CASE STUDY

THE IRAQ WAR OF 2003

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Anticipatory self-defense, or preemption, must show “a necessity of self-defense... instant, overwhelming, leaving no choice of means, and no moment for deliberation.”

Daniel Webster, Secretary of State, 1837

THE MARCH TO WAR: FROM MISSILE DEFENSE TO PREEMPTIVE WAR

Without the terror attacks of 11 September 2001, the war against Iraq would have been unthinkable. Even if some top officials of the Bush administration had already decided to remove Saddam Hussein independently of the terror attacks, the President would not have been able to find any support from the American people or its allies. The political will and the factual predicates essential to justify this war were simply nonexistent. In the aftermath of 9/11, however, the crucial question for the administration and the American people was what actions should be taken to defeat terrorism.

This was not a question that had received any sustained consideration from the administration. Indeed, on 11 September 2001, Condoleezza Rice, national security adviser to the President, was scheduled to deliver a speech at the School of Advanced International Studies at Johns Hopkins University. In it she would address the security threats faced by the United States. But Rice never delivered the speech. Had she done so, Rice would have declared that the major security threat was long-range missiles. It is abundantly clear from more than a few speeches and interviews given by the President, the Vice President, and Rice that this was the administration’s focus. For example, in June 2001, at his first meeting with NATO leaders, Bush presented the top five defense issues facing this organization. Missile defense was at the top of the list. Terrorism by
Islamicist groups was not mentioned. On 2 August, at a news conference with Republican congressional leaders, Vice President Cheney said, “We’re fundamentally transforming the U.S. strategic relationship around the world as we look at missile defenses and modifications to our offensive strategic arms.” And on 9 September, on NBC’s “Meet the Press,” Rice reported that the administration was prepared “to get serious about the business of dealing with the emergent threat. Ballistic missiles are ubiquitous now.” In April 2002, Rice returned to Johns Hopkins. This time the speech had little to say about missile defense. The focus was on international terrorism. “An earthquake of the magnitude of 9/11 can shift the tectonic plates of international politics,” she said.2

Between 9/11 and April 2002, the Bush administration was at work on a new strategic posture. The Cold War doctrines of deterrence by mutual assured destruction or counterforce response, and of containment of rogue states were designed to meet particular threat environments. While some of them remain, the threat of international terrorism by non-state groups, such as al-Qaida, presented a novel security challenge. On 1 June 2002, at a commencement speech at West Point, Bush announced the new national security strategy for the United States. “We will defend the peace against the threats from terrorists and tyrants . . . . And we will extend the peace by encouraging free and open societies on every continent,” Bush declared. On 26 August, at a speech to the Veterans of Foreign Wars in Nashville, Tennessee, Cheney began to apply the new doctrine to Iraq. Saddam Hussein, he declared, is aggressively pursuing nuclear weapons and enhancing his chemical and biological capabilities.

We now know that Saddam has resumed his efforts to acquire nuclear weapons . . . . What we must not do in the face of a mortal threat is to give in to wishful thinking or willful blindness . . . . Deliverable weapons of mass destruction in the hands of a terror network or murderous dictator or the two working together constitutes as grave a threat as can be imagined. The risks of inaction are far greater than the risks of action.

A little over a week later, Cheney went on “Meet the Press.” There he said he knew “for sure” and with “absolute certainty” that Hussein had “reconstituted his nuclear program.”3
Finally, on 6 March 2003, a few days before the invasion of Iraq, Bush linked the war against Iraq with 9/11.

Saddam is a threat, and we're not going to wait until he does attack . . . . If the world fails to confront the threat posed by the Iraqi regime . . . free nations would assume immense and unacceptable risks. The attacks of September 11, 2001, showed what enemies of America did with four airplanes. We will not wait to see what . . . terrorist states could do with weapons of mass destruction.4

Thus the war against Iraq would be a major front on the global war on terrorism. Once the two were linked, invading Iraq could be regarded as a preemptive war: Hussein would be defeated before he attacked us.

