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PREVENTIVE WARS, JUST WAR PRINCIPLES, AND THE
UNITED NATIONS[★]

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ABSTRACT. This paper explores the question of whether the United Nations should engage in preventive military actions. Correlatively, it asks whether UN preventive military actions could satisfy just war principles. Rather than from the standpoint of the individual nation state, the ethics of preventive war is discussed from the standpoint of the UN. For the sake of brevity, only the legitimate authority, just cause, last resort, and proportionality principles are considered. Since there has been disagreement about the specific content of these principles, a third question also is explored: How should they be formulated? Moreover, these questions are addressed in the context of a particular issue: the goals of the non-proliferation and the abolition of weapons of mass destruction.

KEY WORDS: ethics of war, just war principles, pre-emptive wars, preventive military actions, preventive wars, Security Council, United Nations, war and morality, weapons of mass destruction

At the beginning of *Prevention of Armed Conflict: Report of the Secretary-General*, Kofi Annan relates that, “Since assuming office, I have pledged to move the United Nations from a culture of reaction to a culture of prevention.”¹ In broad agreement with his report, I want to explore a question that he does not consider sufficiently: Should a UN culture of prevention include an option of preventive war? Note that “war” is used broadly. What Annan terms an “armed conflict” is a war, and the actual use of military force – a military action – is an act of war.² Hence the question can be restated as

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¹ Kofi A. Annan, *Prevention of Armed Conflict: Report of the Secretary-General* (New York: United Nations, 2002), p. vii.

² For a discussion of the terms “war” and “armed conflict,” see Ingrid Detter de Lupis, *The Laws of War* (Cambridge: Cambridge University Press, 1987), pp. 16–18.

follows. Should a UN culture of prevention include an option of preventive military actions?

Correlatively, I shall explore the question of whether UN preventive military actions could satisfy just war principles. Instead of discussing the ethics of preventive war abstractly, I shall discuss it concretely by orienting it from the standpoint of the UN. For the sake of brevity, I shall consider only the legitimate authority, just cause, last resort, and proportionality principles. Since there has been disagreement within the just war tradition about the specific content of these principles, I shall also have to ask how they should be formulated.³ (Those who hold that preventive wars violate current just war principles might understand my question thus: how should they be revised?) Again for the sake of brevity, my answer to this question has to be incomplete.

Usually, however, discussions of the ethics of war are oriented from the standpoint of the individual nation state. On 20 September 2002, the George W. Bush administration released a document containing a new national security strategy for the US. In this document, it is declared that the US maintains “the option of pre-emptive actions to counter a sufficient threat to our national security,” that “we will not hesitate to act alone, if necessary,” but that this option will be exercised only when “the cause [is] just.”⁴ Evidently, this appeal to (something like) the just cause principle is oriented from the standpoint of the US. But could preventive military actions that are waged alone – unilaterally – satisfy just war principles?⁵ Because I am skeptical that this question should

³ The topic of preventive war is discussed from a “cosmopolitan normative perspective” in Allen Buchanan and Robert O. Keohane, “The Preventive Use of Force: A Cosmopolitan Institutional Proposal,” *Ethics & International Affairs* 18 (2004), p. 1. Although what they propose – namely, a new cosmopolitan “institutional framework” governing the preventive use of force – includes “traditional just war principles,” they do not consider the question of how such principles should be formulated. In contrast, a main goal of my paper is to answer this question.

⁴ “The National Security Strategy of the United States of America,” 2002, <http://www.whitehouse.gov/nsc/nss.html> (accessed 16 March 2004). The first quotation (p. 15) and the second quotation (p. 16) are from a chapter about weapons of mass destruction, whereas the middle quotation (p. 6) is from a chapter about terrorism (page references are to the PDF version). Although this unilateralist declaration is not repeated explicitly in the former chapter, it is implicit there.

