The Use Of Pre-Emptive Force By Small States

by **COL Gaurav Keerthi**

Abstract:

The use of anticipatory military actions or pre-emptive forces by states in the name of self-defence has long been a controversial decision that has elicited further analysis by the masses. Anticipatory attacks refer to any form of self-defence that is exercised before the enemy is able to impact you. Considering the distinction between preventive and pre-emptive force, this essay will aim to distinguish between small and large states in the use of pre-emptive force in self-defence. To conclude the hypothesis, three tests, namely the moral (philosophical) test, the legal test and the realist test, will be conducted to determine which size of state is more justifiable. This essay argues that the use of pre-emptive force is more justifiable for small states.

Keywords: Preemptive Forces, Anticipatory Attacks, Preventive Forces, Self-Defence, Size of States

INTRODUCTION

> "If someone comes to kill you, arise and kill him first."
>
> *The Talmud, Sanhedrin 72a*

On 5th June, 1967, Israeli radars detected a large movement of Egyptian aircraft moving towards the Israeli border. The Israeli military executed their response with clockwork efficiency: the air raid sirens were activated, jets were scrambled and flown to intercept the Egyptian forces before they entered Israeli airspace. Iraq, Syria and Jordan simultaneously tried to attack Israel from multiple directions. The battle was fierce and fast. At the end of the first day of air combat, Israel had lost 19 aircrafts. Egypt had lost 300 aircrafts and lost the use of most of their airbases; Syria had lost 52 aircrafts, Jordan lost 27 and Iraq had lost 9 jets and an airbase.[1] The pre-emptive strike by the Israeli jets had been extremely successful. As one of the pilots recalled: *"I was on a routine reconnaissance flight when I was suddenly informed of the Egyptian air assault. 'Head for Bir Gafgafa in Sinai and destroy every plane on the runway or in the air,' my comrades and I were ordered. […] In the first assault, we surprised the base, hitting two MiGs squarely…"*[2] Dayan suggests that had the Israelis not moved first, they might not have been able to defend their soil.

The Six Day War itself is not the focus of this paper; the decision by the Israeli force to strike first in the name of self-defence is the controversial decision that warrants further analysis. French President Charles De Gaulle warned the Israelis not to strike first and subsequently denounced the Israeli pre-emption in a press conference on 27th November, 1967.[3] Israel responded that the real aggressor was Egypt, who was clearly preparing to attack and annihilate them;

they thus had a right to defend themselves from the impending assault—even if that meant launching the first blow.[4]

That incident echoes one of the central questions of this essay: Are countries ever justified in using pre-emptive force in self-defence and if so, under what conditions? We will begin with a definition of pre-emptive force and clarifying the mess that has been created (partially by the proponents of the 'Bush Doctrine') regarding the range of anticipatory military actions. We can then begin to address the central question and more specifically, to look at small states' use of pre-emption. We will put our hypothesis through three tests: the moral (philosophical) test, the legal test and the realist test, in order to determine whether there are sufficient grounds for us to carve out a niche especially for small states, to allow them to invoke this particular form of self-defence earlier. We will then posit and consider possible criteria that may help guide nations in the moral use and justification of pre-emptive force, in keeping with the Just War tradition.

We begin with the Just War premise that the use of force should be avoided unless necessary and from there, we carve out limited moral exceptions. Fundamentally, I argue that small states should be

Supply warehouses and dock facilities in North Korea port feel the destructive weight of para-demolition bombs dropped from United States Air Force Fifth Air Force's B-26 Invader light bombers, 1951.

able to justify pre-emptive force more readily in their self-defence against imminent threats. Implicit in my argument is thus the balancing claim in the dialectic; that beyond this presumed exceptional case, other nations should meet a larger burden of proof (to pass the moral philosophical, legal and realist tests) to justify their use of anticipatory force (i.e. to act before the aggressor).

DEFINITIONS

> *"We no longer live in a world where only the actual firing of weapons represents a sufficient challenge to a nation's security to constitute maximum peril."*
>
> *President John F Kennedy, 1962*[5]

There is a wide variety of terms and definitions that have added to the confusion around the concept of pre-emption. The terms used by the military, media, politicians and academics include 'defensive attack', 'first strike', 'strategic surprise', 'anticipatory attack', 'preventive war', and 'pre-emptive war', among *many* other terms. The terms can serve to obfuscate key concepts and distinctions—sometimes politicians do so deliberately to fit their own needs. This rhetorical trickery—or confusion—was displayed by Donald Rumsfeld who said (about the Cuban Missile Crisis) that Kennedy "decided to engage in pre-emptive action, preventive action, anticipatory self-defence, self-defence, call it what you wish."[6]