The new doctrine was signed by Bush on 17 September 2002. It declares that the United States

will act against . . . emerging threats before they are fully formed. [W]e will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists . . . . We must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction . . . . We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries . . . . To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.5

THE CASE FOR PREEMPTION: STOCKPILES OF WMDs AND ANTICIPATORY SELF-DEFENSE

The task of making the case for preemptive war to the international community fell on Colin Powell, Secretary of State.6 On 5 February 2003, in a highly anticipated event, Powell described to the Security Council of the United Nations in painstaking detail “what the United States knows about Iraq’s weapons of mass destruction . . . . These are not assertions. What we are giving you are facts and conclusions based on solid evidence . . . . Iraq’s weapons of mass destruction pose . . . real and present dangers to the region and the world.”7 Those weapons included biological agents, e.g., anthrax and botulinum toxin in vast quantities, and mobile produc-
tion facilities. “Our conservative estimate is that Iraq today has a stockpile of between 100 and 500 tons of chemical weapons agents . . . a massive clandestine nuclear weapons program . . . [and] has made repeated covert attempts to acquire high-specification aluminum tubes [that] can be used as centrifuges for enriching uranium.” Powell then described “the potentially much more sinister nexus between Iraq and the al-Qaida terrorist network,” a “decades-long experience,” which coupled with Hussein’s stockpiles of weapons of mass destruction, make for a “frightening future.” “We know,” Powell concluded, “that Saddam Hussein is determined to keep his weapons of mass destruction . . . [G]iven what we know of his terrorist associations . . . should we take the risk that he will not someday use these weapons at a time and in a manner of his choosing?”

The case for preemptive war, the Bush administration thought, was clear and compelling. First, Hussein had not disarmed, he had instead increased his stockpile of banned weapons and developed a nuclear capability; second, he had used chemical weapons in the past, to repress the Kurds and during the war with Iran, and he might use them in the future; third, he had long-established ties with al-Qaida and other terrorist networks, and he could at any time supply them with WMDs to attack the U.S. and its allies; and fourth, to fight terrorism, we must transform Iraq into a stable, prosperous democracy that would lead to the democratization of other autocratic regimes in the Middle East. By its account, then, the Bush administration’s war against Iraq is just and necessary to (i) remove an imminent threat before it materializes and (ii) create the political conditions that lessen the appeal of terrorism.

In March 2003, the United States, along with several other nations providing various levels of troops, launched the invasion of Iraq. It was an extraordinary military success. Iraqi forces gave no significant resistance, and within a short period of time Baghdad was occupied. Many Iraqi civilians greeted U.S. and Coalition forces as liberators and casualties were few. There was significant looting in Baghdad immediately following its occupation, but much less so in other parts of the country. On 1 May 2003, Bush declared that major military operations were over. The United States and its allies had prevailed. The “battle of Iraq is one victory in the war on terror that began on September 11, 2001 — and still goes on.” He then added:

The liberation of Iraq is a crucial advance in the campaign against terror. We have removed an al-Qaida ally, and cut off a
source of terrorist funding. And this much is certain: No terrorist network will gain weapons of mass destruction from the Iraqi regime, because the regime is no more. In this 19 months [since 9/11] that changed the world, our actions have been focused and deliberate and proportionate to the offense . . . . With those attacks, the terrorists and their supporters declared war on the United States. And war is what they got.9

The mission now was to secure the ground, rebuild Iraq’s infrastructure, and establish the political conditions necessary for a constitutional democracy.

**POSTWAR FACTS: NO WMDs, NO THREAT, NO LINKS TO AL-QAIDA**

A few months into the occupation of Iraq, pre-war assertions about weapons of mass destruction were being challenged. Simply put, none had been found. By the fall of 2004, nearly every pre-war assertion made by Bush, Cheney, Powell, and Rice had been contradicted. The Duelfer report, the most definitive accounting by the U.S of Iraq’s capabilities, concludes that since 1991 Iraq’s nuclear weapons program had “progressively decayed” and that no evidence had been discovered of any “concerted efforts to restart” it. “There is no indication,” the report states, “that Iraq had resumed missile material or nuclear weapons research and development activities since 1991.” Evidence was discovered that Iraq “clearly intended to reconstitute long-range delivery systems” beyond the 93-mile limit imposed by the United Nations after the 1991 war. But none of the desired systems had reached the production stage. Moreover, the small arsenal of mobile Scud missiles that remained after the 1991 war had been destroyed.

