

**PRE-EMPTION AGAINST TERROR:
JUST WAR PACIFIST APPROACH**

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ABSTRACT

Having soberly reflected upon the tragedy of September 11, the author observed that though International law and treaties restrict pre-emptive war, they do allow for war in self-defense. Consequently, some powerful nations have used this as a justification for launching pre-emptive strikes. The threats posed by the powerful nations using self-defense as a justification for pre-emptive strikes and the inability of weaker states to do the same, greatly account for the unprecedented explosion of global terrorism. The author thinks that confronting terrorism therefore requires a pro-pacifist ethical framework whose principles have to be applied with international law to narrow the legitimacy of self-defense wars. Hence he proposes 'Moral Consistency' as a required condition for launching pre-emptive strikes with two main aims— to reduce violent conflicts and to draw a substantial distinction between reason and justification, and between crime and criminal justice.

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Dedicated

To:

My mother, Margaret Akoh
For her
Patience,
Love, and
Care.

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CHAPTER ONE: BACKGROUND TO THE STUDY

The UN has intensified its peacekeeping measures for decades now. However, in spite of its disarmament actions and the number of international treaties and peace agreements signed by nations, violent armed conflicts, insurrections and terrorist activities continue to occur in many parts of the world. The root cause of such an unprecedented explosion of violent conflicts is not easy to explain. One possibility is that the proliferation of diverse justificatory theories of the use of force in conflict resolution and the disregard for pacifism in particular, have contributed to both the terrorism perpetrated by Islamic militant groups and the violent response to such terrorism. However, explaining terrorism is initially difficult because the term has been used in many ways by many scholars. In this paper, the term implies a deliberate and unethical attack by an enemy involving mass killings of civilian populations, which causes fear and panic on a people with the aim of achieving ideological goals- whether political, religious, economic or social. Obviously, it is important for state authorities to prevent its occurrence. It would thereby seem that pre-emptive action to avoid terrorist attacks would also be important. But can preemptive strikes of this sort be morally justified? This is the central question addressed in this paper.

There are several different responses that can be expected in answer to the question of whether a moral justification of pre-emptive strikes is possible. These range from the negative answer of pacifists to the positive answer of those who accept a Just War Theory. Some versions of pacifism reject any kind of violence in

conflict resolution so preemptive strikes against terrorism are completely rejected. By contrast, Just War thinkers believe that there are certain conditions that may justify the use of force and so pre-emptive strikes against terrorism may well be legitimate. But there is yet another version of pacifism—Just War Pacifism—which raises moral concerns about the Just war theory in its application. This paper defends the position of the latter version of pacifism to examine the moral justification of pre-emptive strikes against terrorism.

The justification of responding to terror does not necessarily depend on which method we use—be it violence or non-violence. Circumstances may determine which method but the greatest determinant of justification will also have to take the ethics of war and international law on self-defense and aggression into consideration. In most cases both the terrorist groups and the self-defendant states¹ may want to prove that they have some rational theories supporting their actions. But it appears that some common characteristic features such as abuse of human rights, violations against international law and treaties and excessive use of force, which are inconsistent with the UN Charter characterize both the acts of terrorism and pre-emption against terror. Hence, this thesis critically examines both phenomena—terrorist activities and the “war against terror” and proposes a pro-pacifist response (Just War Pacifist Approach) to minimize the rate of violence in confronting terrorism.

¹Unless otherwise stated self-defendant should be referred to the USA, the proponent of the “war on terror”. I will also be using the term “Arab world” and Islamic militant groups to describe those on the other side of the conflict. And by the collective term Arab world, I do not speak of the Arabs in general. I am referring only to those who are hostile to the U.S. policies and Western culture. I include also those Arab countries which are alleged to have been supportive to terrorism.

By proposing a pro-pacifist response in control of terrorism, I am not in any way attempting to encourage the degree of violence perpetrated by terrorist groups. I deliberately omitted the task of aiming to minimize international violence by first exploring terrorism; for terrorist activities can hardly be non-violent since terrorism and violence are inextricably intertwined. It will not make any sense and it is even impossible to conceptualize a non-violent terrorism. Alternatively, international violence can be suppressed by targeting the other side of the conflict (prevention against terror) since the degree of force employed as a pre-emptive strategy may be regulated to certain limits by considering some versions of pacifism. It is obvious that when the excessive violence by self-defendant states is brought to a minimal level then international terrorism can also be reduced, for the later seems to be a direct response to the former.

But to what extent could a pro-pacifist approach to terrorism be realistic and appealing to the international community in a time when there is great passion for military response to conflict resolution? For instance, Paul Christopher (1999), Brian Orend (2000), Jean Bethke Elshtain (2003) and many other peace and conflict experts have done substantive scholarly work on determining under what circumstances the use of force may be justified. I agree with them to some extent, but the problem I have with their work is the disrespect they have for pacifism. It is one thing to justify the use of force and another thing to condemn pacifism. A sober analysis of pacifism reveals that pacifism and Just War doctrine are not mutually exclusive. Ethically, both share some common moral principles. However, in their examination of the phenomenon these scholars have leveled sharp criticisms at

pacifism in a bid to glorify Just War Theory. In the midst of such theories it will be difficult to recommend a pro-pacifist response in confronting terrorism. So to present my views about how terrorism should be handled I am also faced with the challenge of presenting some moral principles which are embedded in the Just War Pacifist doctrine. This commitment divides my thesis into two main sections— theory and application.

Even though the thesis does not openly present such design it is important for the reader to recognize that the first part of the essay lays the foundation of the thesis by focusing on a careful examination of the established theories in ethics of war and violence, notably, *Pacifism* and the *Just War* doctrine. In defense of pacifism, I discuss contemporary Just War Theory and examine its application to find out whether it is possible to meet all the requirements of the theory in a given war situation. As part of the defense of pacifism, I also offer critical evaluation of the Just War Theory. It is apparent that there are problems when the Just War Theory is applied. This explains why it is possible for a purportedly Just War to begin and end unjustly. Some contemporary Just War thinkers interpret the *last resort* criterion as a resort to force just after a deliberation (Elshtain 2003), thus making it possible for powerful states to declare war as a necessity at any time (even when there seem to be alternatives). Consequently, the purpose of reducing the occurrence of extreme and unethical use of force by modern states is consciously and sometimes unconsciously being pushed to the background. One may argue that a theory need not rule out misinterpretation and abuse of it but I think a critical examination of this theory is important because it determines life

and death of innocent human beings. Apart from the possibilities of abusing and manipulating the Just War principles for one's own interest, the theory does not speak to how weaker states can make legitimate use of force when the need arises. This is perhaps one of the causes of contemporary terrorism which has not yet been observed by most people. For instance, the Just War Theory does not tell us when and how a weak nation should launch pre-emptive strikes against a powerful nation. Even though Just War Theory and international conventions permit states to wage defensive wars against aggression under certain circumstances, the unprecedented explosion of international terrorist acts in response to an excessive use of violence by some powerful states suggests the insufficiency of appealing to such conventions for peace and justice.

The explanation of the constant struggle, vengeance, and retaliatory terror in international politics is not far fetched. While powerful states make use of the principles of Just War in self-defense they do not seem to make an objective reflection on the history of the conflict between them and their enemies though that is very important in issues of peace and justice. In his remarks about the U.S.'s response to the September 11 attacks, As' ad Abukhalil offers a brief history, with comments, about what the world thinks of Bin Laden. He ties the problem to the Israeli–Palestinian conflict, and highlights the atrocities committed by the U.S. on the Arab world. Abukhalil says that:

...I have been quite unhappy with the quality of books on the crisis [September 11] and on Bin Laden... I grew up in Lebanon and came to this country [U.S.] as a graduate student. I lived not far from Palestinian refugee camps. I have seen the devastation and human suffering caused by American weapons in Israeli

hands, and also U.S. forces in Lebanon in the 1980s. ...I lived through the Israeli invasion of Lebanon in 1982, which resulted in the death of more than 15,000 Palestinians and Lebanese, mostly civilians. U.S. media barely, if ever, reported those deaths to Americans, while Israeli loss was mourned. The story that is told is not a pleasant one. It entails murder, deception, duplicity, crude and subtle propaganda, war, defeat, racism, humiliation, oppression, misery, bigotry, and international domination and subjugation. ...It is the story of U.S. roles around the world, a story with which a majority of Americans are unfamiliar.²

Given this feeling of animosity a military response to terrorism will be adding more insult to injury. In such circumstances the problem cannot be solved by appealing to the Just War principles, since this is not the purpose for which the Just War doctrine was evolved. In most cases, the architects of the original Just War Theory were not guilty of the evils they sought to address. As will be shown later, a careful study of the practice of Just War in Ancient Rome in contrast with contemporary interpretations of the theory reveals that there is an apparent missing ingredient in how it is practiced today. Thus, while initiators of war traditionally were genuinely committed to restoring justice, contemporary Just War proponents fall short of this significant feature in their application of Just War Theory. These days, state officials do not normally engage in self-evaluation before invoking self-defense. Without such evaluations one is tempted to assume that the *reasonable chance of success* in pre-emptive self-defense wars against one's enemy is enough principle for justification. But because human beings are prone to retaliation and vengeance when attacked it is unlikely that any such self-defense wars can ensure peace.

² Abukhalil, A. (2002) *Bin Laden, Islam and America's New "War on Terrorism"*. Seven Stories Press, New York. pp. 10-12

The second part of the thesis also adopts the Just War Pacifist ideology to evaluate America's response to terrorism. Here, due to the significance of history surrounding each case of conflict I argue that a state's right of pre-emptive self-defense is largely determined by her moral relationship with her enemy. Hence the only legitimate self-defense against terrorism that may possibly ensure peace and justice is the one evoked by the self-defendant with *clean hands*³.

Therefore, to succeed in minimizing violent conflicts involving terrorist acts in our world, I think there is a need to set a moral requirement for pre-emptive self-defense attacks in order to curtail the bullying of world superpowers against weak states, and at the same time to ensure that the weaker nations be assisted in seeking redress for the deprivation of their social, economic and political rights when the need arises. However, due to constraints on time and space this study will seek to address only one aspect of the problem – how modern states can be restricted from launching unproductive and unethical pre-emptive wars against other states suspected of being associated with terrorist groups in order to minimize terror and counter-terror.

Thus in this study, a pro-pacifist conceptual framework is proposed to deal with the problem. The next chapter, Chapter Two, briefly examines various forms of pacifism and the principles of Just War theory as the theoretical framework of the thesis. It considers the circumstances under which force may be justified by the Just War theory and presents the Just War Pacifist argument to critique the theory. Also, Chapter Two briefly discusses how the inherent problems associated with the

³ Under this context, what I mean by *clean hands* is where a state, groups of people, or individuals are innocent and blameless in their relationship with the enemy prior to the offender's attack.

Just War doctrine makes the contemporary Just War theorists' argument no different than some versions of pacifism— Just War Pacifism. This is an attempt to reconcile pacifism with the Just War doctrine for peace and justice. Since pacifism does not seem to appeal to contemporary Just War theorists in conflict resolution, Chapter Three critically examines the various explanations which such scholars offer for the justification of pre-emptive strikes. While one may consider such explanations as *reasons*, the discussion proceeds, in Chapter Four to pay particular attention to the legal justification of pre-emptive wars against terrorism. Following the challenges posed by the significance of self-defense in an age of terror, the last chapter focuses on the Just War Pacifist view and recommends *moral consistency* as a prerequisite condition for states which adopt Just War theory and international law as models to justify pre-emptive strikes against terrorism.

Moral consistency is not a substitute for International Law and the Just War Theory but a complement to it. It calls for the fulfillment of some moral principles without which peace and justice can hardly be achieved even when modern states apply the Just War doctrine for the justification of pre-emption against terrorism. In this context, country/party *A* will be deemed to be morally justified in waging war on or attacking country/party *B* only when country/party *A* has 'clean hands'. That is, just in case (among other conditions) country/party *A* has not previously been guilty of any persistent harm or unfair treatment to country/party *B*. More importantly, the moral consistency requirement has the prospect of minimizing the use of force and reducing terror and counter-terror. This idea is captured by the

remark by Fred Charles Ikle: “The battles fought during a war, of course, contribute to its aftermath; but it is the way in which a war is brought to an end that has most decisive long-term impact”⁴. We may fight to protect and preserve the interests of our compatriots but the effects of our action on future generations must not be overlooked.

⁴ Ikle, Fred Charles. (1991) *Every War Must End*. Columbia University Press. p. vii

CHAPTER TWO: PACIFISM AND THE JUST WAR DOCTRINE

2.0: Introduction.

Theories about the justification of war were developed as a result of various conceptions of war and peace which have both religious and secular foundations. This chapter highlights the main ideas of the principles of the Just War Theory and examines the dilemmas it poses in its attempt to specify conditions that could justify engaging in warfare. This would include such acts of war as pre-emptive strikes against terrorist groups. In doing this, I first explore different attitudes to war and briefly examine different types of pacifism. The reason for doing this is that while some contemporary philosophers and political writers reject pacifist thinking but tend to defend the Just War Theory, I argue that even though there are inherent problems with the Just War theory we need to acknowledge that it originates from pacifist thinking. Therefore, those who support Just War doctrine should not overlook the moral principles, like rights and duties, underlying pacifism (at least some versions of it).

2.1: Perceptions About War

The idea of conceiving war as an absence of peace has brought philosophers, political theorists and theologians into two main groups – the *realists* or *conservatives* and *idealists* otherwise known as *abolitionists*. While the conservative theorists perceive war in human existence as unavoidable, the abolitionists rather think that even though war is a human cultural phenomenon it

can be controlled or avoided by positive institutional readjustments and conscious efforts to work for peace. Modern day political thinkers have taken both of these two positions. For instance, Brian Orend, a realist, has remarked that “The brutal truth is that there is no imminent solution to the problem of war: wars are being fought and will continue to be fought for some time”⁵ Similarly, Paul Christopher shares the same idea in his observation that “conflicts are ongoing at various places around the world, and it is highly unlikely that this will change anytime soon”⁶

Even though the notion of war’s inevitability has the power of influencing one’s moral sensibility and judgments about the ethics of war, we will not bother ourselves so much with that now. This is because understanding war as part of human existence is one thing but whether states have any right to use force against other autonomous states or to engage them in warfare is another thing altogether. As far as this study is concerned I will focus on the issue of whether it is ever justified for states to use force in protecting its citizens and allies. In doing this, let us first briefly take an overview of the basis and sources of traditional doctrines that have been developed to oppose war.

2.2: Pacifism

According to Jenny Teichman the word ‘pacifism’ first appeared in 1902 and it was coined by a Frenchman who attended an international peace congress. He

⁵ Orend, B., *War and International Justice: A Kantian Perspective*. (Wilfrid Laurier University Press, Waterloo, Canada, 2000), 10.

⁶ Christopher, P. *The Ethics of War and Peace*. 2nd edition. (Prentice Hall, Upper Saddle River, New Jersey, U.S.A. 1999), 3.

used the term to refer to *anti-warism*.⁷ The word has since been used by several other scholars to describe people who express hostile attitudes towards war. However, over the years different versions of pacifist thinking have evolved, thereby making it possible to encounter a pacifist who admits that force can be used in exceptional cases to ensure justice. But because pacifism is usually associated with religious people and more specifically, the early Christians in the then Roman empire whose deep love for peace prompted stiff opposition to war and all forms of violence, the term seems to have been misconstrued by some writers.

Many early Christians interpreted some of the New Testament doctrines as prohibitions against war and violence – for instance, ‘turn the other cheek’, ‘love your enemies’, ‘blessed are the peacemakers’ etc.⁸ Not only did many early Christians express opposition to war and violence, they questioned whether one could join the military and still remain a Christian. This was a perplexing issue for most of the Christians under the Roman Empire. However, Christian pacifist thinking was challenged on several grounds by theologians such as Saint Ambrose, Saint Augustine, and Thomas Aquinas. Paul Christopher cites many examples from the writings of these eminent theologians and points out the problems with the interpretations of the New Testament by some Christians. For Christopher, it does not seem as though the New Testament contains only references that prohibit violence and war. One of the challenging references he cites from the Bible is this:

Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil.

⁷ Teichman, J. *Pacifism and the Just War*. (1986) p.1

⁸ These are normally referred to as ‘The Sermon on the Mount’ in theology. They can be found in Matthew and the other gospels of the Christian Bible i.e. Greek Scriptures.