ANTICIPATORY ATTACKS

> *"The best, and in some cases, the only defense, is a good offense."*
>
> *- Donald Rumsfeld*[7]

It is thus important to first establish a clearer definition of all the ways in which a defender acts *before* the (purported) aggressor and then to determine where precisely pre-emptive self-defence fits in that spectrum. Walzer's places all such terms under the umbrella of 'anticipatory attacks' or more broadly, 'anticipations', which includes any form of self-defence that is exercised before the enemy is able to impact you.[8] Within that large umbrella term, lie a host of subsets, which we will consider with particular focus on the distinction between *preventive* and *pre-emptive* force. I will distinguish pre-emption from other forms of such 'anticipatory attacks' (in particular, preventive strikes) on three levels: imminence (the certainty and proximity of attack), by impact (the scale and damage of the attack) and purpose (of the defender's action).

(1) Imminence

A threat becomes more certain as it draws nearer and becomes clearer. A man rushing towards you with an upturned knife is an immediate threat; a man across the street with a suspicious knife-shaped bulge in his jacket is far less imminent.

An ordinary individual, confronted by such a serious threat, cannot be expected to ponder the possible options and recourses; an immediate fight-or-flight reflex is expected and if that leads to harm for the attacker, criminal courts will find little evidence of wrong-doing on the part of the victim.

The historical justification for anticipatory attacks begins with a distinction along these temporal lines. Walzer draws upon the language in former United State (US) Secretary of State Daniel Webster's 1842 letter on the sinking of the ship *Caroline*: "a necessity of self-defense, instant, overwhelming, leaving no choice of means and no moment for deliberation."[9] Webster complained that the enemy soldiers' decision to set ablaze a passenger ship in the middle of the night was

untenable because the act was conducted without any real time pressure; it was premeditated and thus not a true act of reflexive self-defence (which was the claim made by the other side). Walzer compares pre-emptive self-defence to a 'reflex action' where one has little choice but to react with force to save one's own life. Criminal jurisprudence recognises this distinction as well and the Canadian Judge Advocate General drew on that when stating: *"detached reflection cannot be demanded in the presence of an upturned knife."*[10] An ordinary individual, confronted by such a serious threat, cannot be expected to ponder the possible options and recourses; an immediate fight-or-flight reflex is expected and if that leads to harm for the attacker, criminal courts will find little evidence of wrong-doing on the part of the victim. Dershowitz adds that, *"if the law required the person to try to reason with his assailant before drawing his gun and killing him, even if the delay caused by this requirement would increase his own chances of being killed, that law would be ignored because it does not reflect reality in imposing an unreasonable risk on the potential victim of an unlawful assault."*[11] The same logic, Walzer argues, applies to nations when using pre-emptive force against an imminent existential threat.

How is this definition of pre-emptive force distinct from preventive force? Preventive force is when a threat exists but is less immediate: the suspicious man across the street. Criminal law forbids people from engaging in self-defence before the threat is real; that is, a person should retreat from the situation and not kill the suspicious man as a first resort.[12] This is not to say that preventive force is *always* wrong; there may be circumstances where it is not possible to wait until the threat becomes truly imminent; reflex responses differ among individuals and there are varying grades of suspicious activity among criminals. The suspicious man across the street may terrify a young female in a dangerous neighbourhood at night; her hands may reach for her pepper spray or even handgun more readily than if the same situation was re-enacted in broad day light at a busy intersection. And in such cases, where she shoots the man first *before* the upturned knife is shown, the courts have a more difficult decision on their hands (which was a discussion in the Trayvon Martin case).[13]

The immediacy of the threat, however, is one clear distinction between pre-emption and prevention. The United States Department of Defense (USDOD) defines a pre-emptive attack as "an attack initiated on the basis of incontrovertible evidence that an enemy attack is imminent."[14] *Imminent* is the key word here. The USDOD distinguishes this from a preventive war, which is "a war initiated in the belief that military conflict, while *not imminent*, is inevitable and that to delay would involve great risk."[15] Here, *"not imminent"* become the key distinguishing words.

