'm not very sanguine at all on that point, because I think that all of the cases that we're talking about are really preventive and not preemptive. I mean, you could come up with a hypothetical case, as Secretary Perry did, testifying before the Senate in the mid-1990s, saying that if North Korea was fueling a ballistic missile which we knew had a nuclear warhead on it, that was multi-stage, that would be a condition in which the theater commander would recommend preemption. But what we're really talking about are cases of preventing states from acquiring technology along a continuum of technology acquisition, and making a judgment about it.

Almost all the cases that we're talking about are therefore preventive rather than preemptive. It's a null set. Preemption, meeting the criterion of imminence, may be able to trump Article 51, but prevention never will. My sort of fallback position, trying to think through this panel's discussion is how we can integrate it credibly in the course of diplomacy. If Iran and North Korea are referred to the Security Council, how can we integrate force and diplomacy? In this context where the Security Council has been presented with, prospectively, North Korea and Iran, how do we bring the shadow effect of power to bear in trying to affect their decision making?

HENRIKSON: Okay, over here.

MUSTAFA KIBAROGLU, FELLOW WITH THE KENNEDY SCHOOL

Thank you, Mr. Chairman. First of all, so much thoughtful discussion going on here over the last 20 hours or so, and I've really benefited very much. I congratulate everyone who participated and organized. But there is one question that I believe has not been touched upon much yet, that I thought could've been elaborated here.

What was the real objective of the United States in stepping onto the Iraqi soil? This is a question that I keep hearing being asked outside the United States mostly, and being discussed sometimes at the conspiratorial level, and even asked to me during my associate professorship examination. And I said, "I don't know exactly what the U.S. had in mind."

Without discussing this grandiose or grand strategy behind pouring troops into Iraq, any discussion with respect to preemption or, I don't know, weapons of mass destruction might somehow be redundant.

Let me tell you something that you may not hear from other people. The Turkish Second Chief of General Staff, on one occasion, I believe right after the Iraqi War had started, or had already been started, said, "The United States always asked concrete things from us, but in return gave nothing but promises and things in the abstract." If someone at the highest level, and who went with his counterparts dozens of times, was not clear about the U.S.'s real intentions, how can you expect other people, people in academia or people in the street, to capture the point of where the U.S. did something for what reason? So I believe this issue should've been touched upon, a little bit elaborated, because there are also some discussions about the U.S. having one foot in Afghanistan, the other foot in Iran, and then the so called geo-political fears of people to the center of history, grand chessboard, things like that.

So where, actually, does U.S. policy stand? And, one remark if I may. Madame Chayes, you said diplomacy is making rotten apples taste good. Let me tell you something. I know you know very well that Iranian diplomats are very competent people in this respect.

HENRIKSON: I guess the issue is in part whether American policy is that of a grand strategy; whether than can be presented in any way that does not excite conspiracy theories.

LITWAK: I don't have anything to say on that. Other than, you know, Ockham's Razor should be alive and well in most academic discourse, so I think straight-ahead explanations should take precedence over conspiratorial ones that are more convoluted.

HENRIKSON: After all, one thinks of the Carter Doctrine of 1979. It was stated straightforwardly that the U.S. has and has had, during many administrations, a

vital interest in the petroleum supply line in the Gulf, and that action would be taken, including the use of armed force, to preserve it. This is an interest-based policy, rather than a threat-based policy, which might be another way to go, actually, in this whole field: to make the interests of the United States, which are shared with others, allies and regional partners and various other places, very, very clear, rather than to focus on what these sometimes amorphous threats might be. Yes?

DAVID WESTBROOK, LAW PROFESSOR
AT SUNY BUFFALO

I intend this as an open-ended friendly question for whoever wants it. I've been sort of thinking about the way this conference has been framed, and in particular this session. There's a sort of frame that owes a lot to Clausewitz. Preemptive war and diplomacy seem to be seen as equivalent or related tools, or I would say, grammars, through which states can act, mostly vis-à-vis other states, but now we have the non-state actor problem, and so forth.

For this and other reasons, diplomacy as an activity seems to be sort of newly difficult in the current environment. Let me point out two ways that I think have been touched on so far. The first is that there seems to be a lot of stuff that is clearly relevant, but not so clearly relevant or so central that it doesn't serve to distract from what one might think of as a diplomatic or negotiating objective. So surely oil must matter. Surely Israel must matter. Surely Somalia fatigue must matter in people figuring out who's likely to fight and when, and I would say probably the hardest thing to get a grasp on, referred to very briefly here, is the hijacking of Islam and the—even more difficult to imagine—the recovery of Islam. I'm not sure how that activity would proceed but surely that must matter as well. What Olivier Roy calls the relatively recent life of political Islam as a mode of doing politics seems quite different from the nation-state but quite difficult, I've written a little bit about this, quite difficult to understand from a Western or Westphalian perspective.