⁵ I use the term “preventive,” since (for a reason to be stated shortly) the term “pre-emptive” is misleading.

be answered affirmatively, I am concentrating instead on the question of whether multilateral preventive military actions that are authorized by the UN Security Council could satisfy them.

According to Chapter VII (Article 39) of the UN Charter, it is the duty of the Security Council to ascertain not only whether there is a “breach of the peace” or an “act of aggression” but also whether there is a “threat to the peace.”⁶ The mere possession of weapons of mass destruction (WMD), or even the attempt to possess them – not just by Iraq and North Korea,⁷ but by any state, including Russia and the US – constitutes, I shall argue, a threat to the peace. Accordingly, in discussing the ethics of preventive war, I shall advocate both the goal of the non-proliferation of weapons of mass destruction and the goal of their abolition.⁸ Let us term a state that possesses or is striving to possess WMD a “WMD state,” and preventive military actions with the limited aim of causing a WMD state not to possess WMD a “WMD preventive war.” Of course, a WMD state might be persuaded or coerced not to possess WMD by the use of measures other than military force – such as various political, diplomatic, or economic measures. However, my view is that, if a WMD state is sufficiently threatening, a WMD preventive war against it could be a just cause. Nonetheless, even if such a preventive war would satisfy the just cause principle, it would not be a just war if it did not also satisfy the other just war principles. With the aim of illustrating the above questions with a challenging issue, I shall be especially concerned with the more specific question:

⁶ “Charter of the United Nations,” <http://www.un.org/aboutun/charter> (accessed 16 March 2004). Henceforth references for quotations from the UN Charter are omitted.

⁷ Admittedly, my writing of this paper is motivated considerably by current events, but I want to discuss the ethics of preventive war largely in abstraction from them. Instead of focusing on particular wars or international crises, I am focusing on principles and policies. Therefore, with the exception of a few scattered remarks, I shall ignore the cases of Iraq and North Korea.

⁸ It is often forgotten that the Nuclear Non-Proliferation Treaty incorporates the goal of the abolition of nuclear weapons. More specifically, Article VI commits signatories to engage in “negotiations in good faith” about “effective measures” for bringing about “nuclear disarmament” [see “The Treaty on the Non-Proliferation of Nuclear Weapons (NPT),” <http://disarmament.un.org:8080/wmd/npt> (accessed 16 March 2004)].

Could a WMD preventive war authorized by the Security Council satisfy just war principles?⁹

I. THE UNITED NATIONS AND THREATS TO THE PEACE

Motivated particularly by the case of genocide in Rwanda, Annan proposes that the UN “has a moral responsibility to ensure that vulnerable peoples are protected and that genocides never occur again.”¹⁰ My view is that this moral responsibility should include ensuring that vulnerable peoples are protected from weapons of mass destruction and that nuclear or biological or chemical genocides never occur. Moreover, Annan thinks that the prevention of armed conflict is “best undertaken” in accordance with Chapter VI of the UN Charter.¹¹ Entitled “Pacific Settlement of Disputes,” Chapter VI (Article 33) names such measures as negotiation, mediation, and judicial settlement. Throughout his report, Annan advocates a “comprehensive approach” to armed conflict prevention, one that includes political, diplomatic, and economic measures.¹² Among the measures in his comprehensive approach are peacekeeping operations, but UN peacekeeping operations require the “consent of the States concerned.”¹³ In general, all of the measures named above presuppose such consent.¹⁴

Although mainly concerned with peaceful measures under Chapter VI, Annan does admit, albeit briefly, “that certain measures under

⁹ The topics of the international community, just war principles, and pre-emptive war (and also humanitarian military intervention) are discussed by George R. Lucas, Jr., “The Role of the ‘International Community’ in Just War Tradition – Confronting the Challenges of Humanitarian Intervention and Preemptive War,” *Journal of Military Ethics* 2 (2003), pp. 122–144. Although our two papers overlap somewhat – in particular, we are both concerned with the question of how just war principles should be formulated or revised – there are significant differences. Let me provide a few examples. He is primarily concerned with decisions by individual states to engage in military interventions, whereas I am primarily concerned with decisions by the Security Council to authorize preventive military actions. He restricts the use of military force to threats that are “imminent,” whereas I challenge such a restriction. He considers the issue of weapons of mass destruction peripherally, whereas I consider it centrally.