The findings for biological and chemical weapons were very similar. The stockpiles that remained after 1991 had been destroyed, and by 1995 Iraq had abandoned all research into these weapons, the report concludes. A few frozen samples of ordinary microbes, for example, botulinum, were found in the home of one Iraqi official, but no evidence of any bulk inventory was discovered. The report also states that Hussein had no intention to strike at the United States with nuclear or other weapons of mass destruction and that its inability to give clear answers to U.N. inspectors may have been the result of poor accounting rather than deception.
Assertions by the Bush administration about ties between al-Qaida and Iraq have similarly been contradicted. In the early summer of 2004 the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) released a study on the history and evolution of al-Qaida. It states that while bin Laden was opposed to Hussein's secular rule and supported “anti-Saddam Islamicists in Iraqi Kurdistan,” he did explore “possible cooperation with Iraq.” In 1994, a senior Iraqi intelligence officer did meet with bin Laden in Sudan. At that meeting bin Laden is reported to have requested “assistance in procuring weapons, but Iraq apparently never responded.” But the report concludes that there is “no credible evidence that Iraq and al-Qaida cooperated on attacks against the United States.” Later in the summer, the 9/11 Commission released its full report. Section 10.3 summarizes the contents of a memorandum requested by the President and written by Richard Clarke on 18 September 2001. Citing that memo, titled “Survey of Intelligence Information on Any Iraq Involvement in the September 11 Attacks,” the Commission report states that the “memo found ‘no compelling’ case that Iraq had either planned or perpetrated the attacks . . . . [and] no confirmed reporting on Saddam cooperating with bin Laden on unconventional weapons.”

ESTABLISHING DEMOCRACY

On 26 February 2003, in a speech at the American Enterprise Institute Bush announced that as part of the global war on terrorism, the goal of the U.S. in Iraq was not only to disarm Hussein but also to change the Iraqi regime into a prosperous and stable democracy as a precursor to the political transformation of the Middle East. “A liberated Iraq,” he said, “can show the power of freedom to transform that vital region by bringing hope and progress to the lives of millions . . . . A new [democratic] regime in Iraq could serve as a dramatic example of freedom to other nations in the region.” Bush then went on to cite the historical experience of the U.S. in transforming Germany and Japan following WW II into democratic states. And on September of 2003, in a televised address to the nation, he said:

In Iraq, we are helping . . . to build a decent and democratic center of the Middle East . . . . The triumph of democracy and tolerance in Iraq, Afghanistan and beyond would be a grave setback for international terrorism . . . . When tyrants fall, and
resentment gives way to hope, men and women in every culture reject the ideologies of terror and turn to the pursuits of peace. Everywhere that freedom takes hold, terror will retreat.¹³

On this account, the source of Islamic terrorism is politically repressive regimes. By changing Iraq from a tyranny to a democracy, other nations in the Middle East will follow and the conditions productive of terrorism will be removed. That same view was later given by top members of the Bush administration. Rice, for example, stated that “a transformed Iraq can become a key element in a very different Middle East in which the ideologies of hate will not flourish.”¹⁴

The main challenge to this objective is, of course, whether the U.S. occupation forces can provide a sufficiently stable security situation for the creation of those institutions necessary for democracy. Even assuming that democracy takes hold in Iraq, the administration has not explained how other nations in the region will follow. Rice has stated that just as a democratic “Germany became a linchpin of a new Europe that is today whole, free, and at peace,”¹⁵ so, too, after Iraq the Middle East will follow. Nor is it clear that establishing democracy will eradicate the conditions of terrorism. In Algeria and Pakistan, for example, the very real concern of a militant Islam using the ballot box to establish power led to the suppression of an emergent democracy. American democracy has not prevented the rise of home-grown terrorism (Weather Underground, Christian Identity groups, Tim McVeigh, and others, for example). European democracy did not prevent left-wing terrorism in the 1960s and 1970s, or terrorist acts in Northern Ireland (IRA) and Spain (ETA). Nor has Latin American democracy, in Mexico and Peru, for example, prevented revolutionary activity and terrorism from the 1960s to the present.