All of which I think muddies the water terribly for anybody who would like to set out, as Colin Powell keeps bravely setting off to do, a relatively coherent diplomatic strategy. Arguing with other diplomats about how we're going to proceed. The second point, which was made agonizingly clear to me last night, and picking up on your language again, is about Leviathan. There's not much about negotiation in the Leviathan. Leviathan doesn't really negotiate. So unless the current assessment of the current environment as a state of war, which would seem to lead on to a Hobbesian view, is absolutely wrong, and I think it's probably been overdone—but there's got to be something to it—Osama bin Laden has

certainly been arguing just that—it's not clear to me what the role of the diplomat is at all. And I don't think I'm enough of a multilateralist to hope it doesn't go away, but I think these are, maybe, confusing times for diplomacy. I'll just leave it there and hope you have fun with it.

HENRIKSON: Do you have any suggestion as to what the diplomat might do? If I may just offer something, under, I think, Article 99 of the UN Charter, the Secretary General is authorized to send representatives, as he did with Giandomenico Picco, to deal with Hezbollah for example. He didn't have to deal with nation-states. I mean, Gianni Picco was blindfolded and taken to a hidden place to get the hostages out. I mean that was authorized by the Secretary General of United Nations. I just wonder whether you have something in mind, or are you tossing a kind of conundrum that might be hard for us to grapple with?

UNKNOWN

Well, I assume it's hard for you to grapple with. I didn't mean for it to be an easy question. I think it is very difficult for bureaucracies to deal with diffuse structures. Exhibit A here may be the Palestine situation, that the difficulty of creating a negotiating framework is partially institutional. And so while it is a logical and probably correct move to argue that in a globalized world of non-state actors we must look to relations and negotiations among non-state actors, when one moves from that abstract statement to operationalizing that statement, I think one quickly runs into a lot of problems.

HENRIKSON: So, thank you, we'll try to respond. Toni?

CHAYES: Well, I would say that a confusing time for diplomats is just the time where you most need the diplomats. That's my first point. The second point is you can tie yourself up in knots looking for causation, and it's a useful attempt to try to look at all the causes, but it has to be a very humble attempt, to understand that you're never going to get at them, or even the most important ones. The third point is that it is really much less costly to keep talking for a long time, if possible, and as widely as possible, than to act precipitately, unless the threat to security is so imminent that there is no choice.

HENRIKSON: Hans?

BINNENDIJK: I certainly think there is a role not only for diplomats, but many other non-military people in this overall effort. For diplomats, if we could make

progress on the Israeli-Palestinian situation, that would help a great deal to diffuse some of the anger that has developed in the Arab world. But if you look at this as a problem of fighting terrorism—again, a stronger military really isn't going to help very much. This is fundamentally about intelligence, it's about police, it's about disrupting their financial arrangements. And all of that requires international coop-



eration. We can't do this by ourselves. So the role of the diplomat there, it seems to me, is to create the coalitions, the many coalitions that we need to accomplish this mission and win a war on terrorism. So getting those coalitions, getting support from governments in this broad effort, I think is the role of the diplomat as well.

**ETHAN MAREN, STUDENT, ROGER WILLIAMS
UNIVERSITY IN RHODE ISLAND**

We've heard a lot about Middle Eastern oil. I'm a little curious about Caspian Sea oil. Particularly, the idea was brought up that Russia might intervene in a preemptive manner in Georgia. And obviously I understand that there is an ethnic Russian minority in the country, that Russia traditionally regards Georgia as part of its near abroad. But on the other hand, when you consider American and European plans to construct a BTC, Baku-Tbilisi-Ceyhan Pipeline to convey oil without going through Russia's borders, I'm just wondering, with such an important oil interest potentially in Georgia, would Russia want to intervene there when it's trying to portray itself as a pro-West, particularly pro-European power? I was just wondering if the panel would care to address that.

HENRIKSON: Anybody? I think of what Rob Litwak said about globalization. There are so many interdependencies like this, between Russia and the West, that clearly these relationships and interests related to those are clearly an inhibition. In the case of China, for example, during the whole Hainan affair where the plane was forced down, the massive American investment in China and China's dependency on the

American market was a massive constraint on the escalation of that conflict. So what you say I think has a lot of merit in it. Hans?

BINNENDIJK: I don't think the oil pipeline issue would be a major factor in Russian thinking there. They already have pipelines going to Russia from the Caspian. I think if you're looking at the Georgian problem, it's very complicated. You have Abkhazia, you have South Ossetia, where we have Russian involvement in territory that is Georgian, and a Georgian reaction to it. You have the Beslan massacre and the two aircraft going down, and a sense in Moscow now that they have to take dramatic action. I think that's sort of the mix that may result in some Russian action in this area.