The academic literature echoes this distinction readily. Snyder puts it most simply by arguing that a "state pre-empts when another state is poised to strike; it prevents another state from striking (through disarmament) where the strike is a future, but not immediate, risk."[16] Harkavy separates the terms thusly:

> *"Pre-emption, then, is usually linked to an immediate crisis situation, one with mutual escalating fears and threats, in which there is an apparent advantage to striking first. Preventive war, on the other hand, and in its pure form, involves longer-term premeditated behaviour on the part of one antagonist, often where striking the first blow may not be perceived as crucial."*[17]

Certainty (as determined by the imminence) is the first and most critical distinctions between prevention and preemption.

(2) Impact

A man rushing towards you with a baseball bat is scary; a crowd of men rushing towards you wielding guns is terrifying. Even though both attacks are imminent and self-defence is justified, there is a difference in the scale of damage impact. The same is true for nations: a single angry soldier heading for your border is different from squadrons of fighter jets. The scale of impact has to be significant enough for a country to cause an existential threat (in the Westphalian sense that one's sovereignty may be at risk should the aggressor prevail) and not merely cause a tragic incident.

Walzer offers three criteria: *"The line between legitimate and illegitimate first strike is not going to be drawn at the point of imminent attack, but at the point of sufficient threat… [which covers] three things: a manifest intent to injure, a degree of active preparation that makes that intent a positive danger and a general situation in which waiting… greatly magnifies the risk."*[18] Taken holistically, he is essentially defining when a threat becomes sufficiently worrisome (in terms of the risk of harm, which is a proxy for impact) to justify pre-emptive force in this aspect.

The Bush Doctrine arguably begins with this distinction in the 2002 National Security Strategy: *"The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack."*[19] Interestingly, the USDOD does not consider this parameter in their definition of prevention and pre-emption—perhaps because a truly existential military threat is unlikely to materialise for a vast country and power like the US (unlike smaller states, which may be annexed or annihilated far more easily). In discussions of nuclear war and Weapons of Mass Destruction (WMD), academics essentially utilise this principle to argue that WMD should be treated differently. As Betts argues: *"A nation might launch a preventive nuclear war if it decided that a continuation of the trends inherent in the status quo was certain to be intolerable and that waiting longer before resorting to nuclear force would allow the enemy to inflict greater damage. The motive would be the prospect of eventual, not imminent, defeat or destruction by the enemy."*[20] Implicit in his argument is the assumption that WMD are to be treated differently from normal weapons because of the impact that they can have—the same assumption can be extended for non-nuclear situations where a small state can be easily crushed by conventional forces alone. The impact and scale of damage inflicted influences the definitions.

(3) Purpose

Finally, the objective of using anticipatory force must be clearly in the need of self-defence and not opportunistic victory over another. A man is justified in defending himself with lethal force against an unknown assailant with the upturned knife; the grounds become shaky when the assailant is actually a business competitor of the man and there are no witnesses to the incident. Was it self-defence, or a chance to kill a foe? Courts view the latter more dubiously. Likewise, when the US invaded Iraq—was it pre-emptive self-defence, as per the Bush Doctrine, or was it a chance to overthrow an unfavourable regime that coincidentally had precious oil fields?

Bzostek offers an analysis of this line of thinking: *"Merely destroying the existing capability (or sites where it is being developed) is not sufficient, since the leadership, which may be even more determined to develop the technology, will merely start again. Only by removing the regime, it is argued, will the technological development really be forestalled and* prevented."[21]

A surprise military strike conducted by the Imperial Japanese Navy against the United States naval base at Pearl Harbour, Hawaii, on the morning of 7th December, 1941.

Military academics, Mueller & all suggest that the difference can be recast in terms of the offensive-defensive balance in their purpose: *"Pre-emptive and preventive attacks can thus be thought of as occupying a middle ground between purely offensive and purely defensive uses of force, with prevention at the more offensive and pre-emption at the more defensive end of the anticipatory attack spectrum."*[22] This is clearly problematic: preventive attacks being on the 'offensive' end of the spectrum reduce any justification on the grounds of self-defence. Either way, the *purpose* of the use of anticipatory force appears to be significant in all definitions.

Operational Surprise / Military Preemption

'Surprise attack' is often referred to as 'pre-emption', but this is a military operational tactic, where an enemy is outwitted using stealth (concealing an attack from the intelligence of the enemy) and speed (rapidly attacking to achieve both situational and fundamental surprise).[23] This tactic can be used whether the threat is imminent or not, the scale of the enemy's forces is large or small, or the purpose of the attack is offensive or defensive—hence this definition is unrelated to our discussion, even though some academics conflate the two.[24]

PRE-EMPTIVE FORCE JUSTIFICATIONS FOR SMALL STATES

We can now begin to address the question of whether it is fair to carve out a special case for small states with regard to the justified use of pre-emptive force in self-defence, which shapes the central thesis of this paper.