Wilt thou not be afraid of the power? Do that which is good, and thou shalt have praise of the same: For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil.⁹

Paul Christopher argues that for the purposes of communal order and distributive justice, this passage clearly permits authorities to use violence. Also, with the general notion that the Old Testament seems to command war and violence he further underlines this as another problem for the pacifist. For Christopher,

..it requires that one accept both Old Testament and New Testament as presenting different moral standards. Without this discontinuity it is impossible to reconcile pacifism with *lex talionis* (Exd.21-24). If, however, the violence of the Old Testament is understood as a legitimate means of retributive justice rather than as a form of revenge, the two texts are not incommensurate.¹⁰

One cannot dispute the fact that there are apparent and notable discrepancies between the Old Testament and the New Testament which still appear irresolvable dilemmas in Christian theology. Paul Christopher's attempt to evaluate the two testaments to justify the use of force might seem relevant but that does not provide us with the entire definition of the pacifist ideology. In other words, the traditional Christian opposition to war does not entail that pacifism implies an absolute opposition to war and violence, for it is just one version of pacifism. It cannot be used to explain and to condemn the whole pacifist doctrine. This is not the only place where Christopher commits such an error. He caricatures pacifism by assuming that it will be inconsistent for the pacifist to endorse some degree of force to dispense justice. In his own words he emphasizes that:

For pacifism to qualify as a moral doctrine, however, it must be formulated so that there is never a justification for the use of violence. This does not seem

⁹ Romans 12:1-4, King James Version.

¹⁰ Christopher, P. (1999) *Ethics of War and Peace* pp. 20-21

plausible to me from either a theoretical standpoint or as a practical guide.¹¹

A similar comment is made by Jean Bethke Elshtain in her recent book, *Just War Against Terror*. Elshtain writes:

Pacifists condemn any resort to force outright, whether administered by a musket or a nuclear bomb, so debating justification for a resort to force is moot.¹²

It takes the recognition of various kinds of pacifism before one can respond to the objection raised by Christopher and those who share a similar view. His supposition that the pacifist should either not sanction war or should completely endorse it can best be described as an argument that is guilty of false dichotomy. It fails to realize that it is always possible for one to escape the two extreme positions and still retain one's pacifist ideology. Neither can we accept Elshtain's definition of pacifism since it also suggests that pacifism does not permit any kind of force at all. I think pacifism is more than what they offer here. A more acceptable definition for general pacifist thinking is required. Brian Orend draws us close to what pacifism is all about:

Literally and straightforwardly, a pacifist rejects war in favour of peace. It is *not* violence in all its forms that the most challenging kind of pacifist objects to; rather, it is the specific *kind and degree of violence that war involves* which the pacifist objects to. A pacifist objects to killing (not just violence) in general and, in particular, she objects to the mass killing, for political reasons, which is part and parcel of wartime experience.¹³

I think Orend's definition seems to capture some of the main conceptions of pacifism, especially the passion and strong enthusiasm for peace rather than war

¹¹ *Ibid*, p.3

¹² Elshtain, J.B. (2003) *Just War Against Terror: The Burden of American Power in a Violent World*. Basic Books.p.63

¹³ Brian Orend, 'Evaluating Pacifism' In Canadian Philosophical Review. VOL. XL, NO.1 Winter 2001 p.4.

and the rejection of unwarranted violence that may result in mass killing. Nonetheless, I think Orend's remark about pacifism also needs to be critically examined. After providing what appears to be a reasonable definition of pacifism, Orend further infers: "So, a pacifist rejects war; she believes that there are no moral grounds which can justify resorting to war. War for the pacifist, is always wrong"¹⁴

Since there are various kinds of pacifism some of which in the course of justice may sometimes accept a considerable amount of war and violence, Orend's later comment makes his definition too narrow. It cannot be said that pacifists (those who oppose war outright) do not have any moral grounds for their position. Most pacifists do not reject war for no reason. There are various reasons which underline such pacifist thinking, and which I think cannot be overlooked. We can understand some of these reasons by exploring Teichman's treatment of various kinds of pacifism.

Though Teichman herself claims pacifism connotes rejection of war she admits that there are various moral principles (some of which are based on human rights), which explain why it is wrong to shed blood or to be engaged in warfare.¹⁵ In expounding some of the moral reasons for the pacifist's opposition to war and violence, Teichman categorizes pacifism into two main groups- *conditional* and *unconditional pacifism*. Whilst the conditional pacifists' acceptance of war depends largely on the conditions under which war is fought, the latter opposes war outright. Perhaps the classical example of *unconditional pacifism* is Mohandas K. Gandhi's

¹⁴ *Ibid.*

¹⁵ Jenny Teichman. *Pacifism and the Just War*. (1986) p.4f

non-violent resistance approach to dispute resolution¹⁶, which John Yoder describes in his *Nevertheless* (1971) as ‘Absolute Pacifism’.¹⁷ One version of *conditional pacifism* identified by Teichman is the belief that war is permitted by the Old Testament but it is forbidden by Jesus’ teachings under the New Testament dispensation. This implies that because Christ introduced nonviolent response to one’s enemy in the New Testament dispensation it would be *morally* inconsistent for one to follow Christ’s moral teachings and engage in war, retaliation, and all forms of violence. Another type of Teichman’s *conditional pacifism* will accept warfare only if the destructive weapons were used to kill combatants, and if soldiers were to kill each other without taking the lives of large numbers of civilians.

¹⁶ Gandhi (1869-1948) is an eminent non-violent activist who employed Asiatic religious thought to resist British imperial rule in India during the 20th century. For more information on his approach see the BBC Website on Ethics of War.

¹⁷ Teichman reviews John Yoder’s discussion of diverse kinds of pacifism one of which is Absolute pacifism. See this in Teichman, J. (1986) *Pacifism and the Just War*. pp7-9. Aside from this she also cites various types of pacifism from the work of Peter Brock [*Pacifism in Europe to 1914*, (Princeton 1972)]. Brock’s types of pacifism recorded by Teichman include the following:

“*Vocational pacifism* is the pacifism of priests and others in holy orders. It can (though it need not) go with anti-warism or with theories about non-violence.

Eschatological pacifism is an interim ethic which teaches that there will be an Apocalyptic war at the last day between the forces of good and evil, but until then wars are to be utterly rejected. Merely human wars, that is, are forbidden, and human beings will only be indirectly involved in the war of the Day of God’s Wrath.

Separational pacifism is the view that the redeemed or favoured of God must separate themselves from the rest of mankind. Ordinary human society is irredeemably wicked and worldly so whoever wants to be saved must abandon it. The New Testament is taken as the Law, replacing the teaching of the Old Testament. War is condemned absolutely, but ‘the violence of the magistrate’ is accepted as conditionally justified; even that violence, however, is regarded as belonging in its essence to the realm of evil.

Integrational pacifism is the title given by Brock to those pacifist groups which combine an ethic of peace and peace-seeking with the setting up of reform movements whose platforms include opposition to war but may contain other aims as well, e.g. the abolition of racial segregation.

Integrational pacifists do not reject government nor the use of force by government; they reject only the injurious use of external force in international relations. Modern Quakerism, in Brock’s view, is an example of an integrational pacifist movement.

Goal-directed pacifism involves the use of non-violent techniques in order to achieve specific aims. Ghandi’s fasting while in goal is an example. Bertrand Russell’s ‘Direct Action’, associated with his membership of “the Committee of 100’ in the 1950s, is another, the action in question being non-violent, e.g., sitting down in front of buildings inhabited by the Ministry of Defence. No doubt the Greenham Common Women are involved in goal-directed pacifism by this definition.” See Teichman, J. (1986) *Pacifism and the Just War*. pp.6-7.

Besides, some pacifists explain their negative attitudes towards war in terms of how soldiers are recruited to engage in warfare. They argue that it would not pose any moral dilemma if people who engage in war were all volunteers. In other words, such pacifists think that it is morally wrong to conscript all or many people into fighting.

Teichman refers to these last two versions of conditional pacifism as *just war pacifism*, for the reason that “they exemplify the idea that war, or most war, or modern war, because of its very nature, cannot possibly fulfill those canons of justice which were supposed to make the activity all right.”¹⁸ This is the thrust of the argument by the reasonable pacifists. The truth of the matter is that some pacifists completely reject war of all kinds; others have moral reasons for not endorsing war and do not want to violate their moral obligations. The latter are inclined towards peacemaking and peace building; they have respect for human life and would not reject war if the just war principles were sincerely and objectively employed when the need arises. That is, if those conditions were satisfied, war can justifiably be resorted to.

Our evaluation of the various kinds of pacifism should not be based on the underlying assumptions of each of these beliefs, for they all promote peace and social co-operation. The objection that can be raised is the level at which such beliefs can be entertained. While absolute pacifism may be encouraged at the individual and personal levels the same cannot be said when one occupies a political position, for the latter domain comes with greater responsibility and more enduring consequences for inaction when the use of force really remains the only

¹⁸Teichman, J. *Pacifism and the Just War*. (1986) p 5

option. So on balance, due to the above reasons conditional pacifism, especially, just war pacifism, seems to have the potential of ensuring international peace and justice better than the unconditional one. But that should not foster the idea that pacifism does not have any moral conception for the justification of war as Brian Orend and Paul Christopher may want to prove. The conditions for the justification of pre-emptive strikes against terrorism under “Moral Consistency” in Chapter Five highlight the degree of force which can be accepted by the pacifist. For now let us briefly examine the Just War theory.

2.3: The Just War Doctrine

The adjective *just* qualifying the noun *war* creates two impressions; that some wars are just, and that others are unjust. It also presupposes that there is a connection between justice and war. That is, the idea is that occasionally war can be resorted to for the restoration of peace and justice. The just war doctrine, over the years, has been developed by Christian theologians, philosophers, jurists and many others to answer the question of who may declare war, when and how. The justification is usually based on either theory or precedent. While the theory aspect deals with the legitimacy of resorting to war as a means of resolving conflicts, the precedent one acknowledges certain forms of treaties, regulations, and agreements that have evolved throughout history among nations probably as a result of engaging in warfare. The United Nations’ resolutions and international conventions and declarations such as the Geneva and Hague conventions are examples of historical rules proposed to restrain some forms of war and violence. There are two

facets of Just War theory expressed in Latin as the *Jus ad bellum*, which spells out the conditions under which engaging in war may be legitimate, and *Jus in bello*, which is about how a war should be conducted once it gets started. Two things need to be noted here. First, classical versions of the Just War theory do not seem to have the divisions of *Jus ad bellum* and *Jus in bello*. Second, the principles under the *jus ad bellum* convention also vary according to each theorist. For instance, Thomas Aquinas' version of the Just War doctrine identifies three main conditions i.e. right authority, sufficient cause, and right intention.¹⁹ We will, however, examine the theory as analyzed by contemporary writers.

2.3.1: *The Jus Ad Bellum*

According to experts, the required principles under the *jus ad bellum* include the following: for a war to be just:

It must be declared by the right authority,

It must have been initiated for a just cause,

It must be the last resort,

It must be fought with the right intention,

There must be a reasonable chance of success,

The means employed in the war should correspond to the ends it aims to achieve.²⁰

Lastly, the *Encyclopedia of Political Thought* further requires that a just war should

¹⁹ Tooke, Joan D. (1965) *The Just War in Aquinas & Grotius*. S.P.C.K, London. p. 21

²⁰ These criteria are severally discussed by Michael Walzer, *Just and Unjust Wars*. Third edition. (Basic Books, 2000); Joan D. Tooke, *The Just War in Aquinas & Grotius*. (London: S.P.C.K., 1965) ; Jenny Teichman, *Pacifism and the Just war*. (Basil Blackwell:1986)

aim at *peace as its goal*.²¹ Unfortunately, contemporary just war experts do not seem to pay attention to this criterion. We will understand how the neglect of this condition has contributed to terror and counter-terror as we examine the bases of modern states' resort to force in chapters four and five. Let us now examine the content of the conditions.

Right Authority

Scholars have interpreted right authority in Just War doctrine as a recognized or legal institution of a state, which is considered as having the right to declare war within its jurisdiction. Depending on the system of government practiced by a given state lawful authority may be a king, head of state, a president or a prime minister. He or she wields political power and has the sole power to declare a war.

Just Cause

This principle explains the reason(s) for going to war. Should a country resort to war because it has the ability and military superiority to win? Must a state fight another country because the latter resists adopting the former's political and economic ideologies? May we describe it as a *just cause* if country *A* attacks country *B* when country *A* feels insecure under the growing influence of country *B*? Causes or reasons for going to war are many so this principle primarily must tell us those that should be included under the Just War theory. In her analysis of various sources of *just cause* from Augustine, Aquinas and conventions like the decrees of

²¹ David Miller (ed.) *The Encyclopedia of Political Thought*, The Blackwell.

Popes and other medieval commentators, Teichman (1986) points out that “The traditional reasons [for going to war] include self-defence, the defence of the homeland, the defence of allies, the bringing about of a return to the *status quo* after theft of goods or expropriation of territory, the punishment of guilty persons²²...and the coercion of wrong-thinking people.”²³ The BBC home page on the ethics of war has several examples of self-defense which may be deemed as reasons for recourse to war – invasion, attack on state religion, economic attack, pre-emptive strike, attack on national honor, and assassination of a prominent national figure of a country. But while an invasion, i.e., the actual aggression of an enemy constitutes a sufficient just cause of war, all the rest are considered as ‘less obvious causes for war’.²⁴ If self-defense is a just cause for recourse to war why isn’t preventive self-defense such as a pre-emptive strike also a just cause? In other words, whereas traditional self-defense in criminal law allows a person to take the life of another when one is threatened by death or bodily harm,²⁵ it appears quite unclear why pre-emptive strikes are cut off from the list of just causes as far as the traditional model of the Just War theory is concerned. This is a question that will be dealt with in chapter four.

Last Resort

²² While ‘warmongers’, generals, and criminals are cited by Teichman as examples of guilty persons she identifies infidels and heretics as wrong-thinking people.

²³ Teichman, J. *Pacifism and the Just War*. (1986) p.55.

²⁴ www.bbc.co.uk/religion/ethics/war/justwarintro.shtml, June 15, 2003

²⁵ Arthur Ripstein discusses the boundaries and requirements of self-defense in criminal law in his *Equality, Responsibility, and the Law*. (Cambridge University Press, 1999) 190-200

As a traditional Just War principle, “last resort” implies that war should be resorted to only after all peaceful means of resolving conflicts have proved unsuccessful. Nowhere has this principle been more rightly applied than in ancient Rome, as we shall discuss later. Among ancient Roman authorities the offender would first be made to seek for peace before considering any other violent option. However, contemporary war experts disagree with this understanding of last resort. Some for instance, think that the use of force is legitimate immediately ‘after deliberations’.²⁶ According to this view, it is the victim state’s deliberation over a given situation that will determine whether resort to war is appropriate.

Right Intention

In just war theory, “right intention” urges that the war is initiated from right or pure motive without any special interest or pretense. Joan D. Tooke accounts for what Aquinas refers to as good intention: “A good intention, one of securing peace, punishing evildoers, and helping the good, is essential for just war”²⁷ The BBC Ethics web site also outlines both good and bad intentions. A war waged from good intentions include: restoration, keeping a just peace, making wrong things right, and defending the innocent. Bad intentions also include: “seeking power, demonstrating the power of a state, grabbing land or goods, or enslaving people, hatred of the

²⁶ Elshstain, J.B. (2003) *Just War Against Terror: The Burden of American Power in a Violent World*. Basic Books.p.65

²⁷ Tooke, Joan D. (1965) *The Just War in Aquinas & Grotius*. S.P.C.K, London. p.23

enemy, genocide, personal or national glory, revenge, and preserving colonial power”,²⁸

Chance of Success

Why should a just war have “success” as one of its criteria? A consequentialist response to this is that war is inherently evil. It claims human life and destroys other precious resources and properties, and therefore, if there is no hope of success then it would be ethically wrong for states to undertake the risk of going to war. Perhaps this explains why independent sovereign states sometimes pool their resources to fight a common enemy whose military strength could not have been defeated by only one state. A more refined interpretation by experts also suggests the need to conceptualize what is success, and to calculate the possibility of achieving the goals of the war beforehand. By this, one may hope to have a reasonable chance of success if one declares war.

Proportionality

When a state identifies a just cause after deliberations over other options for conflict resolution, the right authority of that state under the Just War theory may declare a war with good intention to put things right. But it is not enough unless the means by which it seeks to address the problem is proportional to the harms suffered. This criterion does not differ from the proportionality principle in *jus in bello*.

²⁸ www.bbc.co.uk/religion/ethics/war/justwarintro.shtml, June 15, 2003.