LITWAK: I just generally [think]—conspiracy theories have been mentioned in a previous question, and the question of American oil lurking there. I think there are a number of assertions made in the debate that bear hard scrutiny. If the American interest in this region was just oil: after the invasion of Kuwait, Saddam Hussein explicitly approached the U.S. Ambassador saying that he would make whatever supply available to us that we wanted, at an acceptable price. Likewise, America, if it was just oil driven, would've probably have jettisoned Israel as an ally a long time ago. As for al-Qaeda, I'm all in favor of efforts to resolve the intractable Middle East dispute, but it should be borne in mind, when one thinks about what will turn off al-Qaeda, that the 9/11 attacks were being planned while President Clinton was at Camp David getting close to what everyone who is in the Arab-Israel negotiating community referred to as "the deal."

So it's not axiomatic that even a resolution of the Palestinian issue, given the scope of Osama bin Laden's demands, which seem to be a global caliphate, would be addressed by even a resolution of the Palestinian question, even though it might lower the political temperature in the region, and as Secretary of Defense Rumsfeld put it, end the situation where we're creating more terrorists than we're killing.

HENRIKSON: In order to stay on schedule I think these probably should be the final two questions, with brief responses from the panelists.

JAMES LIDELL, JUNIOR AT BATES COLLEGE

My question is regarding the relationship between the State Department and the Pentagon. One of the panelists alluded to the article in The New York Times last week about what's going on with Iran and the arguments between the hard-liners in the Pentagon, the neo-conservatives, and those who want to pursue a more diplomatic

approach. I was wondering how you see that conflict panning out, and a potential four more years. Let's say George Bush gets re-elected, how does that conflict, which is I think very serious, pan out in the next four years? We've heard that Colin Powell isn't going to be around. We know who won the battle over Iraq. How do you see this tension?

HENRIKSON: We have two panelists with National Security Council experience, where some of these things are assumed to be brought together. So perhaps I could ask those two, and our third panelist, if any would wish to comment on that.

BINNENDIJK: I guess I would just respond by saying there's always tension between various agencies of government. You can go back to Zbig Brzezinski and Cyrus Vance. They were constantly taking different positions on security issues.

It has been fairly dramatic over the last four years, and we have seen a lot of power move to the Pentagon, in part because of what we've been talking about this last day. We are living in a new strategic situation and we are trying to deal with new threats, and the Pentagon has the capability, at least in part, to deal with those threats. So we have seen a shift in power.

You have in Rumsfeld and Powell two very powerful secretaries, and it has not been as easy as some might think to have the National Security Council do what it's supposed to do, and arbitrate between those very powerful people.

HENRIKSON: Final question.

DAVID MARLEY

Quick observation: this is an excellent conference. I wish people who would plan such conferences, though, would set aside a little time for those who might be found to think and talk about a more long-term address to these problems than we hear when we're preoccupied with emergencies like those that we face right now.

Mr. Henrikson spoke of multilateral preemption. How about multilateral law enforcement? Terrorism, after all, exists in an environment of lawless nation-states. We seem to have given up even talking about how international institutions might develop into true law enforcement development, and effective enforcement facilities. Somehow we can't talk about it, because it's viewed as too unrealistic. We can't talk about beginning to experiment with global democracy. That would be a step toward making international institutions accountable, and thereby making it possible, feasible, to confer enough power to create the judicial and military forces on an international level that are needed to deal with these problems.

I would just say, in ending, that if you think back, disarmament advocates were saying for 50 years that nuclear weapons must be controlled. They will proliferate, they

will get in the hands of the wrong actors, they will get in the hands of people who can't be deterred. They'll get in the hands of terrorists. What we need, it seems to me, is at least some time devoted to thinking ahead for another 50 years, for the next 50 years of the nuclear age, if we survive that long, and if our civilization survives that long, to think what it would take to create national leadership, leadership in a nation like the United States, toward that goal.

If academics paid perhaps more—I'm not an academic, I'm a lawyer, a practicing lawyer—paid more attention to creating a framework, drawing the picture of what a world of law enforcement would be like, political support, I think, would develop automatically, and we would begin to achieve the feasibility for these things that today seem impossible.

HENRIKSON: You make very good points, and one of the points I don't think has been made so far in our conference is the point about international law and order, international crime. After 9/11, a decision was made in this country to consider it to be war. NATO invoked Article 5, and we are now in the midst of a war on terror. Most of the rest of the world doesn't use that language. It's "the international fight against terrorism." In Europe it's really Interpol, as well as the militaries, that is doing a lot of the work. It could well be that as part of that synthesis which we were alluding to there will be more of an institutionalization, and strengthening of the institutions, of international police work and intelligence sharing.

And, possibly, this proliferation initiative that both the President last night talked about, and John Bolton did as well, is something closer to that, actually. It is short of classic military operations on a grand scale against WMD, because these trans-shipments of supplies and so on, in and of themselves don't constitute a direct threat of an aggressive act. They're components of it, and to track those in fact involves a lot of intelligence work, which I think transcends the military. And that could possibly have some world order, institution-building significance later on. So you raise some very, very good issues. More, besides the one I just responded to.

A final word on these matters, or anything else from any of our panelists, or should we close? Thank you very much. And thank you to our panelists particularly.

APPLAUSE

END OF PANEL