Given the range of societies in which terrorism has emerged, it may prove quite difficult to identify those background conditions that give rise to it. We can, however, say provisionally that terrorism, as other forms of political violence, is a response to a perceived threat or challenge. Some scholars argue that Islamic terrorism is a symptom of a failed civilization. Hamas, Hizbollah, Islamic Jihad, al-Qaida, among others have been kindled by the realization that Islamic culture has failed and Muslims are consequently motivated by a desire to destroy the successful civilizations of the West by producing an Armageddon-type war between the two. Ralph Peters, for example, writes:
A religio-social society that restricts the flow of information, prefers myth to reality, oppresses women, makes family, clan, or ethnic identity the basis for social and economic relations, subverts the rule of secular law, undervalues scientific and liberal education, discourages independent thought, and believes that ancient religious law should govern all human relations has no hope whatsoever of competing with America and the vibrant, creative states of the West and the Pacific Rim. We are succeeding, the Islamic world is failing, and they hate us for it.16

James Klurfield writes that the attacks of 11 September 2001

... came from a religious sect lashing out at modernity and the leading exponent of modernity, the United States. Osama bin Laden is the product of a failure, a failed culture that is being left behind by the rest of the world. He and his followers are lashing out because they cannot cope with the modern world. ... Bin Ladenism and other forms of Islamic fundamentalism are attempts to deal with the Arab world's inability to cope with modernity.17

Along similar lines, others argue that what motivates contemporary Islamic terrorism is a hatred of who we, Americans, are. Jean Bethke Elshtain, for example, writes: “They loath us because of who we are and what our society represents....”[W]e must and will fight — not in order to conquer any countries or to destroy peoples or religions, but to defend who we are and what we, at our best, represent.” The terror attacks of 9/11 were committed by individuals who are part of a “violent, extremist, and radically intolerant religious-political movement that now threatens the world [and] constitute[s] a clear and present danger to all people of good will everywhere in the world.”18

But terrorism by al-Qaida and other militant Islamic groups might be motivated not by hatred of who we, Americans, are but by what we do (or have done). Nations very much like the United States — for example: Sweden, The Netherlands, Canada, and others — have not been targets of attack by al-Qaida. Israel has suffered a large number of terrorist attacks by Palestinians. An examination of the relation between Israel and Palestine might prove instructive in identifying the conditions of contemporary terrorism. For example, the illegal occupation of Palestinian lands
for thirty-five years by Israel in violation of UN resolutions subsequent to the 1967 Arab-Israeli War; continued settlements by Israel in the Occupied Territories since the Oslo Peace Accords of 1993; its control of a major portion of land and other resources, like water, in the West Bank; denial of the right of return or compensation for Palestinians in exile driven off by Israeli expansion. Further exploration into the conditions of political violence in other parts of the world might well support the view that it is the actions and policies of states and governments or, as in Sri Lanka, the “competition for state resources” that motivate terrorism, rather than hatred of who the other is. Sri Lanka has suffered the greatest number of suicide bombings in the past couple of decades. The leading organization in suicide bombings in the world is the Liberation Tigers of Tamil Eelam, whose ideology is secular and nationalistic with, as Robert Pape observes, some Marxist/Leninist elements, and recruits from mainly Hindu Tamils in northern and eastern Sri Lanka. According to Pape, it “accounts for 75 of the 186 suicide bombings between 1980 and 2001.”

POST-WAR JUSTIFICATION: FROM HUMANITARIAN INTERVENTION TO CRISIS

When the weapons of mass destruction were not found, weakening the case for anticipatory self-defense, the Bush administration advanced another and quite different justification. This is a war of humanitarian intervention. Hussein is a murderous dictator who has slaughtered several hundred thousand of his own citizens. To protect future victims the United States and its allies must therefore intervene militarily. Typically, such wars of intervention are justified to stop ongoing humanitarian crises or when they are about to occur, seldom, if ever, for those that have already occurred. The Bush administration offered no evidence that Hussein was committing, or was about to commit, the kind of atrocities that would justify humanitarian intervention. There was none.