2.3.2: *The Jus In Bello Convention*

The core requirements of *Jus in Bello* are *proportionality* and *discrimination*. To ensure just conduct in war, “proportionality” highlights how the means in war can be matched with its ends. It urges that the degree of force employed in a war must be proportional to the nature of the threat posed. On the other hand, “discrimination” concerns who is to be targeted in times of war. It emphasizes the need to draw a distinction between combatants and noncombatants in warfare. Historically children, the aged or disabled, women, prisoners of war and all unarmed civilians are described as noncombatants.²⁹ According to international conventions some weapons are not permitted to be used in warfare. The Hague Convention of 1907 for instance, forbids the use of poisoned weapons, killing or wounding treacherously, mistreating prisoners of war, declaration of no mercy for opponents, etc.³⁰

Thus, roughly, the reasonable pacifist³¹ will first of all not hasten to resort to war as an approach to deal with conflicts but, when circumstances compel her to fight for justice because of the offender’s unjustified aggression or attack, she is guided by the above principles (the combination of *jus ad bello* and *jus in bello*) in order to fight justly. It should be noted here that the Just War theory is a set of principles, which must be applied together. Violation of one may therefore be seen as violation of the whole doctrine.

²⁹ Elshstain, J.B. (2003) *Just War Against Terror: The Burden of American Power in a Violent World*. Basic Books.p.65

³⁰ www.bbc.co.uk/religion/ethics/war/justwarintro.shtml, June 15, 2003

³¹ Reasonable pacifist is used interchangeably with conditional pacifist.

2.4: The problems with the application of the Just War doctrine

Is it possible to fulfill all the seven requirements in a given war situation? Are some of the principles more important than others? Which of the principles should hold sway if they conflict with others? The difficulties, contradictions and counter-attacks resulting from the application of Just War doctrine to justify the use of force underscore how the principles are jointly insufficient. The conflicting nature of some of the principles renders the just war theory problematic in its application and for that matter, makes the justification of pre-emptive wars difficult as well. As a result, it is often said that a war can be just in theory but not in practice. In what follows we shall point out the dilemmas with some of the principles and examine the complexities involved in an attempt to adopt the Just War theory as a model to justify the use of force including pre-emptive war. The examination of these puzzles goes a long way towards reaffirming the position of the just war pacifists.

Apparently the existence of two traditional conventions of Just War i.e. *just ad bellum* and *jus in bello* makes it possible for a just war to begin but to be fought unjustly. Thus given a just cause, a competent and recognized authority of a state that has military capacity and a reasonable chance of success may declare a war with good intention (e.g. to restore peace) after exploring several unsuccessful non-violent attempts to restore peace. But if in any situation his soldiers fail to comply with the code of ethics in war and end up with serious human rights violations the war can hardly be a just one. There are records of such misconduct and unreasonable brutalities by some military men in intervention wars. For example,

In Somalia soldiers in the intervention force tortured, tormented and murdered innocent children and civilians. A child in Somalia is reported to have been put in a box, in the blazing sun after he was caught stealing food from the people on Mission and was retrieved dead. The report says photographs have been published showing a soldier applying electrodes to various parts of a naked man. In the worst of all, one of the soldiers (whose nationality I will not disclose) was accused of forcing a Somali youth to take in pork and worms, drink salt water and then eat his own vomit. (Remember most Somalis are Muslims who do not eat pork)³²

Intervention to protect the life of innocent civilians is a just cause, but the above inhuman acts and misconduct are inconsistent with just war. A similar situation whereby unjust means were employed in war with a just cause occurred during World War II. America has been criticized for its use of atomic bombs which violated the *jus in bello* convention because it failed to observe the noncombatant immunity principle³³. The recent brutalities and sexual misconduct against the prisoners of war in Iraq by some American soldiers is also a case in point. These scenarios raise the question of when a war could be described as just or unjust- should a war be considered as just before it begins or during the conflict or after its end?

“Right authority” has generally been agreed by both the traditional and contemporary architects of the Just War theory as one of the important pre-requisite conditions for just war. According to this principle, a person who wields political power but who does not have the right to do so isn’t a legitimate authority to initiate war. Hence leaders who impose themselves in power through the gun, especially, in some developing countries, and all revolutionaries, are typical examples of illegitimate authorities to declare war. According to Teichman if a war is unjust

³² Daniel Oduro Sem “A Philosophical Review of the European Union’s Principles for Conflict Prevention in Africa” (B.A. Long Essay, Philosophy Department, University of Ghana 1999) 47. For the original information see the popular Magazine, New Africa, November 1997 pp. 18-19.

³³ Elshstain, J.B. *Just War Against Terror*. (Basic Books, New York, 2003) 62.

when it is waged by *usurpers* then wars initiated by the heirs of the usurpers are equally unjust.³⁴ Considering the rampant occurrence of violent revolutions in Europe in the 1980s, Teichman doubts that there could really be just wars as far as the right authority criterion is concerned. Therefore, she writes: “Either there are very few proper authorities and so very few just wars, or else proper authority is compatible with usurpation and revolution”³⁵. By so doing Teichman reduces the meaning of proper authority to *public international recognition*. By implication, contemporary state officials who occupy political seats as usurpers can be said to be potentially illegitimate rulers unless they have international recognition. It follows that their interpretation of the Just War doctrine to invoke a pre-emptive strike cannot also be justified if it does not have international approval.

The interpretation of *last resort* also poses a problem due to a refined definition offered by present-day Just War experts. While the term originally implied a resort to force in the absence of alternative solutions to conflict, contemporary state officials choose to go for war based on their subjective understanding of the term. Now to determine whether deployment of military force is the last resort depends on factors such as the degree of the aggression one seeks to address, availability of other options, and the level of patience a state may entertain with her antagonists. Last resort still remains a model for traditional Just War theorists who understood and applied the term in an undiluted manner. *Last resort* appears a relative term since it does not seem to make the use of force the last option, indeed, to everyone at all times and in all circumstances. In the

³⁴ Teichman, J. *Pacifism and the Just War*, (1986) p.55

³⁵ *Ibid.*

following passage Paul Christopher echoes Arthur Nussbaum (1954) and describes how the Just War was practiced in ancient Rome. And I think the passage illuminates what “last resort” really meant to ancient Roman generals in their application of the doctrine.

Rome had a detailed procedure whereby whenever she had a grievance against another city, ambassadors under the direction of a distinguished statesman would go to the offering city and demand reparations. The ambassadors then returned to Rome and waited thirty-three days for a response. If they receive none, the same representative and his party would again travel to the nation and threaten war. If the offending nation still refused, the designated statesman would inform the Roman senate of the failure to achieve reparations, and the Senate could decide to resort to force to carry out its claims. Once the Senate voted for war, the ambassadors were again sent to the hostile nation to announce the declaration of war and symbolically throw a javelin on enemy soil.³⁶

Oftentimes, the way in which modern states employ the use of force in warfare is quite different from this approach. Manufacturing of dangerous weapons and high levels of technology employed in modern warfare are offered as some of the reasons for the use of force by contemporary just war theorists. Some war experts and other state authorities argue that it is when one is not affected by a calamity that she will prefer non-violence to the use of force. Jean B. Elshtain sounds this tone in her evaluation of America’s response to September 11: “It is difficult for us to imagine anarchy and dread unless we have been victims of random violence of some kind. Otherwise, it is easy for us to lose sense of urgency”.³⁷ As a sharp contrast to ancient Rome’s understanding and practice of last resort Elshtain provides the American interpretation of last resort:

Properly understood, last resort is a resort to armed force taken after deliberation rather than as an immediate reaction. The criterion of last resort does not compel a government to try everything else in actual fact but rather to explore other options before concluding that none seems appropriate or viable in light

³⁶ Christopher, P. *Ethics of War and Peace* (Prentice Hall, Upper Saddle River, New Jersey 1999) 13.

³⁷ Elshtain, B.J. *Just War Against Terror*. (Basic Books 2003) 49.

of the nature of the threat.³⁸

There is no doubt that this exemplifies a clear description of last resort in the light of technologies and sophisticated weapons used in wars among modern states. However, it is important to note here that the deliberation Elshtain mentions does not take the antagonist to a dialogue as the ancient Rome generals understood the term. Last resort then remains the unilateral choice of those who have suffered an injury or harm.

What we refer to as “reasonable chance of success” in Just War doctrine also has its own dilemmas and complexities especially if we interpret success as winning the battle. It presupposes that if we have a just cause and good intention and war remains the last resort we should not go to war if there is no hope of success. It practically (not logically) follows that only strong nations are in a position to wage war against their weaker opponents. Meanwhile, as has been pointed out by war experts, “it is sometimes morally necessary to fight against a much larger force, either for the sake of national self-esteem or to protect a threatened minority”³⁹ And when weak countries are unable to employ ethical means to achieve their aims they are tempted to embark on any means to protect themselves, though that might be morally wrong.

With the above limitations associated with Just War theory, it makes sense to reconsider pacifism not just for its opposition to war and violence but to

³⁸ *Ibid* p. 61

³⁹ www.bbc.co.uk/religion/ethics/war/justwarintro.shtml, June 15, 2003

extrapolate some underlying moral principles which one can develop from it. Pacifists are of various kinds; some have ethical and moral reasons for opposing violence and war while some set out conditions to be met before endorsing war. Traditionally, both Christians and non-Christians have resisted the use of force. However, by the insightful works of theologians like Ambrose, Aquinas, and Augustine pacifism has gained new impetus in its resistance to the use of force. As a result, some pacifists have now become aware of the circumstances in which force may be legitimate such that it is even difficult to draw a clear distinction between a traditional Just War sympathizer and some groups of pacifists. Some pacifists have realized the need to accept a considerable amount of force on some occasions to ensure peace and justice. For instance, the argument by Just War Pacifists demonstrably runs parallel with the traditional Just War theory. While the traditional Just War theorist is genuinely committed to ensuring peace and justice by sincerely observing the rules of war, the Just War Pacifist is also worried about the changing nature of our traditional notion of Just War. Thus while the former is concerned with fighting to ensure peace and justice the latter points out the acts and conduct that do not make war a just one.

The seeming conflict between pacifism and Just War theory occurs for two reasons. First, the comparison of pacifism with just war erroneously focuses on unconditional pacifism. Here because unconditional pacifism absolutely rejects all kinds of use of force there is always a conflict when analyzed in contrast with the Just War theory. Second, apparent conflict may also occur when we compare Just War Pacifism with contemporary Just War theory because there seems to be a

common goal pursued by both the traditional Just War theorist and Just War Pacifist which cannot be identified with contemporary Just War theorists due to the latter's changing conception about the conditions of just war. Unlike contemporary Just War theory, both traditional Just War theory and Just War Pacifism objectively explore non-violent alternatives to conflict resolution before considering resort to force.

In light of the high percentage rate of civilian casualties in modern day warfare, the Just War Pacifist's argument should not be ignored. According to the Just War theory, both *Jus ad bellum* and *Jus in bello* conventions have to be satisfied for a war to be just. Just War Pacifism rejects contemporary Just War theory on the grounds that modern day warfare does not satisfy the requirements of justice. This denial should not be explained as a total dismissal of lethal force in warfare. It may also be explained as an admission of violence based on certain specified conditions. That is if modern states meet the required conditions of Just War theory the Just War Pacifist theorist will also endorse war. This does not seem to make Just War theory any better than some versions of pacifism. Both appear to be qualified for considering the situation under which the use of force may be legitimate. However, in waging war against terrorism contemporary Just War defenders have utterly rejected pacifism due to their intuitive idea of unconditional pacifism. It is therefore important to critically examine the grounds on which the advocates of the "war on terror" justify pre-emptive use of force. This is what we

will be considering in chapters three and four from the Just War Pacifist perspective.

CHAPTER THREE: CRITICAL EVALUATION OF THE CASE FOR PRE-EMPTIVE STRIKES AGAINST TERRORISM

3:0: INTRODUCTION:

In confronting terrorism, state authorities, ethicists and war experts have attempted an explanation for rejecting dialogue and for adopting the use of force. Some of the reasons they put forward seem to suggest that the “war on terror” is a just war. To examine this, I do not directly apply the Just War theory to assess the reasons even though its principles are fundamental to my discussion. How should we respond to terrorism and why? Some have proposed military force as being a necessity to prevent and pre-empt terrorism.⁴⁰ Others have argued that terrorists need to be brought to justice under a proper institutional court.⁴¹ Many people also think that the killer should be killed and the terrorist terrorized—“an eye for an eye”, and “a tooth for a tooth”, nothing more, nothing less. In this chapter, I assess the reasons given and react to the “an eye for an eye” response. I conclude that responding to terror is a just cause, but it does not necessarily justify a Just War.

3.1: THE CRIME OF TERRORISM

In contemporary politics, terrorism is sometimes described as a war strategy, which involves a deliberate killing of civilian populations in order to achieve ideological goals. It has been asserted that terrorism has already begun once

⁴⁰ This is evident in the speech given by President George W. Bush after September 11. See *Current History: A Journal of Contemporary World Affairs*. May 2003, p. 222

⁴¹ See an article by Frank K. Kelly and Robert B. Laney, <http://www.wagingpeace.org/articles/01.09/010920kellylaneyproicc.htm>, June 8th 2003

individuals, a group of people, or a state decides to use violence in self-defense while avoiding direct confrontation of the enemy's military force.⁴² We might not be in a position to enumerate all the acts of terrorism but they clearly include the indiscriminate killing of mass populations, humiliation and terror, destruction of property, the environment, and regional political order. Understood in these terms, no respectable moral theory in philosophy will defend such terrorist atrocities. Neither do I think any laws of war will legitimize these acts of terror.

From its inception, perpetrators of terrorism have always given reasons for their acts. For instance, those who oppose capitalist ideology usually mention social, economic and political subjugation by the world's great powers as some of the reasons they strike at their enemies. Among our contemporaries, some have often cited the protection of human rights and self-determination to legitimize terrorist activities, thus making it legally and politically appealing. Nonetheless, terrorism intentionally designed to kill civilian populations, including little children and innocent adults, fails to be a morally right approach to conflict resolution. It does not satisfy the non-combatant criterion of the Geneva War Convention since perpetrators intimidate and kill indiscriminately. From an ethical point of view, it can be said that terrorism identifies a problem but it lacks the moral justification for its strategy for tackling the problem. In that sense, terrorism tends to connote the very idea of "the ends justify any means". This I think is morally wrong.

⁴² Michael Walzer, *Just and Unjust Wars* 3rd Ed. (New York: Basic books, 2000)

3.2: REASONS FOR THE WAR ON TERROR

This is not an attempt to exhaust every reason for the war on terrorism. I discuss only the immediate ones that have provoked the heated debate on justification for pre-emptive war against terrorism. The challenge is whether modern democratic states can refrain from confronting terrorism with military strikes and consider other alternatives. Our understanding of the problem of terrorism determines the rational response that any reasonable person will propose if the aim is to avoid future occurrence. The concept of punishment immediately comes to mind in our response to terrorism for the purposes of justice and deterrence. Why and how the wrongdoer should suffer is one of the issues that will be raised in the last chapter. What is rather pertinent now is our reaction to potential or would-be terrorists and those who are suspected of having cooperated with terrorist groups. As far as Islamic fundamentalist groups are concerned, those who commit atrocities that can be directly dealt with according to the law mostly end their lives through suicide bombing. For that reason, policies of direct vengeance and retaliation in our reaction to terrorism should carefully be weighed under some moral principles, which can restrain modern states from acting under the influence of anger and revenge.

Some of the reasons and theories people give to support military force as a response to terrorism may properly be based on the general principles of the ethics of war but they seem to contravene international law and some fundamental moral principles. International law and treaties permit states to defend themselves against threats by an enemy, but they have little to say about pre-emptive and anticipatory

wars. That is to say, it is morally and legally justified for a state to defend itself from terrorism. However, states must do so according to the principles of such conventions. Consider what President George W. Bush offers to justify the “war on terrorism” during his address to the U.S. Military Academy in the aftermath of September 11:

When the spread of chemical and biological and nuclear weapons, along with ballistic missile technology...when that occurs, even weak states and small groups could attain a catastrophic power to strike great nations. Our enemies have declared this very intention, and have been caught seeking these terrible weapons. They want the capability to blackmail us, or to harm us, or to harm our friends...and we will oppose them with all our power...If we wait for threats to fully materialize, we will have waited too long.⁴³

These are the President’s reasons for launching pre-emptive strikes against terrorism. First, we could see multiple reasons for pre-emption—the urgency to prevent terrorists from getting access to weapons of mass destruction, the priority of self-defense and the protection of the state’s allies. Second, one could trace another reason which does not come out plainly but seems to influence the idea that military force is the best option for confronting terrorism: the desire to dispense instant justice. In the world of global terror, no responsible government will overlook the significance of national peace and security. Indeed self-preservation is so crucial that it has led many states into armed conflicts. Though philosophers are not prophets, it would not be an exaggeration to say that Jenny Teichman correctly identified human beings’ unwavering craving for retribution when she rightly pointed out many years ago that “Self-defence is the rationale of the two great military alliances, NATO and the Warsaw Pact; return of stolen land was the reason

⁴³ *Current History: A Journal of Contemporary World Affairs*. May 2003, p. 222.