There is a general desire to avoid war as far as possible because of the death and destruction involved. Defending yourself after an act of aggression has already been committed (a 'hostile act' in legal terms) is uncontested. However, defending yourself *before* the act of aggression lands needs greater justification because the hostility is perceived (and may turn out to be imaginary) and not actualised (yet)—yet there is thus room for doubt as to whether the act of pre-emptive self-defence was truly necessary. Our analysis thus asks whether small states should be allowed to invoke the 'right' to use pre-emptive force more readily as compared to large states, which should have a bigger burden of proof.

Small states here are not defined merely by geographic land area size or population—although those are valid considerations because the physically smaller a country is, the less strategic depth they have to lose. Singapore (50 km across at its widest and with a population of 5 million people) can be overwhelmed far more quickly than Russia. Relative combat power (which can be understood as 'defensibility') matters, too: a country that is militarily far weaker than another can be considered a small state, in relative terms (the United Kingdom may be physically smaller than Kazakhstan but is ranked as a stronger military power).[25] We use the term 'small states' as preferable to 'weak states' purely because the latter implies a subjective evaluation of the quality of their democracy and governance, rather than their political clout, military strength and geographic size.

We apply three tests: moral, legal, and realist and contrast the special case of small states versus other cases.

THE MORAL TEST: THE JUST WAR ETHIC

Should it be easier to morally justify the use of pre-emptive force by a small state? I argue that it should. The Just War tradition provides a useful moral framework for which to analyse the right justifications to go to war (Jus Ad Bellum) and the right conduct in a war (Jus In Bello). Jus Ad Bellum contains of six criteria: (1) Just Cause, (2) Right Intention, (3) Right Authority, (4) Last Resort, (5) Possibility of Success, and (6) Proportionality (of ends, a macro-analysis). Jus Ad Bellum can be used to analyse the moral use of pre-emptive force; Jus In Bello is somewhat applicable but less directly relevant to the question we are exploring on how wars can / should start, rather than how wars are conducted.

(1) Just Cause

Johnson summarises the four historical grounds for a cause to be considered 'just' and acknowledges that, "there is the notion that *defence* always constitutes a just cause.[26] This idea is as old as the ages and is, at least in theory, the only legitimating cause for resort to war ..." It thus seems that as long as a country feels that they are the victims of aggression (even imminent *future* aggression), they meet this criteria regardless of the size or power of their state. Johnson notes that there is a difference between small and large states in terms of moral duties: *"it is a moral duty for those who possess power to protect those who are relatively impotent when they are being threatened by others more powerful than they."*[27] There is a distinction made for the special protection and defence for weak and small states here, but nothing is mentioned of self-defence by those small states.

However, self-defence is a Just Cause for large states as well. The US used that claim for its pursuit of Al Qaeda into Afghanistan after 9/11. So long as a nation claims to act in self-defence, anticipatory

Plumes of smoke billow from the World Trade Centre towers in New York City after a Boeing 767 hits each tower during the 9/11 attacks.

action (including pre-emption) appears to be arguable based on Just Cause (regardless of state size).

2) Right Intention

The intent for the use of force must be in 'pursuit of the avowed just cause' only.[28] This is difficult to assess because intent is registered only in the minds of the political and military decision makers, and public articulations of intent can only be taken at face value. An argument can be made that small states are unlikely to use force against a larger state to achieve ulterior motives, because of the disparity in military strengths. Opportunism in terms of conquering land or capturing resources is an unlikely goal for small states picking a fight with powerful enemies. Large states, knowing that they are more likely to win a war, are more likely to have hidden—possibly sinister—intentions.

This gives greater weight to creating a special case for small states' ability to justify the use of pre-emptive force more readily, because the intent is *less* likely to be sinister and therefore more often as self-defence.

(3) Right Authority

The question of right authority is more pertinent to the subsequent legal analysis.

(4) Last Resort

War is to be considered only after exhausting all other options to a reasonable extent according to this criterion, though it is impractical, as Walzer argues, to truly expect absolute "lastness".[29] However, we fall back to the knife-wielding-man dilemma: how long can you consider other options before you run out of time to be able to defend yourself? Put more bluntly in the context of states: a small state has less land to retreat into and fewer soldiers to sacrifice before they have lost their state entirely.

Sometimes the first blow for a small state is the *fatal* blow in Westphalian existential terms, which Johnson captures: *"in some cases first use of force may appropriately be a response of last resort."*[30] It is thus clear that small states need to act more quickly and decisively in order to defend their sovereignty: pre-emption falls squarely in the favour of small states here.