Nonetheless, the number of civilian deaths in this war might rise to the level of a humanitarian crisis. Although the United States has not released any figures — “We don’t do body counts,” General Tommy Franks has said — at least two sources have published estimates of civilian casualties. One source, Iraqbodycount.net, places the number of civilian deaths due to direct war related violence between a minimum of 14,563 and a maximum of 16,742 (as of 29 November 2004); 3,000 of those deaths occurred during the invasion phase of the war, the remain-
der during the occupation. There are reports suggesting that the conduct of this war has not been sufficiently discriminating in the relevant moral and legal sense. For example, cluster munitions have been used repeatedly in cities and towns. In March and April of 2004 alone U.S. and British forces used almost 13,000 cluster munitions containing nearly 2 million submunitions that, according to Human Rights watch, killed or wounded more than 1,000 civilians. Additionally, the 50 decapitation strikes — that is, attempted killing of Iraqi leaders — have all failed to hit their targets and instead killed civilians. A more recent study conducted by investigators from the School of Public Health, Johns Hopkins University, and published in the British medical journal, *The Lancet*, concludes that violence subsequent to the invasion has produced about 100,000 deaths, with air strikes and coalition forces accounting for most of them. While there is no evidence that these were intended deaths, and likely are not so, the war is producing a level of collateral damage that is disproportionate to any reasonable objective of this war.

Additionally, there are some online sources reporting the use of banned napalm (or napalm-like, phosphorous) and other illegal weapons against Iraqi troops as early as 21 March 2003, in the advance to Baghdad and then later against insurgents in the attack on Fallujah. The Pentagon has admitted using a firebomb called Mark 77, consisting of forty-four pounds of polystyrene-like gel and sixty-three gallons of jet fuel, that is “remarkably similar” to napalm. On 21 November 2004, libertypost.org and aljazeera.com reported some thirty-four Iraqi civilians from Fallujah killed by chemical weapons. In Britain these reports have been taken seriously, and several members of Parliament have demanded an explanation from Prime Minister Blair on the use of such weapons.

**The Rise of Insurgents and the Nation-Building Effort**

Twenty months after the fall of Baghdad, the U.S. and its coalition partners do not have control of the ground. Suicide bombings; assassination of Iraqi political and civilian leadership; kidnappings and executions of hostages, soldiers and police; sabotage of oil fields; and direct attacks against U.S. and coalition forces by elements of the old regime, insurgents, and foreign fighters profoundly challenge the likelihood of success. Iraq is a nation in chaos. At the time of this writing, the city of Fallujah, which was under control of insurgents, is under attack by occupation forces. The U.S. reports some one thousand insurgents killed. Mosques have been defiled. The city is in ruin. Nearly forty U.S. soldiers have been
killed and some one hundred wounded flown to Germany. As insurgents in Fallujah have fled, other Iraqi cities have seen a rise in violence and sectors of Mosul and other cities are under insurgent control. The fight over Fallujah might not be over yet.

So far, U.S. casualties exceed 1,300 and nearly 10,000 have been wounded. Bush stated in his radio address to the nation on 13 November 2004, that as Iraq moves to democratic elections next January, violence is likely to increase. The cost of the war to the U.S. alone will soon exceed $200,000,000,000 and no one doubts that the occupation of Iraq will last more than a few years. The prospect of the occupation lasting ten to fifteen years appears very real. And the objective of a democratic Iraq leading then to a democratic Middle East and removing the conditions of global terrorism seems at best very distant. Although the provisional government in Iraq, with strong support from the Bush administration, called for nationwide elections on 30 January 2005, several Sunni, including the very influential Association of Muslim Scholars, and Kurdish groups have called for a delay, fearing that continued violence would challenge the legitimacy of any elections.