¹⁰ Annan, *Prevention of Armed Conflict: Report of the Secretary-General*, p. 86.

¹¹ Annan, *Prevention of Armed Conflict: Report of the Secretary-General*, pp. viii, 90.

¹² Annan, *Prevention of Armed Conflict: Report of the Secretary-General*, pp. ix, 90.

¹³ Annan, *Prevention of Armed Conflict: Report of the Secretary-General*, p. 45.

¹⁴ Annan, *Prevention of Armed Conflict: Report of the Secretary-General*, p. 87.

Chapter VII of the Charter such as sanctions, can have an important deterrent effect.”¹⁵ Entitled “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression,” Chapter VII includes both non-military measures such as sanctions (Article 41) and “such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security” (Article 42). Obviously, such coercive measures do not presuppose the consent of the states concerned. Should Chapter VII be understood as encompassing actions by air, sea, or land forces that are preventive of armed conflict?

When there is a breach of the peace, Chapter VII (Article 39) authorizes the Security Council to decide which such measures should be taken to “restore” peace. And, when there is a threat to the peace, Chapter VII (Article 39) authorizes the Security Council to decide which such measures should be taken to “maintain” peace. A plain reading of the words “threat” and “maintain” implies, I submit, that Chapter VII authorizes the Security Council to exercise an option of preventive military actions – military actions that are designed to prevent a threat to the peace from eventuating in a breach of the peace.

Chapter VII (Article 40) also authorizes the Security Council to pass resolutions that require a state that is threatening the peace to cease doing so. And, if the state fails to comply with the resolutions, the Security Council may then call for military actions to compel compliance.¹⁶ Although occasioned by the state’s failure to comply, the Security Council’s aim in calling for military actions is to prevent the state from breaching the peace. For example, in Resolution 687 (1991), the Security Council decided (as a Gulf War cease fire measure) that Iraq must not possess WMD, and recently the Security Council deliberated whether Iraq should be compelled to comply with this resolution by means of military actions. Plainly, the motive for the decision that Iraq must not possess WMD was preventive – the aim was to prevent Iraq from using (or threatening to use) WMD in the future.

A UN option of multilateral preventive military actions is compatible with the UN Charter, but is the US option of unilateral preventive military actions compatible with it? Chapter VII (Article

¹⁵ Annan, *Prevention of Armed Conflict: Report of the Secretary-General*, p. 90.

¹⁶ See Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clarendon Press, 1994), pp. 257–259.

51) does recognize that, prior to action by the Security Council, states have a “right of individual or collective self-defence if an armed attack occurs.” Nevertheless, it is not recognized in Chapter VII that, prior to action by the Security Council, states have a right of individual or collective preventive war. It might be objected that, in accordance with international law, a pre-emptive first strike could be legitimate in the face of an imminent attack.¹⁷ However, in the document in which this US option is declared, it is asserted that “We must adapt the concept of imminent threat” – for “pre-emptive” military actions could still be legitimate “even if uncertainty remains as to the time and place of the enemy’s attack.”¹⁸ So that this adaptation is not confused with the usual meaning of the term “pre-emptive,” I have been using the term “preventive” in discussing the US option. Even if unilateral pre-emptive military actions are compatible with the UN Charter, unilateral preventive military actions are not.