Small states have another weakness in attempting other options. Economic measures like embargos or punitive tariffs imposed by a small state on a big state are meaningless (the big state can take their business elsewhere; the small state is the one who will suffer by cutting off economic ties with the bully state). Diplomatic pleas from a small state are more easily ignored by the big state. Other options are thus far more limited for small states.

(5) Probability of Success

The idea that small and weak states would launch into war proactively against a larger and more powerful state for any reason other than self-defence is intuitively unlikely. Wars are usually won by the stronger state; a small country is thus more likely to try its best to avoid war unless absolutely necessary to defend itself. Their use of pre-emptive force is thus

more compellingly in line with actual self-defence. The converse is true for large states: knowing that they are more likely to win, they are more likely to pursue war as a Clausewitzean "continuation of policy by other means' to achieve their goals."[31] Again, it appears clear that small states are more likely to use pre-emptive force in justifiable self-defence, but there are doubts that must be clarified first for large states.

Wars are usually won by the stronger state; a small country is thus more likely to try its best to avoid war unless absolutely necessary to defend itself.

(6) Proportionality (of Ends)

Given the possible existential threat faced by smaller states, they are more justified in using force (including pre-emptive) for survival, which is considered a noble end. The cost they impose (on the aggressor) compared to the benefit of survival, is a simple calculation. Large states will have to consider their force outcomes in order to ensure that they do not go beyond what is reasonable proportionality. The difference between the simple moral calculations for a small state and the more difficult one for large states in this area translates to a possible presumption that trusting small states with the right of pre-emption may be more acceptable.

These moral assessments do not give small states a *carte blanche* in the use of pre-emptive force; but our arguments lean towards giving them more leeway in the justification (or at the very least, allowing them to call upon this form of self-defence more readily), because it appears that they are more likely to use pre-emption in moral ways as compared to large states, which have to prove that their use of pre-emptive force fits our moral framework.

THE LEGAL TEST

The United Nations (UN) Charter Article 2(4) states: *"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."*[32] However, there are two notable and accepted exceptions to this mandate: the use of force authorised by the UN Security Council (UNSC) (under Chapter 7) and self-defence (under Article 51).

In fact, Mueller et al. argue that Chapter 7 permits the UNSC to *"authorize force in response to a threat to the peace where there has not yet been a breach of the peace or an act of aggression. In addition, the Security Council can authorize force to maintain peace and security. If peace and security are to be maintained, as opposed to restored, then peace has not yet been breached."*[33] There are practical problems with this approach: firstly, it is rare (this authorisation was only granted once, in USA's pre-emptive defence of South Korea in 1950), and secondly, the process is long and cumbersome—and may be too long for some states to wait in the face of an imminent threat.

The second exception, of self-defence, rests on Article 51, which states that *"nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations."*[34] This controversially appears to negate the opportunity for pre-emptive self-defence, as the word 'occurs' strictly means that an aggressive act is currently or has already taken place. The UN High-level Panel on Threats, Challenges, & Change allows room for pre-emptive self-defence by stating: *"a threatened State, according to long established international law, can take military action as long as the threatened attack is imminent."*[35] The report adds that preventive conflicts are a different matter and only UNSC can authorise those. It states:

Israel's surprise attack on the Egyptian Air Force: Israeli troops examine destroyed Egyptian aircraft.

> *"For those impatient with such a response, the answer must be that, in a world full of perceived potential threats, the risk to the global order and the norm of non- intervention on which it continues to be based is simply too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all."*[36]

For our specific question, legal positivists would argue that the UN Charter is thus impartial (or blind) to the size of the state when it comes to legitimate use of pre-emptive force. So long as the laws are abided by, any state may argue their case on its merits.

THE REALIST TEST

The question of legality is an important one, but some critics argue that it is increasingly less relevant in the 'real world'. Glennon sums it up bleakly thus:

> *"The international system has come to subsist in a parallel universe of two systems, one de jure the other de facto. The de jure system consists of illusory rules that would govern the use of force among states in a platonic world of forms, a world that does not exist. The de facto system consists of actual state practice in the real world, a world in which states weigh costs against benefits in regular disregard of the rules solemnly proclaimed in the all-but-ignored de jure system. The decaying de jure catechism is overly schematized and scholastic, disconnected from state behavior, and unrealistic in its aspirations for state conduct."*[37]

Luban describes the growing view that *"a double standard is appropriate, in which the United States is simply not bound by rules of general applicability across all states. The United States gets to do things like launch preventive wars or insist on its own military pre-eminence, that other states do not get to do."*[38] This is realism at its finest: the mighty do as they wish. In this view, the need for the most powerful states to justify pre-emptive (or even preventive) attacks is 'optional.'