There are, nonetheless, some signs that point to a hopeful future for Iraq and its people. In June 2003, an Iraqi Interim Government was appointed and vested with full sovereignty; a system of government is in place that is republican, federal, democratic, and pluralistic; there is the gradual development of a national police force and an Iraqi army under a civilian leadership; a Transitional Administrative Law has been adopted in which all Iraqis are equal in their rights without regard to religion, ethnicity, or gender and which upholds the right to associate and organize freely, the right to a fair, speedy, and open trial and the presumption of innocence, as well as the right to freedom of thought, expression and conscience. A public opinion poll conducted by The American Enterprise Institute reports that seven in ten Iraqis believe that Iraq will be a better country five years from now; about two in five say that “democracy can work in Iraq”; by a ratio of “4 to 1, the ordinary Iraqi thinks his country is better off without Saddam . . . . by almost 7 to 1, he is more hopeful for his own future absent Saddam; and by almost 2 to 1, he doesn’t want an Islamic government.” The United States Agency for International Development, in its publication “Iraq Reconstruction Weekly Update,” reports a number of important developments from rebuilding the nation’s infrastructure — water and sanitation, bridges, roads, and electricity — to progress in secondary and higher education,
and the beginnings of a competitive, private sector economy in banking and business.23

QUESTIONS

The Iraq War of 2003 raises a number of important and troubling questions. Among them are the following:

1. What are the conditions for a morally defensible doctrine of preemptive war? How will we distinguish between genuine threats and phantom menaces? What is the standard of proof that determines whom and when to attack? Were those conditions and the burden of proof met in this war?

2. Is this a just war? The question asks not whether this war is in our national interest, militarily prudent, or legal according to international law. It wants to know whether it is morally defensible and, if so, how? Suppose it is not justified on the basis of a morally legitimate doctrine of preemption. Might it be morally defensible on other, say, humanitarian, grounds, e.g., liberating the Iraqi people from a murderous tyrant?

3. Suppose it is not a just war. Can an unjust war be fought justly? Or is it the case that the injustice of the war corrupts the entire conduct of the war? If so, then regardless of the great care in their conduct, Coalition forces are engaged in injustice. Suppose further that the distinction between killing and murder is determined by the justice of the war, not its conduct. Is it the case, then, that no matter how scrupulous Coalition forces are in their military conduct, all killing in this war amounts to murder?

4. Suppose all killing in this war does amount to murder. Are American citizens who support this war supporting, and thereby complicit in, murder? If such complicity in murder renders one non-innocent, is there any moral sense is saying that civilians, regardless of their government’s action, are innocent and, by their innocence, immune from deliberate military attack? If an Iraqi resistance group now decides to target Americans at home and abroad, is that killing the guilty or murdering the innocent?

5. One of the least developed principles of the just war doctrine is the jus post bellum (or postwar justice). Assume this is a just war by tradi-
tional just war principles. Is it necessary that prior to waging war there be a specified and reasonably attainable morally defensible end to it? What would that be in this war?

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NOTES

1 This paper has benefited enormously from my conversations with Bruce N. Waller, as well as his careful and probing reading of earlier versions.


6 A tapestry reproduction of Pablo Picasso’s mural *Guernica* hangs in the entrance to the chambers of the United Nations’ Security Council in New York City. It is 11 feet 6 inches high and 25 feet 8 inches wide. It commemorates the aerial bombardment of the ancient Basque town of some 5,000 inhabitants. On 27 April 1937, German and Italian air squadrons used it for bombing practice. For three hours, they dropped high-explosive, incendiary bombs, killing or wounding 1,600 children, women, and men. The tapestry, like the mural, depicts their suffering and slaughter — chopped-up, mutilated human and animal forms totally lacking in color are rendered in stark gray, black and white tones (the tapestry reproduction, though, adds some brown and tan, weakening its effect). It is an awesomely disturbing scene conveying the inevitable massacre of modern, technological war. Consequently, on the day Powell made his case for war against Iraq, U.N. officials placed a blue curtain over the tapestry and displayed before it the flags of the various nations represented in the Security Council. The news conference immediately following Powell’s speech would take place on that spot.


8 Powell. pp. 11, 12, 14, 16, 17.