Roughly speaking, to satisfy the legitimate authority principle, a war must be declared and controlled by persons who are legally authorized to do this.¹⁹ My view is that the principle should involve a concept of legal authorization that transcends the individual nation state. In particular, since 191 states are members of the UN, the principle should encompass the procedure of legal authorization that is formulated in the UN Charter.²⁰ Therefore, a preventive war could satisfy the principle only if it is authorized by the Security Council. Indeed, a US preventive war could satisfy the principle only if it is authorized by the US Congress. But, additionally, since the US is a signatory of the UN Charter, and thus must be in compliance with it (cf. Article VI of the US Constitution), a US preventive war could satisfy the principle only if it also is authorized by the UN Security Council.

In endorsing Annan’s report by Resolution 1366 (2001), the Security Council emphasized that, in order for the prevention of armed conflict to be successful, “the United Nations needs the consent and support of the Government concerned.”²¹ I want to

¹⁷ See Higgins, *Problems and Process*, pp. 242–243.

¹⁸ “The National Security Strategy of the United States of America,” p. 15.

¹⁹ See Richard J. Regan, *Just War: Principles and Cases* (Washington, DC: Catholic University of America Press, 1996), p. 20.

²⁰ Cf. Regan, *Just War: Principles and Cases*, pp. 24–27.

²¹ This resolution is reprinted in Annan, *Prevention of Armed Conflict: Report of the Secretary-General*, p. 96.

emphasize that there is no explicit endorsement in this resolution of coercive measures under Chapter VII. Even though the Security Council is authorized by the UN Charter to decide whether coercive measures should be taken, and even though Annan's report alludes to them, this resolution does not. Concerning the concept of consent, let me make a quasi Hobbesian point. Each member of the UN, in signing the UN Charter, has committed itself to comply with Chapter VII, and, therefore, it has consented to being coerced, should it become a threat to the peace.

In light of the irresolution in Resolution 1366 about coercive measures – and also because any permanent member of the Security Council may veto any resolution that authorizes coercive measures – it might be argued that the US option of unilateral preventive military actions is necessary because the UN is ineffective. Admittedly, to have a sufficiently effective UN option of preventive military actions, UN culture has to be transformed. But the Bush administration, by its policy of unilateral preventive military actions, would also transform international culture. Given that there are threats to the peace that warrant preventive military actions, we need to ask which transformation is best. My suggestion is that the US should, instead of acting alone, act together with other states to realize a sufficiently effective UN option of preventive military actions.

Alternatively, it might be argued that, in order to have a truly legitimate transnational authority, the ineffective UN ought to be superseded by a different global institution. For instance, such a global institution might be founded by a treaty among all those states that are sufficiently democratic (i.e., in addition to the obvious European states, such states as Brazil, Israel, Japan, Mexico, Russia, South Africa, and Turkey). To envisage it, we might imagine NATO expanded into a Pacific and Atlantic Treaty Organization (PATO). By reading the terms “United Nations (UN)” and “Security Council” as standing for such a global institution, those who agree with this sort of argument might find much of the remainder of this paper acceptable.²²

²² For a detailed proposal of an institutional model involving a “democratic coalition” that would supplement the Security Council, see Buchanan and Keohane, “The Preventive Use of Force,” pp. 18–20. My view is that this proposal is in conflict with the UN Charter, for it permits the democratic coalition to engage in a preventive war that is not authorized by a Security Council resolution.

II. THE MERE POSSESSION OF WEAPONS OF MASS DESTRUCTION

Even though a UN option of preventive military actions is compatible with the UN Charter, we still may ask whether such an option could satisfy just war principles. Since the legitimate authority principle has already been considered, it remains to consider the just cause, last resort, and proportionality principles. With the aim of answering this question in the context of a particular issue, I shall first discuss the topic of weapons of mass destruction.²³

The controversy today concerning the Bush administration's preventive war policy is reminiscent of the controversy two decades ago concerning the Ronald Reagan administration's nuclear war fighting policy. In the midst of the earlier controversy, McGeorge Bundy advocated the efficacy of "existential deterrence": Instead of relying on credible threats about nuclear retaliation – such as threats about escalation dominance in a limited nuclear war – existential deterrence does not need "provocative threats."²⁴ For the mere possession of nuclear weapons – their mere existence – creates "terrible and unavoidable uncertainties" about how (or even whether) they would be used in retaliation, uncertainties that are sufficient for deterrence.²⁵ Analogously, my claim is that the mere possession of WMD by states – even ones that do not (apparently) have aggressive intentions – creates terrible and unavoidable uncertainties about what could happen, uncertainties that constitute a threat to the peace.