(on both sides) for the Falklands War; the desire to punish terrorists might well spark off at least a small war one day.”⁴⁴ The accuracy of Teichman’s prediction is clearly evident in current persistent efforts in the ongoing war on terror. The degree of violence and the rate of casualty and death in the invasion of Iraq alone is enough to call the war against terror a greater war (not a small war).

Third, the frequent flow of chemical, biological, and nuclear weapons, as well as the intention to prevent weak states from attacking great nations provides another reason for the war on terror. Finally, one can deduce from the President’s speech that it is the appropriate time to wage pre-emptive strikes when great nations begin to experience fear about the growing influence of weak states. Attempts to discourage the spread of nuclear, biological and chemical weapons are relevant if modern states can succeed in building peace and security measures for conflict prevention. This is one of the main objectives of the international community in its peace-building endeavors. And it has been the concern of most world organizations, such as the European Union, in their efforts to prevent violent conflicts on the European continent and other parts of the world. So getting involved in policies against weapon proliferation is a just cause though not sufficient for a just war. Moreover, discouraging the proliferation of these dangerous weapons for the sake of world peace and security for all humankind is one thing and preventing weak states from acquiring them is another. While the former has a more global concern and is less myopic, some moral objections can be raised against the latter.

⁴⁴ Teichman, J. *Pacifism and the Just war: A study in Applied Philosophy*. . (Basil Blackwell Ltd.) 1986. p.55

Why is it wrong for weak states to acquire nuclear weapons if great nations like Russia, United States, China, India and Pakistan continue to possess them? Is it the weapon per se which constitutes a threat to human life or the status and size of the state in possession of the weapon that determines world security? Undoubtedly, records indicate that Iraq has threatened its neighbors with dangerous weapons such as poison gas and biological weapons, and indeed, Saddam Hussein has even used such weapons on soldiers and some civilian populations. That is not enough grounds for preventing small states from pursuing weapons of mass destruction programs since great nations are also guilty of the same activity. The United States for instance, has been condemned for its use of the atomic bomb during World War II. Pakistan and India have recently been threatening each other with the use of nuclear weapons. An objection that can be raised here is that if great nations possess Weapons of Mass Destruction (WMD), and if some of these great nations have ever used their dangerous weapons in the history of warfare, then we cannot be convinced that the small state's possession of WMD or their programs for WMD is a good reason for resort to pre-emptive war on terrorism. Neither can we assume that the unrelenting war on terror by powerful states to disarm small states may necessarily ensure peace.

On ethical grounds, nothing seems to make it morally permissible for rich nations to wage war against small states if they are all guilty of violating the fundamental principles of international conventions in warfare. Both small states and great nations violate international laws on self-defense. Both end up maiming innocent civilians even though that appears the main target of the terrorist. Both are

guilty of inflicting bodily human pain and harm. Both the terrorist and the self-defendant are driven by what Trudy Govier refers to as the “policy of rough battlefield justice”⁴⁵, the idea that the offender must die because she has denied another’s right to life. Subscription to this idea caricatures political culture of modern democratic states which perceives terrorism as barbaric and inhuman. Adopting such a cynical approach more or less brings the civilized state to the same level as the terrorist whose approach to human rights defense and self-determination seems to reject ethical reflection on war strategy as irrelevant. Similar features may be ascribed to both the terrorist and the civilized democratic state if the latter loses its sense of fair justice principles in democratic culture.

It may be said that they both have been confronted by political challenges, allowing emotions, fear, anger, and self-interest to influence their actions. And this is likely to prevent any civilized state from playing a constructive role in world peace and security. Thus, if small states pursue weapons of mass destruction in order to threaten, dominate, and to attack, the strong nations are equally vulnerable to the same temptation. President George W. Bush’s response to September 11 made this clear when he passionately declared that the U.S. would use any kind of weapons on its enemies. In fact, if we think that the threats of terrorism can be overcome by preventing small states from acquiring weapons of mass destruction then we would have a long way to go. This is because we are overlooking the ultimate aim of terrorism; and I am afraid we might not succeed in a self-defense war if we lose sight of what the terrorist is up to.

⁴⁵ Govier, T. *A Delicate Balance: What Philosophy Can Tell Us About Terrorism*.(Westview Press. USA) 2002. p.71

Certain key concepts and some basic significant questions will remain unanswered if our attention is focused only on weapons of mass destruction in getting rid of terrorism. For instance, how do we overcome hatred? Can we be sure of our security after the war on terror? It is as if destroying the enemy's program of weapons of mass destruction necessarily restores the defendant states' broken international relations with the rest of the world. It is not what the terrorists will *use* and how the terrorists will strike that matters; for we should be much more concerned about why the terrorists strike and who the terrorists have in mind as their target. We may destroy the entire enemy's weapons of mass destruction (if they really have any) and even strip them completely of anything similar to that without being able to uproot terrorism. For example, was it not just ordinary knives that the attackers of September 11 used to hijack the planes needed to commit their atrocities? This implies that our safety doesn't depend on what the enemies possess but rather what our enemies think about us.

For this reason, we need to identify the peculiar nature of contemporary terrorism and what the perpetrators are up to. Michael Walzer has observed that "In war, terrorism is a way of avoiding engagement with the enemy army".⁴⁶ Thus the strategy of terrorists is to avoid direct confrontation with their opponents, perhaps due to the strong military power of their enemies. One may therefore interpret Walzer's definition of terrorism as another kind of warfare. For instance, in an article "*States, Terrorists, and the Clash of Civilizations*", Jack A. Goldstone describes terrorism as a political organization rather than a criminal act.⁴⁷ From a

⁴⁶ Walzer, M. *Just And Unjust Wars*. Third Edition. (Basic Books) 2000 p.197.

⁴⁷ See *Understanding September 11*, edited by Craig Calhoun, Paul Price, and Ashley Timmer

strategic point of view, terrorism in one sense may be described as warfare since it mainly employs suicide bombing to hit its targets. In this sense, the reasonable pacifist may find it difficult to discourage victim states from using force in return. But terrorism can be viewed from a different angle too— it is not a desire to conquer; not direct craving for domination per se; or a yearning for superior power to rule the world. It is more or less an unethical means of expressing dissatisfaction with Western influence and military attacks on the Middle Easterners' beliefs and aspirations within their sub-region. More specifically, terrorists are displeased with military strikes and violence perpetrated by the U.S. — a perennial conflict having the potential to affect future generations if nothing is done about its international relations with the rest of the Arab world.

Indeed, terrorists are less powerful in terms of military capacities if they were to confront their opponents directly. Luiz Carlos Bresser-Pereira hits the nail on the head in pointing out that “The states where fundamentalism thrives and terrorism is born are poor and weak states where modernization has been frustrated”⁴⁸ For this reason, some have argued that the terrorists are cowards. But I think it is high time to discard the idea of ascribing cowardice to terrorism since cowardice is not consistent with the very acts of suicide bombing associated with contemporary terrorism. Neither does it make any sense to launch systematic military strikes on people we designate as cowards. It is our responsibility to

New York: The New Press, for the Social Science Research Council (2002)

⁴⁸ Luiz Carlos Bresser-Pereira “After Balance-of-Powers Diplomacy, Globalization’s Politics” in Eric Hershberg and Kevin W. Moore, ed., *Critical Views of September 11: Analyses From Around the World* (Social Science Research Council, New York, 2002) 118.

objectively evaluate the antecedents to terrorism; otherwise a mere suspicion of our enemy's WMD will not be enough reason to justify the new pre-emptive war on terror.

Nevertheless, there are still other reasons people give to justify military strikes and pre-emptive wars against terrorism. Jean B. Elshtain provides one such reason. She writes:

What is one to do with the likes of bin Laden and Al Qaeda? They present no accountable, organized entity to engage—no sovereign state. They are not parties to any structure of diplomacy and thus cannot be negotiated with; in any event, because what they seek is our destruction, there is nothing to negotiate about.⁴⁹

Elshtain's observation also clearly portrays the *true* nature of contemporary terrorism. It is very important because it highlights the difficulties involved in adopting non-violent and diplomatic approaches to the phenomenon. And of course, getting isolated terrorist groups and organizations scattered around the globe to the conference table for peace talks appears unrealistic. Yet, through a diligent search, an intelligence source has been able to uncover the network of terrorism engineered by the Islamic extremists and militants who are believed to be responsible for the September 11 attacks.⁵⁰ This is the proof that pre-emptive strikes against terrorism

⁴⁹ Elshtain, J. B. *Just War Against Terror: The Burden of American Power in a Violent World*. (Basic books, New York.) 2003. p.67.

⁵⁰ Gordon Corera reports that "At the head of Al-Qaida, Osama bin Laden has been more of a symbol around which to draw Muslim support than some kind of all-powerful terrorist CEO who directs every operation...Many of the activities carried out under the banner of Al-Qaida are executed with limited support from the centre, and around bin Laden are a small core of experienced terrorists, any one of whom could step into his shoes, even if they lack the dark charisma and global reputation that has built up. ..Rather than a bureaucratic hierarchical organization, it is highly fluid network, flexible enough to work in different cultures and exploit globalization by operating in the gaps between national authorities in policing, finance and intelligence. Despite its image as a terrorist network, Al-Qaida itself may only number a few thousand members, instead acting literally

wouldn't be a necessity since we have the logistics and resources - both human and material - that can be utilized to explore other alternatives for resolving the problem of terrorism. How consistent is it to use force on those we claim one cannot meet for negotiation due to their non-organized and non-entity nature? An intelligence source grants that Islamic extremist terrorist networks extend far beyond the Middle East region. It is said that the presence of Islamic extremist terrorist movements can now be felt in Europe, Africa, Asia, and North America including the United States.⁵¹ Thus the non-organized nature of the network does not seem to suggest military force as the last resort in this scenario. Let's assume that the terrorists are hiding in caves thus making it difficult to engage them in negotiation and peace talks. That alone should not rule the process of dialogue since the terrorists do exist among their antagonists. The counter-terror response in international politics especially in the Israeli-Palestinian conflict reveals that terrorists feel, they observe, they hear, they communicate, and they sometimes (if not constantly) express their worries and anxieties through the media and in other literary works. So the view that pre-emptive strikes against terrorism are only the option is debatable. If it is the case that one cannot meet his enemy for peaceful negotiation then I wonder how resorting to military force against his supporters can be successful. On the other hand, if we assume that the use of force against the sympathizers and supporters of terrorism will minimize the nefarious acts of terrorism, then I don't think we will

as a base or clearing house for militants, providing funding, training and members for other groups around the world. Al-Qaida activities have been uncovered everywhere from New Zealand to Thailand, Ecuador to Eritrea. Up to 30,000 trainees have been passed through its camps and been sent to more than 50 countries. (The BBC Reports on America, Its Allies And Enemies, And the Counterattack on Terrorism. Ed .Jenny Baxter and Malcom Downing.(The Overlook Press, Woodstock & New York, 2002) 71-74

⁵¹ For further information on the Networks of Terrorism see also Govier, Trudy. *A Delicate Balance: What Philosophy Can Tell About Terrorism*. (Westview Press. USA. 2002) p. 50.

make any moral progress by refusing to negotiate peacefully with the supporters, suspected, would-be, and potential terrorists who are believed to be aspiring to a common goal with the actual terrorists. This, I think, is also not any strong reason for pre-emptive strikes against terrorism because the ability to come out with *facts* about the terrorist network alone indicates the possibility of other options that can be explored before resorting to the use of force.

Anticipatory war on terror against the Islamic fundamentalist groups is a self-defense war placing the United States of America and the Arab world in constant struggle. But a civilized nation built on democratic principles of freedom, liberty, justice, and rule of law should distinguish itself by the way it proceeds with conflict resolution in contrast with the way the so-called barbaric states handle their socio-economic and political struggles. The reality of the matter is that once we identify terrorists as our ‘destroyers’ we are tempted to be driven by emotions in responding to the problem. Human beings have the tendency to kick back when attacked by an enemy. Sometimes the impulse of revenge strongly moves us to consider first ‘an eye for an eye’ approach rather than to think of any other concept of justice based on fair moral principles. In such situations dialogue is essential if we can be morally consistent. But from the way some scholars present their resentment, it seems the advocates of “rough battlefield justice” are not ready for negotiation and reconciliation. For instance, reflecting on the nefarious acts of September 11, Elshtain passionately points out:

Other events may have crowded out memories of that horrible day in 2001, and the waters may have started to close over. Some of us may be forgetting what it was really like. We shouldn't. It was as bad as we remember it. Our emotions at the time were not extreme: They were appropriate to the

horror. Anger remains an appropriate feeling.⁵²

The September 11 attack was bad, no doubt about that. And every reasonable moral thinker has acknowledged that. However, since the harm has already been caused it may be said that one cannot succeed in avoiding a similar occurrence as long as anger continues to color our response to the attacks. The influence of anger explains why the victim states seem to prefer policies of retaliatory terror against the perpetrators rather than a fair legal and moral response to the problem of terrorism. In conflicts, anger precedes vengeance while vengeance usually fails to draw a line between criminal justice and crime. It is only when fundamental moral principles are applied in our response to wrongdoing that any significant distinction can be drawn between a particular wrong act and the response of justice to the act itself. Without that, our attitude toward perpetrators of terrorism may blur our concept of criminal justice. This became evident in an Internet poll that was conducted to seek public opinion about what should be done to Osama bin Laden when captured. According to the report, 70% out of 200,000 responses proposed that he should right away be executed as against those who advocated a legal trial.⁵³ Trudy Govier argues, and I agree, that the criminal offender who kills seems to have given up his right to life but he must not be denied his right to a fair trial if we value judgment based on rational legal justification.

⁵²Elshtain, J.B. *Just War Against Terror*.(Basic Books, New York, 2003) p.7.

⁵³ See Govier, T. *A Delicate Balance: What Philosophy Can Tell Us About Terrorism*.(Westview Press. USA) 2002. p.74.

The reasons people offer for anticipatory military strikes against terror seem to be influenced by the spirit of revenge and retaliation. They lack moral and legal backing when examined from a neutral point of view. The argument for military pre-emption against terrorism does not draw any distinction between *actual* terrorists and *potential* terrorists.⁵⁴ A fundamental legal objection can be raised here. Isn't the accused supposed to be considered innocent prior to her conviction? Legal experts agree that under common law, labeling a person a potential or suspected killer does not necessarily warrant punishment if one has not been convicted. In the same vein, if attackers kill themselves in suicide bombing then I think it is ethically and legally questionable to wage pre-emptive war against suspected sponsors and potential terrorists who have not yet been convicted of such crimes. Pre-emptive use of force which does not properly base its justification on international law and moral principles is unethical, illegal and dangerous for future posterity. Such a response will be unethical because there will be no clear difference between crime and justice. Terrorism, as already discussed in this paper, is *prima facie* wrong because it seems to support the "end justifies any means" slogan. A quite distinct approach is required as an antidote to terrorism; otherwise there would not be any significant difference between the political cultures of the states in conflict. Terror and counter-terror will reduce both the democratic and the barbaric states to the same moral status.

⁵⁴ While a person convicted of the crime of terrorism may be called an actual terrorist, potential terrorists must be identified by strong supporting evidence.