Ephraim argues that practical military concerns (such as having intelligence that is reliable and has diagnostic value on the enemy's intent) are more critical in deciding whether or how to launch a 'surprise attack.'[39]

The realist view also impacts our discussion of small states: the realist political leader of a small country will do what is necessary to survive any imminent attack first (including launching a pre-emptive assault) and worry about the legal and moral ramifications *ex-post*. Israel attempted to justify their preemptive strike, but it was clear that their strike would have persisted regardless of international opinion on the morality or legitimacy of their chosen method of self-defence.[40]

Carl von Clausewitz, the legendary military strategist, argued that preventive and pre-emptive force by small states was the only logical choice in a realist world:

> *"Supposing that a minor state is in conflict with a much more powerful one and expects its position to grow weaker every year. If war is unavoidable, should it not make the most of its opportunities before* its *position gets still worse? In short, it should attack."*[41]

POSSIBLE CRITERIA FOR THE USE OF PREEMPTIVE FORCE

There have been attempts to build structured criteria to aid the moral and legal choice to use pre-emptive force. Dershowitz offers this jurisprudential guide: *"Primary among the factors that should be considered are the severity, certainty and imminence of the threat, on the one hand, and the nature, scope and duration of the contemplated pre-emptive actions, on the other."*[42] Totten proposes a set of criteria that mirrors this: *"certainty of intent, sufficient means active preparation, magnitude of harm, probability of harm, proportionality (of ends) and most important, necessity (or last resort)."*[43] He notes that the first five focus on threat assessment, while the last two look at the response of the state, which is similar to how Dershowitz splits his considerations into two halves.

Waiting until the first blow is launched against them might be too late—pre-emptive force should be part of the playbook of a small state's military and the global community should accept that small states might need some leeway carved out for them.

This essay has aimed to distinguish between small and large states in the use of pre-emptive force in self-defence. Both the above criteria that are more favourable to the small state: on the first grouping of threat assessments, the severity (Dershowitz) and magnitude of harm (Totten) are far more dire when a small state is attacked by a more powerful state; in the second grouping of response action, small states are less likely to lead ambitious conquests and thus, their ends are more likely to be necessary and proportional to the goal of survival.

CONCLUSION

This essay sets out to argue that a special exception should be made for small states, to be able to justify pre-emptive force more readily in their self-defence against imminent threats. War should be avoided, but small states have a vested interest in avoiding war even more than large states would, because small states usually come out as the eventual losers. This aversion to the use of force gives them the moral high ground when they are put in a position of imminent existential danger; conflict was not their choice, it was thrust upon them through the actions of a bigger 'bully'. The moral arguments in the Just War tradition lend weight towards carving out a special exception for small states to use pre-emptive force to defend themselves that is distinct from large states. The legal arguments, however, are not weighted either way: so long as the conditions are met, any state can defend itself with force, even pre-emptively (although pre-emptive force falls outside the literal view of the UN Charter). The decision whether to strike pre-emptively in self-defence, according to realists, is largely a military decision driven by the desire for state survival in the Westphalian sense.

The power dynamics between small and large states will continue to play out on the world stage on moral, legal and realist terms. Few small city-states have survived the long test of history, which makes them even more nervous when bigger states start threatening them. Waiting until the first blow is launched against them might be too late—pre-emptive force should be part of the playbook of a small state's military and the global community should accept that small states might need some leeway carved out for them. Larger states, on the other hand, have the depth, might and options, so they need to provide much stronger justification before they are allowed to launch anticipatory attacks of any sort.

BIBLIOGRAPHY

Betts, R. K.. Surprise Attack and Preemption. "An Agenda for Avoiding Nuclear War," *Hawks, Doves, and Owls*. (New York: W.W. Norton & Co., 1985).

Bzostek, R.. "Security Law Norms and Anticipatory Military Activities" *Why Not Preempt?* (United Kingdom: Ashgate Publishing Ltd, 2008).

Crawford, Neta C. "The justice of preemption and preventive war doctrines." *Just War Theory: A Reappraisal*. (Edinburgh: Edinburgh University Press, 2005): 25-49.

Dayan, D.. "A battle history of Israel's Six-Day War," Strike first! (New York: Pitman Publishing Corporation, 1968).