Writing under the title '*The Mind of the Terrorist*' Fergal Keane, a BBC reporter, presents a case where an Islamic fundamentalist parent encourages his young child to learn to commit crime, violence, and retaliation against the U.S. Keane echoes William Butler Yeast's observation at a stadium in Quetta, Pakistan and writes:

I was surrounded by young men waving posters of Osama bin Laden and screaming 'death to America'. I approached a man holding a boy-I guessed his age to be about twelve-and asked if he agreed with the message. 'Most certainly I do and I am teaching him that it is his responsibility to Follow the road of Jihad.' Didn't he worry about teaching a child to hate? 'Well, yes of course it is wrong to hate, but in this case it is right.'⁵⁵

In contrast to Kant's categorical imperative, the man believes that certain acts are wrong depending on the circumstances under which the acts are committed. Allah commands Muslims to love so hatred is sinful in Islamic religion. But the man's own belief system influenced by anger and desire for retaliation and vengeance justifies the hatred he has for America. In addition, he sees the need to indoctrinate his son so that the conflict and struggle continues into the future. What difference would it make if America also has a similar view about its enemies? Our familiar old adage will judge it as 'two wrongs never make a right'. Neither may we accept excuses and reasons as enough grounds to justify our self-defense struggles as long as they are based on personal idiosyncrasies.

But reasons become subtle when supported by seemingly rational arguments. This takes me to the examination of the concept of the *reasonableness test* in philosophy and politics, which can clearly be distinguished from the familiar

⁵⁵ Baxter, J. and Downing, M. ed. *The BBC Reports on America, Its Allies and Enemies, and the Counterattack on Terrorism*. (The overlook Press, 2002) Woodstock and New York. p 54.

rational person test when dealing with issues of liberty and security. After all the conflict between the great powerful states and the weaker ones may be described as a contention over liberty and security. The *reasonableness test* is a concept that has been applied in legal cases to try criminals under common laws and tort laws. It is applied to deal with controversial legal cases associated with crime that involves excuse, luck, consent, mistakes, and self-defense. But I think the same concept of *reasonableness test* can be applied in dealing with conflicts between sovereign states. Both liberty and security are significant principles in legal and political philosophy which societies must regulate if its members are to live in peace and harmony. The relevance of liberty as a political concept is built on the assumption that self-determination and personal autonomy are necessary for human beings to live freely and pursue their own interests so as to develop their potential. On the other hand, people also need to be protected against unnecessary harm and pain inflicted by others as they maximize their rights and liberty in societies. We may all have reasons and excuses for performing an action or behaving in a certain manner. But the reasonableness concept can help us to determine the moral rightness or wrongness of our actions.

Arthur Ripstein employs the reasonableness test in law and politics to discuss how the borders of one people's liberty and another's security can be regulated.⁵⁶ When states interact with other states, there cannot be mutual cooperation and solidarity if they embrace the extremes of liberty and security. In other words, there can be no fair terms of interaction if there is only the protection

⁵⁶ Ripstein, A. *Equality, Responsibility, And The Law; Cambridge Studies in Philosophy And Law* (Cambridge University Press, 1999) Chapters. 1&9

of liberty without people's security; neither can there be freedom and justice when security alone is protected without granting a people their rights to act freely and ensure their political freedom. Therefore, liberty and security must be balanced in fair terms as states interact with others. How do we strike the balance between one state's security and another's liberty? In explaining how this can be achieved Ripstein mentions two ways but he fully discusses only one.⁵⁷ The first is what he describes as a sort of utilitarian version of moral and political thought which maintains that the limits of liberty and security be set in such a way that one person's liberty will be curtailed by another's security. The second, which he develops, introduces an idea of *a representative person* who is supposed to take pleasure in both liberty and security. Thus a representative person may be explained as the one who applies the reasonableness test in complex situations to avoid conflict of interest. If all states have interest in liberty and security then it is by reaching equilibrium of the extreme ends of liberty and security within the representative person that the idea of the principles of equality for all comes to play.

The terrorist who strikes does so in order to defend her liberty, freedom and self-determination. The victim state also needs to be protected and secured from such atrocities. How can a state secure its members from an attack without denying another's inalienable rights? The concept of the reasonable person in common-law presents the notion of a fair balance between liberty and security. The reasonable person when confronted by this challenge will not act out of self-interest; he will not behave under pretence, and will not allow himself to be deluded by the influence of the enemy's wrongdoing. As portrayed by Arthur Ripstein, the

⁵⁷ *Ibid.* p.6.

reasonable person rather takes “precautions against accidentally injuring others, making only allowable mistakes, and maintaining an appropriate level of self-control when provoked.”⁵⁸ Thus the agent responding to social and political challenges under the reasonableness test analyses issues from an objective point of view. It is how state authorities and officials respond to crises like contemporary terrorism that determines their sense of social and political maturity. If we place ourselves in the shoes of the terrorist, how would we wish to be treated? It is easy to propose a “rough battlefield” policy and colorfully present it by rational arguments. But such arguments can hardly be defended under the concept of the reasonable person. Ripstein further echoes John Rawls and distinguishes the reasonable person from the rational person. While he identifies the rational person with someone who acts effectively to promote her ends, the reasonable person rather aims at fair and equal terms of social cooperation as she interacts with others. The moral agent acting under the reasonableness test in legal and political philosophy will not accept any reason for self-defense wars against terrorism without carefully striking the balance between liberty of the weak states and the security of the strong states.

In sum, even though the seeming non-organized nature of terrorist groups and the weapons of mass destruction program pursued by weak states are important reasons, I think they are not conclusive reasons for military use of force against terrorism. It may be argued that since prudential rationality is an efficiency notion of achieving an end, the methods of the terrorists may well be rational. And so one may expect the terrorists to be reasonable. This carries commitment to the system of law and makes dialogue very essential in dealing with terrorism.

⁵⁸ Ibid. p.7.

Reasons for the justification of extreme use of violence in self-defense may fail to draw any significant difference between criminal justice, which great nations claim to be administering and the criminal acts of terrorism. The justification of military strikes against terrorism should have to be built only on neutral moral principles and must have a strong legal backing. Reasons (even if they give rise to just cause) are not sufficient justification for just war. So a strong defense for the justification of pre-emption against terror needs to be found outside the enumerated reasons. This leads us to the discussion of the relationship between international law, self-defense and pre-emptive strikes.

**CHAPTER FOUR: INTERNATIONAL LAW ON SELF-DEFENSE AND
PRE-EMPTIVE STRIKES**

“We can never introduce a modifying principle into the philosophy of war without committing an absurdity”
...Karl von Clausewitz⁵⁹

4.0: Introduction

Because the justification of war is an international issue it may not be sufficient to assess the legitimacy of pre-emptive strikes against terrorism based on the views of individuals and groups like the pacifists, the Just War theorists or the rational self-interest advocates. It is important to consider international law, customs and treaties regulating self-defense and pre-emptive strikes which are considered binding on all states in their interaction with other states. This chapter reviews an argument that has recently been put forward as legal support for the “war on terror”. I acknowledge the relevance of the argument but I point out that going beyond the limits of international law (UN Charter) to justify pre-emptive strikes against terrorism introduces two forms of justification—justification by reason and justification by law.⁶⁰ I think that because anticipatory war is a form of self-defense (though in its extremes), international law on self-defense against aggression should also regulate pre-emptive strikes against terrorism.

⁵⁹ Cited by Michael Walzer in page 23 of his *Just And Unjust Wars* (2000) Third Edition.

⁶⁰ A distinction between the two justifications is significant here. I use *justification by reason* to refer to any of the reasons by a victim state that do not strongly justify the use of force in international disputes. This may include the state’s own laws conflicting with international law. On the other hand, *Justification by law* refers to international law— the generally accepted treaties and customs for international peace and justice.

4.1: The War of Pre-emption

That one cannot alter the logic of war without contradicting oneself is an important observation by Clausewitz. The contradiction is evident in Khilafah's ancient political oxymoron, which goes like this: "Can a person hit back before the first punch is thrown?"⁶¹ It appears theoretically impossible, but the world has experienced a similar situation in the history of war. Israel launched pre-emptive⁶² war against Egypt when Egypt threatened to strike the former in 1967. Again, what is currently going on in Iraq – the U.S. "war on terror" which has led a coalition force in Iraq is a similar encounter. Unless one grants that a threat is a sort of "first punch" pre-emptive strikes may be said to be acts which contradict the philosophy of war since it permits the would-be enemy to be punished or attacked before he strikes.

Such an exercise raises some questions. Are there any justifications for such wars? Does international law on self-defense sanction anticipatory war and pre-emptive strikes? How are they regulated in international politics? What provision does international law make for self-defense? How should a state decide when its national laws conflict with international law? In what follows, we examine how the above questions can be answered.

Since a pre-emptive strike is a typical self-defense tactic enshrined in international law let us consider what international law has to say about anticipatory self-defense and how the advocates of pre-emptive strikes also interpret those principles of international law. Undeniably, international law acknowledges the

⁶¹ www.khilafah.com, October 6, 2003.

⁶² I use pre-emptive and anticipatory war interchangeably though some scholars may pay attention to distinguish between the two.

importance of individual and collective self-defense against any possible attack. In the same vein, sovereignty and equality of all states are also considered as the fundamental principles that the international legal system seeks to enhance. In this regard, there are strict rules regulating state intervention, threat or the use of force, and how states may defend themselves from foreign aggression. As it is understood, anticipatory self-defense or pre-emptive strike is a doctrine that allows a state to respond to an impending threat before such a threat is carried out. States should, however, provide some justification for their military interventions in pre-emptive self-defense exercises. Basically, there are two main sources of international law that a state may appeal to, to defend herself from the threat of force - the United Nations (UN) Charter and Customary International Law. Here are the principles under each of these two sources of justificatory self-defense.

4.2: The UN Charter on Self-defense

First, Article 2(4) prohibits the threat or any use of force by states against other independent states⁶³. However, Article 51 (stated below) permits states to defend themselves under certain conditions. Article 51 of the UN Charter reads:

Nothing in the present Charter shall impair the inherent right of individual or Collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

⁶³ According to Article 2(4) of the UN, “All Members shall refrain from their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”.

The UN Charter permits self-defense against aggression. But the Charter, as stipulated in Article 2(4) requires that the self-defense should not contravene the aims of the United Nations. Thus Article 2(4) in the light of the requirements of Article 51 does not seem to permit the unilateral and perhaps bilateral use of force against any sovereign state without the approval of the UN Security Council. Member states can do so only when authorized by the Security Council. This implies that anticipatory self-defense may be legally justified when it is sanctioned by the Security Council or when it serves the rationale behind the formation of the UN. While the 51st Article acknowledges the necessity of a state's security against an enemy's attack, it does also place a restriction by providing the circumstances under which self-defense is legitimate and the procedure that member states should comply with in defending themselves. In real terms, the circumstance where the state's use of force becomes legitimate according to article 51 is during an "armed attack". And the procedure or process member states should follow before employing military force in self-defense is to communicate its decision to the Security Council for approval. Thus in the case of the September 11, 2001, attack, it would have been morally and legally consistent if the U.S. had defended itself against the hijackers 'during' the act.

Let us examine the Charter's provision for future attack and previous attack i.e. 'before' an attack begins or 'after' an attack has been made. The Charter is not silent on these scenarios. Article 51 requires that any decision about self-defense by the Victim State "shall be immediately reported to the Security Council". Indeed, it is controversial that the right of self-defense is curtailed by the power of the

Security Council. The advocates of anticipatory self-defense find this restriction a total denial of the state's inherent right to pre-emptive self-defense. But I do not think that the injunction justifies its violation no matter how complicated this may seem, since being signatory to the charter carries with it certain responsibilities with which all member states of the UN must comply. After all, for the purpose of allowing the Security Council to act promptly in playing its peace and security role, member states agree in principle to surrender their sovereign power.⁶⁴ One has to provide moral and legal justification for violating these criteria. For this reason, arguments that appear to be inconsistent with the provision by Articles 2(4) and 51 have been mounted from international customary law sources to defend pre-emptive strikes against terrorism.

4.3: International Customary Law And Pre-Emptive Strikes

International Customary law refers to unwritten conventions, treaties and accepted norms that are usually also recognized as the basis of international law. Here, I discuss only one, but it is a fascinating argument that appeals to international customary law to advocate anticipatory self-defense against terrorism. In an article '*Anticipatory Self Defense: The Terrorism Exception*'⁶⁵, Mikael F. Nabati, (the president of the H.W. Briggs Society of International Law in the United States) puts forward an argument for pre-emptive strikes against terrorism. He exposes the weaknesses and unrealistic nature of articles 2(4) and 51 and examines

⁶⁴ See UN Charter, articles 24 and 25.

⁶⁵ See *The Current History: A Journal of Contemporary World Affairs*. May 2003.

the conditions under which he thinks international customary law may permit pre-emptive strike. Nabati further presents the challenges posed by contemporary terrorism and finally argues for anticipatory self-defense against terrorism.

What does Nabati find wrong with the UN charter on the issue of self-defense? Nabati's worry about the strict requirements of articles 2(4) and 51 for the invocation of anticipatory self defense is that, first, they allow states the right to defend themselves only when an "armed attack" has begun but not when the attack has ended or when it is yet to be carried out. Second, in the traditional sense an "armed attack" implies an attack by military action targeting a state's territory, population, or its possessions by another state. Hence, Nabati points out that because contemporary terrorism (such as those of Tokyo subway in 1995 and September 11, 2001 attacks) are perpetrated by ordinary civilians who do not usually equip themselves with military weapons they are immune from the "armed attack" criterion. Nabati therefore contends that a state may find it difficult to satisfy Article 51's self-defense requirements⁶⁶. Third, by reserving the power in the Security Council to decide when a state may launch self-defense, he thinks that the state's discretionary right to defend itself is totally denied. So because the UN Charter does not make any provision for pre-emptive strikes, Nabati argues that it is not enough to rely on the Charter for pre-emptive self-defense against the terrorists. This explains why he delves into another source of international law—International Customary Law—to consider the justification of pre-emptive war against terrorism.

⁶⁶ Nabati argues, "...the September 11 attacks resulted from individuals using civilian aircraft, armed with nothing more than knives. Similarly, the sarin gas attack on the Tokyo subway system by the Aum Shinrikyo sect on March 20, 1995 did not involve the use of military weapons".

The *Caroline* doctrine is one of the most popular international customary laws that scholars usually allude to, to justify the use of force in self-defense. So it features prominently in Nabati's article as well. Historically, the *Caroline* doctrine was formulated based on conditions enumerated by Daniel Webster in the nineteenth century when British troops invaded the U.S. in 1837 to demolish their ship, *The Caroline*, a vessel used by the U.S. as an instrument of support for Canadian political struggles against Britain. In response to this, Britain struck the U.S. in the name of self-defense, but Daniel Webster, then U.S. Secretary of State, condemned this attack and emphasized that pre-emptive use of force is justified only when there is "*a necessity of self-defense...instant, overwhelming, leaving no choice of means, and no moment for deliberation.*"⁶⁷ Webster's conditions since then have remained part of the standard requirements of pre-emptive use of force in self-defense under customary international law. They are conditions that most contemporary war ethicists uncritically use to endorse the use of force. And it is diametrically opposed to the deliberative approach of conflict resolution or the last resort principle in the traditional Just War theory as practiced by the ancient Roman generals⁶⁸ perhaps because the ancient Roman generals never experienced any such imminent threats as modern states encounter.

Apparently, like Article 51 of the UN Charter, the *Caroline* doctrine's imminence requirement also does not seem to permit self-defense against an attack

⁶⁷ *Ibid.* p.224. See also *Just and Unjust Wars*, by Michael Walzer (1977) p.74. There is, however, a discrepancy in the date of the *Caroline* doctrine formulation – while Nabati mentions 1837 Michael Walzer dates it to 1842.

⁶⁸ In Ancient Rome, steps were taken to explore all peaceful and nonviolence techniques of dispute resolution before recourse to the use of force. In his *Ethics of War & Peace*, Paul Christopher (1999) provides examples of this.

which has already occurred – a restriction that Nabati has noted but strongly opposes:

To justify preemptive use of force in self-defense, however, customary international law requires that the threat be imminent...Under the *Caroline* doctrine, the right of self-defense is only valid as long as the immediate threat lasts.⁶⁹

This suggests that under international customary law too, there is no justification for defensive use of force against an attack which is about to happen or an attack which has already occurred. And yet Nabati does not seem to completely agree with the restriction of The *Caroline* case in his efforts to justify pre-emptive strikes by international customary law. For him, “Customary international law as formulated by the Caroline doctrine does not expressly prohibit the exercise of anticipatory self-defense.”⁷⁰ Nonetheless, like the U.N. Charter the *Caroline* case clearly reveals that a state may respond to an attack for self-defense but the defense is legally justified as long as the attack is in progress. Thus in both theory and practice, there seem to be restrictions and opposition to self-defense war waged after an attack or before an attack. One may not accept the absolute pacifist rejection of war yet it is significant to acknowledge the restraints by other recognized theories of justice and war on the excessive use of force, especially in anticipatory self-defense. Just War pacifism also questions the so-called just principles in modern wars. The UN Charter permits self-defense only during an “armed attack” or with the Security Council’s approval. International Customary Law also allows pre-emptive use of force only when the threat is ‘imminent’. So

⁶⁹ Nabati, M. “Anticipatory Self-Defense: The Terrorism Exception” in *The Current History: A Journal of Contemporary World Affairs*. May 2003 p.224.

⁷⁰ Ibid.

what else can states appeal to for the justification of anticipatory self-defense and counter-attack to terrorism?

Nabati responds to this by re-examining the challenges posed by terrorism and by giving other reasons to support his argument. He argues that since contemporary terrorist attacks may use instruments that can cause instant destruction of a large percentage of a state's population there is no need to wait until an attack begins. Also, he contends that the support and sponsorship of terrorist organizations is as dangerous and horrendous as terrorism, but a state cannot claim self-defense against it since that is not an "armed attack" per se.⁷¹ Again Nabati reflects on both articles 2(4) and 51 and offers alternative interpretations. He thinks article 2(4) will permit pre-emptive strikes against terrorism if the use of force does not affect a state's "territorial integrity" or "political independence". For Nabati, since the architects of the UN Charter did not intend to place the right of self-defense within the power of the Security Council, article 51's restriction of self-defense to an armed attack should be widened to include terrorism. He finally reviews historical practices of the use of force in self-defense against threats to legitimize anticipatory war. Therefore, he concludes "not only is anticipatory self-defense implicitly recognized by the UN Charter and customary international law, but the international community has accepted and

⁷¹ Nabati buttresses his point by citing the *Nicaragua v. United States of America* (1984-1986) case. When the US justified its use of force in retaliation to Nicaragua's support of rebels in El-Salvador for self-defense, the International Court of Justice (ICJ) dismissed it and drew a distinction between an "armed attack" and an "assistance to rebels". The court interpreted Article 51's "armed attack" as when a state crosses a border with "armed bands, groups, irregulars or mercenaries which carry out acts of armed force against another state of such gravity as to amount to an actual armed attack by regular forces" (*The Current History: A Journal of Contemporary World Affairs*. May 2003page 225)

integrated its legitimacy through state practice”⁷². Surprisingly, what is apparent from Nabati’s enumeration of historical practices of self-defense war is the admission that apart from the 1981 instance when Israel struck the Osirak nuclear power plant of Iraq, it was the U.S. authorities that declared all the rest instances of force on the grounds of self-defense. This is an indication that the U.S. appears to be one of the chief proponents of the anticipatory self-defense doctrine. And whether we should take the U.S.’s unilateral deployment of military force in pre-emptive strikes as the international community’s acceptance of pre-emptive strikes is also contested. In what follows, we attempt a critical analysis of Nabati’s grounds for the justification of pre-emptive strikes against terrorism from the Just War Pacifist perspective.

4.4: A Reply to F. Nabati

Nabati’s article is a thoughtful and insightful work that has to be reconsidered for self-defense against terrorism. However, I think uncritical acceptance of the argument will also justify the violation of the UN Charter by member states. Hence I raise some objections against Nabati’s paper. First, the argument presents the exercise of a state’s military power without considering the significance of external control of that power. In calling for the review of international law on self-defense, Nabati laments “The current legal regime of self-defense under customary international law and Article 51 of the UN Charter place strict requirements on the invocation of states to defend themselves”.⁷³ Some

⁷² *Ibid*, p227

⁷³ *Ibid*, p.223.

aspects of modern states' constitutions are formulated in such a way that they can be modified through practice as the changing behavior of the people within the states may require. But the same may not be said about international law if the purpose is of particular interest to a few privileged states.

Why should the law permitting war by military forces which may claim thousands of lives including innocents be so flexible? Raising a question about the flexibility of laws in order to prevent mass killing seems to imply a perfectionism doctrine, the view that states should never think of committing certain acts because such acts are wrong in themselves. Perhaps such a question is not worth asking since one may respond by arguing that flexibility of such laws is important because it will enable military forces to fight in order to save tens and hundreds of thousands of innocent people as well. So let us ask the question again in a different way. Would there be a need to complain about the rigid nature of international laws if altering such laws enabled all states to wage self-defense wars? I do not think so. It is obvious that we cannot argue for self-defense wars if we do not possess the ability and all the logistics required for winning such wars. The argument fails to admit that when international law of self-defense is flexible there will be widespread instances of violent conflicts even among the few rich and powerful nations. The constraints should be understood as a means of promoting international peace and order. Modern states, which have the military strength to wage self-defense wars, are usually tempted to argue for the change of international laws for their own advantage and interests.

Nabati's argument underscores how military superiority of the great powers motivates the use of military force in conflict resolution. In a way, the argument denies the relevance of the other principles of the Just War doctrine, especially, the last resort and the object of peace criteria. An examination of the reasons and excuses that some people have offered for pre-emptive use of force against terrorism in Chapter Three suggests that state officials may dispense with alternative approaches to confront terrorism before considering the use of force. States should not be motivated to wage self-defense wars by only the "reasonable chance of success" criterion. The fact that a state has the means to launch pre-emptive war against the imminent threat of terrorism does not justify the whole exercise. The moral and legal justification of such self-defense wars is of paramount importance in an age of global terror. As one cannot justify terrorism on the grounds that it is the strength of the weak who seem to have been suppressed by the dominion of western culture and ideology, so one cannot justify pre-emptive strike against terrorism if it is not sanctioned by international law governing all states.

Nabati's article does not seem to foster adherence to the formal mandate of the UN Charter on how conflicts should be resolved among states. The Charter requires that member states deploy military force only when an attack is in progress or their response to aggression is reported to the Security Council for its approval. And yet the argument for pre-emptive strikes against terrorism contravenes this significant injunction. This undermines the strength and power of international law whose neutrality works towards the recognition of all states as sovereign and equal.

Meanwhile the concepts of peace and justice are international subject matter whose precepts require the compliance by all states irrespective of a state's wealth, power, status, and geographical boundary. Notwithstanding this, some states are more inclined to prioritize national laws over international law when they are involved in conflicts with other states. For instance, though the U.S. has been playing a significant role in health, poverty alleviation, international trade and other peacekeeping missions, its policies for international cooperation and other global issues, such as dispute resolution, do not seem to conform to international standards especially when the conflict directly affects America or its allies. Nabati's call for illegal deployment of military force against terrorists typifies the unique standard which America is adopting in its relationship with the rest of the world. For instance, in an article '*War is Peace*' Arundhati Roy affirms how America distinguishes itself in responding to conflicts as she quotes Madeleine Albright: "The U.S. acts multilaterally when it can, and unilaterally when it must."⁷⁴ The challenges of contemporary terrorism may really call for an urgent review of the UN Charter but I doubt the legitimacy of unilateral or bilateral preventive strikes without the Security Council's approval.

Radical as Mikael Nabati's argument to override the internationally accepted norms appears, it more or less depicts the American unique version of a just war. Over the years, the U.S. has virtually developed its own interpretation and application of the just war principles when provoked by other sovereign states. But this is not the moral basis of preventive wars upon which past state officials built

⁷⁴ <http://www.wagingpeace.org/articles/01.11/011118royarundhati.htm> [accessed June 8, 2003].

the American nation. In contrast to Nabati's argument, state officials and other concerned U.S. citizens who have realized the need to build peace and justice on fair terms of social cooperation have constantly expressed their opposition to preventive wars. Some former American presidents and other state officials rejected preventive war except those for self-defense or collective defense against armed aggression. For instance, during the Korean conflict, the U.S. declared to the world its perception about preventive strikes when President Truman proclaimed the American policy: "We do not believe in aggressive or preventive war. Such war is the weapon of dictators, not of free democratic countries."⁷⁵ Thus when we compare the President's declaration with Nabati's argument it clearly points out America's withdrawal from its ideal philosophy of war. Such a comparison also raises an objection to the bizarre justification of the ongoing "war on terror", for fighting in defense of a state when it is being attacked is one thing, and fighting with the aim of protecting a state from a suspected enemy is another. The former is legally and morally justified; but the justification of the latter is controversial unless we agree with America's new concept of Just War by accepting preventive war as justified by the circumstances preceding the resort to force rather than the standards of international law and the traditional Just War theory. The critic may say that since threats are more serious than mere suspicions pre-emptive strikes against the former should be permitted. In Chapter Five, we will examine threats in detail and consider what sort of threat should warrant pre-emptive strikes.

⁷⁵ Address to the Nation, September 1, 1950 (Bulletin, XXIII, 409). See also, Turcker, Robert W. *The Just War: A Study in Contemporary American Doctrine*. (The John Hopkins Press, Baltimore, 1960) p. 15.

More importantly, Nabati's justification of pre-emptive strikes against terrorism based on the unrealistic nature of the UN Charter further needs careful evaluation in light of the requirements of modern democratic principles. It is undisputable fact that the urgency of self-defense requires prompt response by a state's administrative executive head and its security agents. But that does not require a total dismissal of proposals by pressure groups and other non-governmental organizations (NGOs) within the state. A true representative democratic state under normal circumstances will hesitate to initiate national pre-emptive war strategies based on the views of a few individuals within the state. Issues of peace and justice affect all nationals – it pervades the executive, the judiciary, the legislature, and the entire civilian populations whose voices are usually expressed through the media, pressure groups, trade unions, and various religious bodies. And yet, prior to the inauguration of the “war on terror” any alternative views raised by these non-governmental organizations, social groups and peace activists were met with rebuffs. State authorities and officials overlooked such views. Implementing intervention policies in a western democratic state without national consensus runs at variance with good governance. Nonetheless, in his evaluation of the American Just War doctrine, Robert W. Tucker seems to notice clearly that the moral content of the American Just War principles does not make the doctrine generally accepted by the whole American citizenry. However, he presents a common feature of democracy - the constraints of achieving a consensus agreement - to counter the problem. Tucker writes:

To assume that there is a public doctrine respecting the justification for employing force is one thing. To assume further that this doctrine reflects the “moral consensus” of the nation as a whole is quite another matter. It is only to be expected that in

addressing other nations the statesman will claim to speak in the name of a united nation and will insist that his voice is indeed the authentic voice of the nation. At best, this claim always contains an element of pretense, even for democratic societies. Indeed, the element of pretense involved may be greater in the case of democratic societies, since unity of view must normally be elicited and not imposed. Given sufficient opportunity to exercise its critical faculties, and the will to do so, a democratic society still rarely, if ever achieves the degree of unity of outlook in confronting the external adversity that totalitarian societies not infrequently attain.⁷⁶

Statesmen represent the populace and speak for the nation on several occasions but because contemporary terrorism greatly affects the ordinary citizens of a state rather than the direct organs of government, it is morally unworthy to ignore their opinion on many sensitive issues such as war. If a civilized democratic state does not need to have moral endorsement at least by the majority of the people before implementing a decision determining the life and death of other human beings, then I think the legality and moral status of the doctrine is objectionable. It logically follows that such a democratic system of government is not worthy of being enforced or recommended for other independent states. Michael Walzer, an expert who offers a modern philosophy of the Just War doctrine, gives due recognition to the voice of the ordinary citizen in his remarks about international conflicts. Walzer writes: “But it ought to be possible for ordinary citizens to identify and focus on the central political and moral issues of a given intervention. To help them do that is the point of just war theory...”⁷⁷ Because the reasons for contemporary war on terror are various, including the defense of human rights (in the case of Iraq) and invasion of the enemy’s political territory, Michael Walzer’s

⁷⁶ Turcker, Robert W, *The Just War: A Study in Contemporary American Doctrine*. (The John Hopkins Press, Baltimore, 1960) 5-6.

⁷⁷ Michael Walzer, *Just And Unjust Wars*, (third edition). (Basic books, 2000) xiv.

point has to be taken seriously. Modern states must not therefore refuse to take into account different shades of opinion in responding to terrorism. Nabati's paper also fails to consider this in deciding whether the "war on terror" is justified or not aside from its violation of the UN Charter on self-defense.

It can also be deduced from the article that Nabati's argument for pre-emptive strikes against terrorism is presented from the legal point of view, but the article's defense of pre-emptive war on terror after the war had already been initiated by the U.S. and Britain renders his argument no more than those of the reasons enumerated in Chapter Three by some other writers such as Jean B. Elshtain. We do not intentionally flout the principles of international law and later appeal to the rigidity of the UN Charter as a justification. Doing so immediately distinguishes an explanation which is based on reasons from moral and legal justification. A close examination of the UN Charter even reveals that the argument that Article 51 does not allow states to defend themselves is objectionable. Article 51 plainly grants all states the permission to defend themselves during an armed attack, period! To wage anticipatory self-defense war with the view that country *X* poses a threat to country *Y* has an inherent epistemic problem. One has to prove how and why a *potential* war criminal may be considered an *actual* war criminal before launching pre-emptive strikes. That isn't enough though, for there is still the need to prove the legal and moral legitimacy of such war before the international community.

The rationale behind the Charter's regulation of self-defense wars requires investigation. My conviction is that article 51's restriction on anticipatory self-defense is a means of promoting peace and justice among all states and all people. I think human beings are rational animals (at least in most cases), who do not act if there is not a cause. Though terrorism is morally reprehensible, I would want to maintain that there seems to be an element of objectivity in terrorist thinking, functioning to determine within which geographical boundary they should strike and who is to be targeted by the terrorist as an enemy. And so, when the UN Charter maintains that a state is permitted to defend itself during an armed attack, it presumes that no state will initiate direct or indirect oppression and abuse the rights of others. Under such conditions, no state will attack another and there will be chances of reasonable peace and tranquility among all people. But this appears impossible because of the belief in the inevitability of conflicts among the human race, given the differences in taste, preferences, self-interest etc. that usually characterize human action. If this belief is true then *before* an attack begins or *after* an attack, states ought to and can communicate their decision on pre-emptive self-defense to the Security Council for an approval before any military action. The self-defendant state shouldn't find this injunction a burden at all if its international relations with other states have been morally consistent.

Nabati's position for pre-emptive use of force against terrorism is derived from the self-defense principle that all states are entitled to evoke when confronted by an undue threat. But his argument does not seem to acknowledge that the U.S.'s seemingly inconsistent national policies, injustices, and violations, which pose a

threat to the Arab world, partially explain the rampant suicide bombing against the U.S. and its allies. Some few remarks by scholars underscore this point. As `ad Abukhalil has described America's relationship with the Arab world, it is a story involving: "murder, deception, duplicity, crude and subtle propaganda, war, defeat, racism, humiliation, oppression, misery, bigotry, and international domination and subjugation."⁷⁸ Dr. Shreesh Juyal, professor of Political Science and director of the Institute for the United Nations and International Affairs also draws a parallel between the September 11 attacks and U.S. human rights abuses when he wrote: "If terrorism means violence against innocent civilian and non-combatant targets, during the past decade, from Iraq to Sudan to Yugoslavia, the United States missiles have destroyed the lives of civilians just as innocent as those who perished on September 11."⁷⁹ In his analysis of civilian casualties caused by the U.S. since World War Two, Kai Nielsen also shows how history presents the U.S. as a typical terrorist state.⁸⁰

Given this background it is difficult to justify the pre-emptive use of force against the very acts of which the great nations are also guilty. Isn't Nabati's argument trying to justify the unjustifiable by explaining pre-emptive war on terror on the grounds of international law's unrealistic nature? Should terrorism be accepted because terrorists lack the military power to face great nations? In

⁷⁸ Abukhalil, A. *Bin Laden, Islam and America's New "War on Terrorism"*. (Seven Stories Press, New York, 2002) p.12

⁷⁹Juyal Shreesh, 'International Law and Terrorism' in *The Saskatchewan Peace News* (Vol.10 No. 1, February 2002) p.6. Also published in *The Third Degree*, The University of Regina Alumni Magazine, Fall 2001.

⁸⁰Nielsen, K. '*On Terrorism (State and Otherwise)*' A presentation given at the Western Canadian Philosophical Association Conference held in October 2002 at the University of Calgary, Canada.