Dershowitz, A. M.. "A knife that cuts both ways," *Preemption*. (New York: W.W. Norton & Co., 2006).

Ephraim, K. A. M.. *Surprise Attack*. (Cambridge: Harvard University Press, 2004).

Flynn, M. J.. "Preemptive War in Modern History," *First Strike*. (United Kingdom: Routledge, 2008).

Glennon, M. J.. "Self-Defense, Inherence, and Incoherence in Article 51 of the United Nations Charter," Fog of Law. (Cambridge: Harvard Journal of Law & Public Policy, 2001), 25, 539.

Hall, W. E.. *A treatise on international law*. (Oxford: Clarendon Press, 1917).

Harkavy, R. E.. "A Comparison of 1967 Israeli Strategy with the Pre-World War One German Schlieffen Plan," *Preemption and Two-Front Conventional Warfare*. (Hebrew University of Jerusalem, Leonard Davis Institute for International Relations, 1977).

Huxley, T.. "The Armed Forces of Singapore," *Defending the Lion City* (NSW: Allen & Unwin, 2000).

Johnson, J. T.. *Can modern war be just?* (London: Yale University Press, 1986).

Luban, D.. Preventive War. *Philosophy & Public Affairs,* (New York: Rowman & Littlefield) 32, n._3 (2004), 207-248.

Mueller, K. P., Castillo, J. J., Morgan, F. E., Pegahi, N., & Rosen, B.. "Preemptive and Preventive Attack in US National Security Policy," *Striking First*. (Santa Monica: Rand Corporation, 2006).

O'Brien, W. V.. The Conduct of Just and Limited War. (New York: Praeger Publishers, 1981), 3-44.

Schmitt, M. N.. Preemptive Strategies in International Law. (London: Mich. J. Int'l L., 2002), 24, 513.

Totten, M.. "America, Terrorism, and Moral Tradition," *First Strike* (London: Yale University Press, 2010).

United Nations. High-level Panel on Threats, & Change.. "Our Shared Responsibility: Report of the High-level Panel on Threats, Challenges, and Change," *A More Secure World*. United Nations Publications, 5, n._1 (2004).

Walzer, M. "A Moral Argument with Historical Illustrations," *Just and Unjust Wars*. (New York: Basic Books, 2006).

ENDNOTES

1. Dayan, D.. "A battle history of Israel's Six-Day War," *Strike first!* (New York: Pitman Publishing Corporation, 1968), 22.
2. Ibid., 25.
3. Ferby, J. "Charles de Gaulle and the France he Saved," *The General*. As cited in Bering, H. (2013) Audacity of de Gaulle. Stanford University Policy Review. Retrieved from http://www.hoover.org/publications/policy-review/article/139501.
4. Johnson, J. T.. *Can modern war be just?* (London: Yale University Press, 1986), 22.
5. McNamara, R. S.: "A National Security Archive Documents Reader, L. Chang, & P. Kornbluh (Eds.)," *The Cuban Missile Crisis,* 1962 (New York: New Press, 1992), 54-56.
6. "Secretary Rumsfeld Interview With NBC Affiliate," News Transcript, (2002) – WXIA Channel 11, Atlanta, GA. U.S. Department of Defense. Retrieved from http://www.defense.gov/Transcripts/Transcript aspx?TranscriptID=3673.
7. Rumsfeld, D. "Secretary Rumsfeld Speaks on '21st Century Transfor- mation' of U.S. Armed Forces (Transcript of Remarks and Question and Answer Period): Remarks as Delivered by Secretary of State Donald Rumsfeld, National Defense University, Fort McNair, Washington, D.C., Thursday, January 31, 2002," (Washington, D.C.: U.S. Department of Defense, 2002).

8. Walzer, M. "A Moral Argument with Historical Illustrations," *Just and Unjust Wars*. (New York: Basic Books, 2006), 75.

9. "British American Diplomacy," *The Avalon Project*. The Caroline Case. (2008) Retrieved from http://avalon.law.yale.edu/19th_century/br-1842d.asp.

10. Watkin K., ed. McCormack T. "Moral Complexity and Legal Rules." *Assessing Proportionality* (Yearbook Of International Humanitarian Law 3, 2005), 25.

11. Dershowitz, A. M.. "A knife that cuts both ways," *Preemption*. (New York: W.W. Norton & Co., 2006), 197.

12. Ibid., 199.

13. Pearson, M. and Botelho, G. (2013). 5 things to know about the George Zimmerman-Trayvon Martin saga, CNN. Retrieved from http://www.cnn.com/2013/02/25/justice/florida-zimmerman-5-things/index.html?iid=article_sidebar.