Kantian parlance, there is a contradiction when Nabati's justificatory theory of self-defense is universalized, unless we grant that state terrorism is not terrorism proper. If a state is justified in using force against its adversaries without considering its own moral status then the so-called 'rigid' and 'unrealistic' international law requirement for pre-emptive self-defense would strongly justify Iraq in launching pre-emptive strikes against the United Kingdom and the U.S. prior to their invasion of Iraq since that threat was more imminent than the threats posed by the September 11 attacks or the supposed weapons of mass destruction program pursued by Iraq. Further, if we grant that pre-emptive strikes against terrorism are justified without enough evidence of the terrorist intention and readiness to strike (as when the U.S. accused Iraq of possessing WMD), every state may strike any state anywhere and at any time when it senses danger. As a result, humankind will find themselves in a Hobbesian state of nature – "the war of all against all", and at the end it is only the strong that can survive. Where lies the hope and security of the weak? How can the weak survive? This explains why scholars like Michael Ignatieff sometimes label contemporary terrorism as the "strength of the weak"⁸¹. So it can be said that it is the will to survive and to legalize survival that has brought about the conflict between the weak states and the great nations. The truth of the matter is that great nations like the U.S. have appealed to international law to justify wars against many states including several interventions. So it appears the Arab world finds terrorism the only convenient means for self-defense in current politics.

⁸¹ Michael Ignatieff, "The Strength of the Weak: The Justification for Terrorism" in *Political Ethics in an Age of Terrorism*, a lecture given at the University of Edinburgh in January, 2003.

In sum, I think the language of the UN Charter on self-defense does not conclusively prevent states from defending themselves against an attack. International law still allows the victim state to defend itself against an ongoing aggression. In the case of potential attacks the UN Charter does not permit member states to act without the Security Council's approval. But as Nabati argues, it will be dangerous to grant that states should wait until an attack fully materialized before doing something about it. While Nabati's point is important it is also not a guarantee that all pre-emptive strikes against potential threats will necessarily ensure peace and justice. The challenge then is to show how pre-emptive strikes against suspected terrorists will ensure peace and justice if such an exercise is taken by a state or a people guilty of a similar crime. This is what Chapter Five attempts to pin down.

**CHAPTER FIVE: MORAL CONSISTENCY, A NEED FOR PRE-EMPTIVE
STRIKES AGAINST TERRORISM**

“To condemn war is easy; to overcome it is difficult” Leon Trotsky, a Russian revolutionary⁸²

5.0: Introduction

Terrorism interrupts international peace and order; it threatens individual human rights, it claims precious lives of innocent civilians and may also lead to the collapse of established political regimes if uncontrolled. Without doubt, these are enough proof to justify the control of the phenomenon. So in order to ensure global peace and justice the horrendous acts of terrorism have to be stopped but only according to international standards of law and ethics of war. Since the “war on terror” adopts a national policy with military use of force which does not seem to conform to the traditional Just War theory or the generally agreed principles of international law, this chapter discusses the complexities involved in human rights protection and the significance of self-defense in an age of terror. Finally, given the heated debate on the issue of pre-emptive strikes against suspected terrorists, the chapter focuses on the Just War Pacifist ideology and recommends moral consistency as a condition for pre-emptive war against terrorism.

5.1: Moral Consistency

⁸² The Spartacist, No. 135 Winter 2002/2003. p. 1.

Launching pre-emptive wars to confront terrorism without thereby committing a similar crime is necessary for international peace and justice. How to achieve this aim is one of the major concerns in this essay from the outset. Unless states endeavor to reflect moral concerns in their approaches to international conflicts the challenges of the “war on terror” will continue to be compounded. This is because in recent times, self-defendant states appear to be guilty of the very acts of human rights violations they seek to protect against. But it is unlikely that the insurmountable terrorist activities can be brought to a minimal level if strong nations do not desist from abusive use of military strikes against the suspected terrorists. There should be firm moral grounds for the legitimacy of violence against terror. It is for this reason that I propose ‘Moral Consistency’ as an antidote to remedy the problem. Moral Consistency (MC) is not a theory that can stand on its own. In other words, it is not an alternative to Just War theory or the UN Charter. As the name implies, it only proposes some neutral and reasonable responses to international disputes, especially, self-defense wars for the promotion of global peace and justice. Moral Consistency seeks to enjoin conflicting states to avoid threats, abuse of human rights, and violation of war conventions in their attitude towards other sovereign states when applying international law and the ethics of violence. That is to say, Moral Consistency recognizes the importance of international law and treaties and emphasizes the need for states to remain consistent with the requirements of such rules. Above all, in its application to self-defense against terrorism, Moral Consistency provides a set of ideal conditions under which pre-emptive strikes against terrorism may be accepted to a certain

limit. By this, MC may be understood as an analytical framework that dissects the concepts of punishment, threats, human rights, and self-defense, which seem to be issues at the core of the “war on terror”.

Though terrorism is a crime against humanity, I do not think military responses against sponsors and suspected terrorists are morally justified if two conditions prevail: (1) if the victim state is guilty of a similar crime, and (2) if the state’s pre-emptive use of force against terrorism contravenes the principles of international law. As has already been discussed, states cannot be discouraged from defending themselves against terrorism “during an attack” since it is their inherent right to do so. While self-defense during an attack is legitimate, the justification of anticipatory and pre-emptive strategies against terrorism remains highly controversial even though the latter may also be a form of self-defense. What role can moral consistency play to ensure peace and justice in the “war on terror”? The contribution of moral consistency in the ethics of pre-emptive strikes is evident in the principles upon which it is built. Moral consistency primarily builds on Just War Pacifist beliefs, a commitment to showing how modern day warfare cannot be called a just war. Nonetheless, MC is also concerned with how modern day warfare can be just though it seeks to reduce violence in international politics. By this it hopes to restore the image of traditional Just War theory.

Moral consistency attempts to bridge the gap between absolute rejection of the use of force and excessive military strikes adopted by the “war on terror”. It does this by evaluating the concepts of punishment, threat, and self-defense. Another significant content of moral consistency is the recognition of and

compliance with, international law and order. Some scholars may oppose law abiding theories such as categorical imperatives. Some also think that a concept that shares close affinity with pacifist doctrine such as Moral Consistency absolutely rejects all forms of violence and the use of force. In the 2003 Whelen Lecture at the University of Saskatchewan, Michael Ignatieff's rejection of perfectionism was based on an assumption that even though commitment to the principles of law is important it ought not always be the case since it may expose compatriots to the danger of terror and insecurity. Ignatieff declares:

...absolute commitment to human rights might preclude any taking of life in response to terrorist attacks and restrict our response to judicial pursuit of offenders through process of law. Such adherence to absolute standards would achieve moral consistency at the price of leaving us defenceless in the face of evil-doers. For security is also a human right.⁸³

Such an impression needs to be cleared up as we begin to paint the picture of morally consistent response to punishment. Undeniably, MC is a pro-pacifist theory but it does not completely reject violence and the use of force. With regard to self-defense against terrorism, what MC does is to probe into the legitimacy of pre-emptive strikes and to examine such strategy's relationship with peace and justice. Being morally responsible in addressing the problem of combating terrorism with a reasonable amount of violence when there is no option is a significant factor in MC. The objections I have raised against the use of military force against terrorism should not be misconstrued as granting amnesty to criminals allowing them to go scot-free after being convicted. In spite of the emphasis on fair terms of social cooperation among states and individuals, I agree with J.S. Mill that

⁸³ Michael Ignatieff, "The Lesser Evil: Political Ethics in an Age of Terror" in *The Whelen Lecture*, (University of Saskatchewan Extension Division, 2004) 5

if an individual or group or a state does anything harmful to others in the course of exercising their freedom and liberty, there is a *prima facie* case for punishing that individual or the group.⁸⁴

An institution of punishment is one of the measures that can ensure compliance with the law in every democratic state. Punishment curtails some of a people's freedom and rights, and because of its harmful nature one may agree that there is a sense in which punishment may be conceived of as evil. Michael Ignatieff for instance, describes punishment as "lesser evil" pursued by liberal democratic states to ensure better results.⁸⁵ However, if we think of punishment only as evil then it will not be morally worthy for a society to take measures to punish its members even if we qualify such measures as "lesser evil". Punishment in itself may not be evil though the way in which it is administered may be wrong. MC acknowledges that punishment may bring good results in democratic societies and attempts to avoid the wrongful aspect of it. In this regard, punishment should not be perceived as evil when it is administered through the right judicial procedure and remains consistent with constitutional provisions. Further, the evil aspect of punishment is avoided as we consider who should be punished with what and when one should be punished and why. The rehabilitation theorists insist that wrongdoers have to be punished for the sake of moral reformation. Thus they consider the good effects which punishment may bring in terms of the improvement in the moral lives of perpetrators of criminal acts. Another aim of punishing offenders of the law is to deter future perpetrators from committing similar wrongdoings. On the other hand,

⁸⁴ Mill on Liberty, (1859) Collected Works, Vol.18, 1977

⁸⁵ Michael Ignatieff, "The Lesser Evil: Political Ethics in an Age of Terror" in *The Whelen Lecture*, (University of Saskatchewan Extension Division, 2004)

retributivist theorists argue that to punish an offender for deterrence or rehabilitation purposes is immoral. For the retributivist, punishing the offender is appropriate because justice requires that moral order be restored.

The criminal's wrongdoing interrupts the moral order of a society; hence, she ought to be punished so that the moral order and regularity would be restored. The element of justice in the retributivist theory—an effort to match the severity of punishment with the severity of the crime is significant in punishing an offender. However, since retributivism does not provide us with the distinction between the *actual* and *potential* terrorist there will be difficulty in applying retributivism to respond to terrorism considering the issues of who should be punished and why one should be punished though its emphasis on justice is necessary. Application of retributivism is irrelevant unless fundamental moral questions about who are the terrorists and why they should be punished are taken into account otherwise it will only be reduced to mere expression of revenge.

The overwhelming passion for indiscriminate punishing of terrorist groups echoes Jenny Teichman's prediction that our willingness to punish terrorists will bring about a *small war* in the near future.⁸⁶ However, the increased number of terrorist activities in spite of our persistent disciplining measures should not necessarily be attributed to the punishment we inflict on the *actual* terrorist groups. It is partly because the passion of anger and revenge lead us to include suspected, would-be terrorists and sometimes the innocent when inflicting punishment. When people suffer adversity and pain such as the September 11 attack, there is the feeling of hurt and humiliation. And as Trudy Govier has noted, it is natural for a

⁸⁶ See Chapter Three, under "Reasons for the War on Terror"

person to express displeasure and hit back in return when attacked.⁸⁷ Most victims desire punishment not to serve justice but to get even. For others, punishment is used as an instrument to seek revenge or to derive some kind of satisfaction from hurting those who have wronged. It is the feeling of revenge that explains people's call for "battlefield justice" or an "eye for an eye" kind of justice.

For most people, vengeance is what they mean when they cry out for justice. Suspected terrorists might be punished in this context without achieving any reasonable success in international peace. Under the moral consistency strategy of dispute resolution, one may think of disciplining terrorists groups by focusing on the realization of three combined significant components – justice, moral order, and peace. Justice requires that a convicted terrorist be punished not only because he deserves it but also because punishing the actual terrorist has the aim of defending the rights of the innocent ones and to help them have their peace of mind in order to fulfill their civil rights and responsibilities. By doing so, the interruption of society's moral order which the terrorist's wrongdoing might have caused will be ameliorated. The ideas of peace and justice should always be taken into an account if we want to avoid the evil aspect of punishing terrorist groups. The absence of any of these key elements will not be an effective peace building strategy. Military force against suspected terrorist groups as a form of punishment may calm the rage of some of the people but it might not be successful for the purposes of peace building exercises among perpetrators and victims. Unilateral use of force against would-be terrorist groups without the support of the international community and especially

⁸⁷ Govier, T. *A Delicate Balance: What Philosophy Can Tell Us About Terrorism*. (Westview Press. USA 2002) 74.

the UN Security Council is also a typical illegitimate form of punishment which does not seem to have any prospects of international peace and justice.

Moral consistency's response to punishing the culpable offender is justified on an assumption that such punishment springs from a legitimate source and that it is within the limits of the law— be it national or international. It has an element of retributive justice but its primary purpose is to seek peace, justice and moral order. For MC will not endorse punishing a terrorist who has not been convicted by the law since that is also an offense. This might seem deontological or absolute adherence to rules, but it has the potential of drawing a distinction between crime and criminal justice.

5.2: Moral Consistency And Self-defense Against Threats

Can we be morally consistent in responding to impending threats in an age of terror? I think we ought to, for without moral consistency it is almost impossible to draw a distinction between terrorist acts and self-defense against terrorism. The concept of self-defense is crucial in legal and political philosophy. States, individuals and groups do not want to be deprived of their autonomy and self-determination. Thomas Hobbes was right in ascribing wars to man's desire for power due to fear and insecurity. Without doubt, this is what sometimes underpins humans' struggle for their political, social and economic interests. Human beings need to preserve their interests for it is their right not to be deprived. To defend oneself underscores the idea that one has some basic rights that she or he must not

be denied. Every human being is born with such basic rights some of which have been encoded in international law. The Universal Declaration of Human Rights (1948) for instance, grants every individual the rights to life, liberty, and security; the right to own property, freedom of speech, freedom to form an association etc. The dangers, hindrances, impediments and forces intended to thwart a people's appropriation of these rights whether by the state or an institution can be designated as threats especially if they are expressions of harm, hurt, injury and have the potential of causing destruction or damage to mankind, properties, and the environment. All such threats intended to interfere with the rights and freedoms of groups and individuals have to be reasonably defended against.

Now the challenge facing modern states is not how one can identify their rights but how to react when threats against human rights renders a state defenseless and insecure. Some political scientists and international law experts admit that there seems to be no generally accepted means to resolving human rights abuses especially when oppression and suppression against humanity become intolerable. The struggle for political liberation in South Africa during the 1990s is usually cited as a typical example. The military and police of the government acted swiftly to repress several violent rebellious activities that were committed by the civilian population during the uprising against the apartheid policy but during the reconciliation process, while a sector of South Africans considered the military role to be legitimate, the Truth and Reconciliation Commission rather justified the people's insurrections in light of international standards of unconventional wars. In her analysis of the moral principles of the Truth and Reconciliation Commission,

Mary Burton cites the exact verdict by the commission on the tension that arose between the two parties: “those who fought against the system of apartheid were clearly fighting for a just cause, and those who sought to uphold and sustain apartheid cannot be morally equated with those who sought to remove and oppose it”.⁸⁸ In this context, torture, severe ill treatment, detention without trial, racism, killing, and abduction characterized by the apartheid policy were condemned as ‘crimes against humanity’ whilst the civilians’ strike actions, rebellion and insurrections against the state were justified as a means for liberation from an oppressive rule. One may draw a parallel between the South African experience and the contemporary “war on terror”.

Terrorism involving the Israeli-Palestinian conflict is an example of supposed struggle for self-defense against America’s alleged suppression of some Middle Easterners both directly through invasion, and indirectly through support for the Israelis.⁸⁹ And given the military power of the United States, it appears that terrorist groups cannot succeed in any way in defending their rights. This seems to be one of the *reasons* why they have strategically avoided a direct confrontation with the enemy’s military forces and have adopted deliberate, random targeting of civilian populations, and precious properties belonging to their enemy and her allies. That is to say, it is apparent that powerlessness of the weak, who cannot employ the legitimate use of force, compels isolated groups and individuals to resort to terror for self-determination and protection of their rights. Should one

⁸⁸ Mary Burton, ‘Making Moral Judgements’ in *Looking Back Reaching Forward* (ed) Charles Villa Vicencio, Wilhelm Verwoerd and University of Cape Town Press. (University of Cape Town Press, 2000) p.82.

⁸⁹ Writers like As Abukhalil candidly points out how the US has constantly been supporting Israel in the Israeli-Palestinian conflict. See chapter one for details.

justify terrorism in light of the South African example? There are two schools of thought regarding the ethics of self-defense through terrorist activities.

The first school of thought condemns terrorism based on the civilian immunity principle under the Geneva Convention of 1977. According to this principle, certain groups of people such as children, women, prisoners of war etc. are to be protected in warfare. Terrorism is therefore condemned since perpetrators kills indiscriminately. The second school of thought, however, evaluates terrorism from a human rights perspective. Those who perceive terrorism as self-defense war strategy contend that the terrorist's indiscriminate killing is ethical because the law of human rights requires that we treat all human beings equally. For instance, Michael Ignatieff, a renowned Canadian writer and historian has recently conceded that since the Universal Declaration of Human Rights (1948) rejects moral discrimination against a person it is very difficult to condemn the terrorist indiscriminate killing with regard to the human rights ethical framework because it will be wrong to kill a person based on status.⁹⁰ Thus the use of force to pre-empt terrorism by the strong may be slightly different from terrorist atrocities in self-defense if the former is undertaken within the ethical framework of the laws of war.

As mentioned earlier, according to the standards and principles of the laws of war such as the Geneva Convention Protocol, non-combatants and prisoners of war must be protected from harm and torture. In this regard, self-defense war by the strong against terrorism may be ethically justified when the non-combatant

⁹⁰ Michael Ignatieff, "The Strength of the Weak: The Justification for Terrorism" in *Political Ethics in an Age of Terrorism*, a lecture given at the University of Edinburgh in January, 2003.

immunity is observed. So it is by observing the precepts of these rules that distinguishes the freedom fighter from a terrorist. But do states really observe and adhere to these laws of war during pre-emptive strikes? I do not think so, for on many occasions combatants have failed to heed the *jus in bello* Convention and the ethics of war in both theory and practice. Since Chapter Two of this essay has already explored instances of modern states' abuse and violations of the laws of war, let us now explore the relevance of MC by examining some of the factors to be taken into an account when responding to threats and self-defense.

The moral concepts of right and wrong seem to be downplayed by the legal justification of self-defense. In other words, our notion of legal justification of pre-emptive war against terrorism by and large creates an impression that we are morally right in defending ourselves. In some instances this may be correct, but I think others are morally wrong. Being morally consistent in legal and ethical matters is a prerequisite condition for waging a legitimate self-defense war. There are two senses in which the act of self-defense against a threat may not be morally right - first, if the threat was initially incited and unduly provoked by the self-defendant; and second, when the rationale of the self-defense seems to demonstrate the defendant's intention to suppress the power of his antagonist just because of the former's military strength and superiority. While modern states allude to the rigid nature of international law to rationalize their unauthorized self-defense wars there is no point in repeating myself about the fact that they recognize the "chance of success" criterion of the Just War doctrine as a much more relevant principle than

the rest. Instead I will attempt an illustration to throw more light on instances where the use of force might not be morally consistent with the principles of self-defense.

When a state first violates the rights of others it has no moral right to launch pre-emptive strategy in self-defense when being attacked unless it has taken measures to correct the injury which has already been caused.⁹¹ An alternative approach to the use of force is recommended even if the self-defendant possesses all it takes to succeed in self-defense. This is a significant aspect of moral consistency that should be taken into account if we care about the objections raised against the “war on terror”. With their interpretation of “last resort” in the traditional Just War doctrine, contemporary Just War theorists seem to have switched from a more fundamental moral justification of the use of force to new set of principles that do not take into account the moral circumstances of the self-defendant into account when launching military campaign against a potential enemy. When waging pre-emptive self-defense wars against threats Just War Pacifist ideology should spell out clearly what cannot justify pre-emptive use of force, while moral consistency should tell us what must be expected before pre-emptive strikes can be morally justified. I am going to use state intervention in my illustration of the legitimacy and illegitimacy of self-defense against threats because I think the great nations’ rampant unacceptable interventions largely account for some versions of contemporary terrorism.

When two states, say country *X* and *Y*, are at war for any reason, the generally accepted though not universally agreed norm is that it is the primary

⁹¹ I am aware that there would be problems here especially when a guilty state leader is required to protect innocent from being attacked. This requires an application of a more fundamental moral principle.

responsibility of the international community like the UN Security Council or any other legitimate body recognized by both parties to intervene. This should be based on the principles of international law and treaties with respect to such an intervention. Without that any unilateral intervention by a third party, say country *Z* in support of country *X* against country *Y* is likely to result in serious moral consequences no matter how one may justify *Z*'s intervention. Country *Z* may be stronger than both countries *X* and *Y* and might even claim to have intervened on humanitarian grounds. Or country *Z* may even be a close ally to one of the opposing states say country *X*, but insofar as international law stipulates how international disputes should be resolved and the fact that international law recognizes the sovereignty of each state in the promotion of freedom, justice and peace in the world, country *Z* will not be morally consistent according to this principle in a bid to hit back or avenge when country *Y* attempts a self-defense. For the weak must survive as well as the strong.

Great nations must note that their military strength and power should never prevent them from being attacked by the weak if the former is at fault. The meaning of a threat therefore can be interpreted as a function of the moral status of the claimant of self-defense. A group, a state, or an individual is morally, legally, and ethically justified in defending themselves against a threat of an enemy only if it has "clean hands" regarding such a potential threat. I am morally justified in defending myself against a murderer who threatens to take my life if I have not previously done anything that may warrant the murder or if I am innocent. Moreover, the legitimacy of self-defense depends on the moral circumstances of an attacker and

the self-defendant. Why is a thief who kills a security officer in an escape attempt guilty of murder? If armed robbers steal money from the Royal Bank of Canada to build mansions for the homeless in poor countries, the theft is still a criminal offence and must be dealt with according to the law. Assuming in the course of this robbery some security officers fired warning shots to help them capture the armed robbers, we will all be outraged to hear that the armed robbers would also be justified in shooting the security officers in the name of self-defense. It seems to me that it is not warranted for us to respond to threats and attacks in any way possible. The causes of a potential danger have to be taken into an account. One may claim to be legally justified in defending themselves without being morally right for their actions. So to launch a pre-emptive strike against an enemy some conditions must be fulfilled.

5.3: Moral Consistency Requirements for Pre-emptive Strikes

No rational moral theory will endorse the horrendous acts of terrorism. Moral consistency does not purport to legitimate it either, for the logic of securing human rights protection and self-determination through suicide bombing is absurd both from political and religious points of view. That is why this essay attempts to set up an ethical guide, which determines when one is morally right in using force against an attack - for states in their response to terrorism so as to escape the danger of producing counter-terror. There would be no need to halt terrorism if the acts of terror were ethically accepted. By criticizing counter-terror, I am not advocating 'turn the other cheek' or the extreme pacifist approach for conflict resolution. In

confronting terrorism, the moral consistency thinker should first know that terrorist groups adopt unethical means to achieve an end. Surely, a non-violent technique is highly recommended rather than any other approach to dispute resolution at the initial stage of conflicts. Alternatives don't seem to be scarce when states are confronted with violent attacks but state authorities and antagonists have frequently employed military force as the only appropriate strategy in their circumstances. Part of the problem is that great nations may want to prove that they cannot be attacked with impunity. But if she fails to identify other alternatives, the moral consistency advocate would lose her moral status and becomes like the terrorists, especially when her basis of justification contravenes the most accepted ethical theories of war.

The necessity of self-defense in the light of customary international law (as discussed in Chapter Four) makes the rejection of pre-emptive strikes against terrorism a contentious debate. Of course, it does not seem clear why states should hesitate to avert a possible danger that might claim precious human lives and properties if it has the means to do so. However, there should be a moral requirement that states and groups and individuals must satisfy before launching pre-emptive strikes. This is one of the conditions that can distinguish the moral consistency approach from the contemporary Just War theorist position. For while the contemporary Just War theorist may want to launch pre-emptive war once there seems to be reasonable chance of success, the moral consistency thinker will be much more concerned with the cause of such a potential danger; he will concern himself with the gap between the *potential* and the *actual* danger; and he will

objectively consider other alternatives before choosing the best internationally accepted approach for conflict prevention.

It does not seem to make sense to demand that a state should wait until it is attacked by an enemy before defending itself. Hence pre-emptive war against an aggression may be permitted but only for the states that have 'clean hands' in order to promote peace and justice. The only pre-emptive war that can carry some moral weight is when sufficient evidence is provided for the enemy's plans to inflict harm or danger on the innocent and when the defender has not previously violated the rights of the would-be attacker. If there have been previous wars and violations among two states and they have not resolved their differences it will be inappropriate to use anticipatory self-defense. All such wars may be categorized as continuous or intermittent wars.

How much evidence is enough? This is an epistemic question and does not seem to have a definite answer. It is difficult to determine how much evidence is required before one can respond to a possible danger. Must I wait till an attacker's knife is in my throat before being sure one is my enemy? Of course not. However, I think one should fear his enemy rather than the enemy's weapon, for I will not suspect any one with a knife to be my enemy if there were no previous struggles between us. Human beings require peaceful co-existence in order to overcome the suspicion and mistrust of other people. Otherwise, not only will a weapon such as a knife possessed by someone expose him or her as my enemy; I will even begin to sense danger as soon as I discover that my potential enemy is in possession of steel.

I will however not be worried if I realize a person is amassing dangerous weapons of mass destruction once my conscience is clear. So one should be concerned about the degree of hatred, anger, animosity in their enemy's ingrained culture and think of how these can be eradicated rather than targeting few specific groups of people and their weapons.

Sympathizers of "battlefield justice" may disregard this proposal outright. They may do so but they are also required by MC to provide reasonable evidence for their belief that one is an enemy before launching pre-emptive war on terrorism. The self-defendant state must prove that its antagonist is ready to wage war before it can legitimately launch a pre-emptive strike. It is very difficult to know whether an intended atrocity by one's enemy will be actualized. But the Six-Day War of 1967 between Israel and Egypt seems to typify the sufficient evidence condition. Though this is not enough to set a moral justification of the entire war, Israel seemed to have enough evidence to pre-empt the impending war to be waged against her given the steps that had already been taken. For according to sources, Egypt had advanced the following steps, which confirmed its readiness for a war. It is said that Egypt had:

- announced a policy of hostility to Israel
- put its military forces on maximum alert
- expelled the UN Emergency force from the Sinai border
- strengthened its forces on the border with Israel
- announced the closure of the Straits of Tiran to Israeli ships
- formed mutual support treaties with Iraq, Jordan and Syria⁹²

While Israel's evidence for preventive war is consistent with our epistemological requirement, the justification of the war itself is another subject

⁹² www.bbc.co.uk/religion/ethics/war/justwarintro.shtml, June 15, 2003.

matter. As far as the justification of pre-emptive war is concerned moral consistency theory requires something more besides the sufficient evidence criterion. The pertinent question is why was Egypt not prepared to fight any other country but Israel? If both countries had been morally consistent in their dealings with each other there would not be any cause for the so-called pre-emptive strike. I doubt if attacks and counter-attacks by states may be referred to as pre-emptive war, for pre-emptive war connotes a war declared by an innocent state against a threat or an impending danger; such wars must be initiated by individuals, groups, and states with “clean hands”. America and some Arab countries have been in attacks and counter-attacks for decades. According to the moral consistency standards, all strikes since September 11, 2001, by America against her enemies including that of Afghanistan and Iraq do not genuinely typify pre-emptive strikes but a continuous or intermittent war or precisely, reprisals.

In order to have ‘clean hands’ for pre-emptive attack, moral consistency urges that states look back into its *history* of international relations and foreign policies with other states for self-evaluation. By history, I am not urging that states should read their historic or pre-historic archives for what and how it has dealt with its antagonists for centuries. Under normal circumstances, state authorities will hardly declare war without a cause. The history I mention here therefore refers to events and incidents associated with the threat by one’s enemy. As soon as country X boldly declares that it is at war with country Y, then country Y has enough grounds to avoid such possible confrontation. But moral consistency requires country Y to evaluate reasonably and objectively its relational factor toward country

X's intended clash in a bid to avoid the war. Country Y will be morally justified to pre-empt the impending war but it is illegitimate to do so when country Y fails to adopt a reasonable pacifist approach; that is, if country Y allows itself to be animated by the pre-emptive war strategy without first considering a non-violent technique endorsed by international law. So in moral consistency, a pre-emptive strike is permitted only if it has the capacity to restore peace and justice without the tendency to produce retaliatory terror. For this to be workable the "backward looking" requirement has to be taken seriously.

History plays enormous role in conflict analysis. The influence of a people's past experience greatly affects their present and future actions against their enemies. This was underlined in Michael Walzer's remark about Israel's and Egypt's war of 1967: "Wars undoubtedly have long political and moral prehistories"⁹³ Sometimes what one might call a threat or danger to another's interest and security may best be described as a response, retaliation, and vengeance to previous injustices suffered by a people, a state, groups or individuals. As I mentioned earlier in this paper, the intermittent terrorist activities expose the resentment which perpetrators have harbored over the years. It will be difficult to promote peace without doing something about past injustices. But the problem is that we seem not to acknowledge easily the wrongs we inflict on others through international policies, interventions, and sometimes severe embargo and sanctions. Apparently, terrorists strike their enemies for a reason and whether such reasons are justified or not is not so easy to tell since our moral judgements sometimes depends on different value theories. Once again, terrorism is *prima facie* wrong but I doubt the legitimacy of

⁹³ Walzer, M. (2000) Just and Unjust Wars. Third Edition. Basic books. p.82

the great nations' pre-emption exercises against it if they have systematically failed to treat the potential terrorist groups fairly. Therefore, to launch a pre-emptive war against terrorists, the reasonable pacifist has to look back at what has transpired in the past. As ancient Roman generals practiced centuries ago, modern states must first explore nonviolent approaches to solve international disputes before considering the use of force if they really aim at restoring peace and order. But if all peaceful means fail then justice and fairness can take their course. Here, for country *X* to wage pre-emptive war against country *Y* with 'clean hands', in self-defense, country *X* should not have wronged country *Y* in the past since country *X*'s survival need not negate the rights and security of country *Y*.

Neither shall country *X* wage unilateral pre-emptive war even when it has clean hands without going by the principles of international law on self-defense. Unilateral use of military action for pre-emptive war should not be encouraged not only because it contravenes international law on self-defense but also because it has the potential of inspiring future retaliatory terror. The tendency to label the self-defendant state as an enemy is high. Hence, for prudential reasons, I propose pre-emptive strikes should be waged under the auspices of legitimate group or a recognized organization such as the UN because it will not be easy for a people to wage a counter-attack against forty or fifty nations. Also, I think it is feasible for a collective body such as the UN to empower weaker nations to also embark on pre-emptive strikes under morally justified conditions when their rights are unduly abused by great nations.

In sum, a pre-emptive strike against any potential threat (terrorism or otherwise) is a typical self-defense tactic. And since international law regulates how self-defense should be conducted, states are legally justified when pre-emptive strikes are launched according to those criteria. If modern states cannot go by these rules just because there are new challenges that render the international law on self-defense unrealistic, then they should bear the moral consistency status before launching pre-emptive strikes. This is because, morally speaking, the unrealistic nature of international law for self-defense does not necessarily empower victim states to pursue their own unilateral approach for an international issue. Some powerful states may justify pre-emptive strikes against terrorism for such reasons and may even parade signs of success initially, but the realities in Palestine and Iraq reveal the very nature of preventing terrorism through the use of military force. My conviction is that we can minimize terrorism (at least those engineered by Islamic extremists) and its associated intermittent wars if powerful states will refrain from employing excessive counter-terror which does not seem to make any significant difference between criminal acts and criminal justice. Moral Consistency is not a panacea; it has just been offered as a supplement to international law and Just War theory to illuminate when a legitimate pre-emptive strike may ensure peace and justice for both the terrorist groups and self-defendant states.

5.4: Conclusion

I have examined how the great nations' excessive use of violence in international politics has contributed to the widespread upsurge of terrorist groups.

To explore the justification of such military use of force, Chapter Two assessed the Just War Theory and various forms of pacifism. It can be said that there seems not to be much difficulty in applying the traditional Just War Theory to justify the use of force. However, due to the interpretation of some of the principles by contemporary Just War theorists, the legitimacy of military use of force to confront terrorism is contested. It is apparent that great nations' pre-emptive strikes against terrorism do not take all the Just War principles seriously. For instance, the "war on terror" does not seem to have *peace as its goal*. Also, the "war on terror" initiates force not as the *last resort* as it was evident in an invasion of Iraq when UN inspectors of weapons of mass destruction were still conducting their search. It is for this reason that chapters three and four critically reject the attempted reasons for the justification of pre-emptive strikes against terrorism.

But this is not an attempt to utterly reject any form of preventive war in an age of terror when violence has reached its peak in international politics. I am in search of an ideal conceptual framework that will discourage an excessive use of violence without leaving the innocent unprotected. Unconditional Pacifism is not a suitable doctrine at this stage because of its absolute rejection of the use of force; rather, I sympathize with Just War Pacifism. Just War Pacifism is implicitly concerned with how the justice and ethical issues in war can be achieved. It has pointed out some of the problems that distort the meaning of the Just War doctrine (see Chapter Two). But because it fails to propose how the problem can be mitigated, Moral Consistency has been recommended as a way that modern states which adopt the Just War Theory to justify the use of force should handle threats

against human rights in self-defense wars including pre-emptive strikes on terrorism. This does not seem to provide all the answers to the problem. Nevertheless, at this stage, the thesis demonstrates that pacifism is more than just an opposition to war; it is also a way of telling us why some forms of war are morally unjust.

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