14. Bzostek, R. "Security Law Norms and Anticipatory Military Activities" *Why Not Preempt?* (United Kingdom: Ashgate Publishing Ltd, 2008), 10.
It is interesting to note that the definitions of preemptive attack and preventive war have been removed from the USDOD Dictionary, and were not accessible from the USOD website. The archive of the definitions can still be found through public-domain Internet archival sites, which the USDOD does not control.

15. Ibid., 10.

16. Ibid., 15.

17. Harkavy, R. E.. "A Comparison of 1967 Israeli Strategy with the Pre-World War One German Schlieffen Plan," *Preemption and Two-Front Conventional Warfare*. (Hebrew University of Jerusalem, Leonard Davis Institute for International Relations, 1977), 7.

18. Walzer, M. "A Moral Argument with Historical Illustrations," *Just and Unjust Wars*. (New York: Basic Books, 2006), 81.

19. Bush, G. W. (2002) The National Security Strategy Of The United States Of America. Executive Office Of The President, Washington DC.

20. Betts, R. K. Surprise Attack and Preemption. "An Agenda for Avoiding Nuclear War," *Hawks, Doves, and Owls*. (New York: W.W. Norton & Co., 1985), 57.

21. Bzostek, R. "Security Law Norms and Anticipatory Military Activities" *Why Not Preempt?* (United Kingdom: Ashgate Publishing Ltd, 2008), 18.

22. Mueller, K. P., Castillo, J. J., Morgan, F. E., Pegahi, N., & Rosen, B.. "Preemptive and Preventive Attack in US National Security Policy," *Striking First*. (Santa Monica: Rand Corporation, 2006), 12.

23. Ephraim, K. A. M. Surprise Attack. (Cambridge: Harvard University Press, 2004).

24. Ibid.

25. Singer, P. (2012). Separating Sequestration Facts from Fiction. Retrieved from http://www.brookings.edu/research/articles/2012/09/defense-sequestration-american-military- spending.

26. Johnson, J. T.. *Can modern war be just?* (London: Yale University Press, 1986), 19.

27. Ibid., 22

28. O'Brien, W. V.. The Conduct of Just and Limited War. (New York: Praeger Publishers, 1981), 34.

29. Walzer, M. "A Moral Argument with Histrorical Illustration", *Just and Unjust Wars*. New York: Basic Books, 2006).

30. Johnson, J. T.. *Can modern war be just?* (London: Yale University Press, 1986), 25

31. Howard, M., Paret, P., & West, R..: "On War," *Carl Von Clausewitz* (Princeton University Press, 1984), 34

32. United Nations, Charter of the United Nations, San Francisco: United Nations, 1945.

33. Mueller, K. P., Castillo, J. J., Morgan, F. E., Pegahi, N., & Rosen, B.. "Preemptive and Preventive Attack in US National Security Policy," *Striking First.* (Santa Monica: Rand Corporation, 2006), 52.

34. United Nations, Charter of the United Nations, San Francisco: United Nations, 1945.

35. United Nations, *A More Secure Worlds,* 5, n._1(2004).

36. Ibid.

37. Glennon, M. J.. "Self-Defense, Inherence, and Incoherence in Article 51 of the United Nations Charter," Fog of Law. (Cambridge: Harvard Journal of Law & Public Policy, 2001), 540.

38. Luban, D.. Preventive War. *Philosophy & Public Affairs,* (New York: Rowman & Littlefield) 32, n._3 (2004), 210.

39. Ephraim, K. A. M. *Surprise Attack.* (Cambridge: Harvard University Press, 2004).

40. Israel's decision to preventively stop Iraq's nuclear program in 1981 was condemned by the UNSC unanimously, but that did not cause the Israeli leaders to regret their actions.

41. Hall, W. E.. *A treatise on international law.* (Oxford: Clarendon Press, 1917).

42. Dershowitz, A. M.. "A knife that cuts both ways," *Preemption.* (New York: W.W. Norton & Co., 2006), 224.

43. Totten, M. "America, Terrorism, and Moral Tradition," *First Strike* (London: Yale University Press, 2010), 168.

COL Gaurav Keerthi studied at Stanford University under a SAF Overseas Scholarship, earning a Bachelor of Arts degree in Economics. He recently completed a Masters of Public Administrations degree at the Harvard Kennedy School on a Lee Kuan Yew Scholarship. COL Gaurav is a CH-47 helicopter pilot and is currently Head, Air Plans Department.