For an illustration of this claim, let us consider the problem of the proliferation of biological weapons (BW). More than 100 states are

²³ There is no space here to discuss topics such as armed humanitarian intervention. However, as what might prove to be an acceptable counterexample to a negative answer to the question, let me mention a case. UN peacekeepers were in Rwanda for several months before the outbreak of genocide in April 1994, but their Rules of Engagement only allowed them to use military force in self-defense. Had preventive military actions been allowed, they might have been able to prevent some of the future slaughter – e.g., by seizing some of the machetes that were being imported in unusually large numbers. Concerning the role of machetes in the genocide, see Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch and International Federation of Human Rights, 1999), pp. 5, 8, 127–128.

²⁴ McGeorge Bundy, "Existential Deterrence and Its Consequences," in Douglas MacLean, (ed.), *The Security Gamble: Deterrence Dilemmas in the Nuclear Age* (Totowa: Rowman and Allanheld, 1984), p. 10.

²⁵ Bundy, "Existential Deterrence and Its Consequences," p. 8.

presently capable of manufacturing BW,²⁶ and so very many states might in future possess BW, if BW proliferation is not stemmed. However, during the Cold War the bipolar nuclear deterrence regimen (presumably) proved stable, and so we might expect that in future a multi-polar WMD deterrence regimen will be stable. Nevertheless, there still was considerable worry during the Cold War about the possibility of the accidental or inadvertent or unauthorized use of nuclear weapons.²⁷ Similarly, we still should be quite worried about the possibility of an accidental or inadvertent or unauthorized use (or release) of a BW agent (i.e., a microorganism or toxin), especially one that would result in a catastrophic plague (briefly, a “BW plague”).

Granted, it is uncertain at present whether there will be in future a BW plague, but this is a terrible and unavoidable uncertainty. Indeed, because each state possessing BW (i.e., each “BW state”) can be expected to have safeguards against accidental or inadvertent or unauthorized uses of its BW agents, the probability that its possession of BW will unintentionally result in a BW plague is perhaps very low. For simplicity, let us suppose that this probability is .01. Nonetheless, if there were 10 BW states, the probability that the possession of BW by one of these ten will unintentionally result in a BW plague is about .1. (To obtain this result, it is assumed that the probability that the possession of BW by the 10 states will not unintentionally result in a BW plague is $.99^{10}$.) And, if there were 30 BW states, the probability that the possession of BW by one of these 30 will unintentionally result in a BW plague is about .26 (i.e., $1 - .99^{30}$.) These probabilities, although conjectural, symbolize a generalization about BW proliferation that is not conjectural: the larger the number of BW states, the greater the probability of a BW plague. Just as there were terrible and unavoidable uncertainties during the Cold War about nuclear intentions, so there are terrible and unavoidable uncertainties today about what could happen with BW agents unintentionally.

There also are terrible and unavoidable uncertainties about what could happen with BW agents intentionally. In particular, we should

²⁶ US Congress, Office of Technology Assessment, *Technologies Underlying Weapons of Mass Destruction, OTA-BP-ISC-115* (Washington, DC: US Government Printing Office, 1993), p. 85.

²⁷ See Paul Bracken, “Accidental Nuclear War,” in G. T. Allison, A. Carnesale, and J. S. Nye, Jr. (eds.), *Hawks, Doves, and Owls: An Agenda for Avoiding Nuclear War* (New York: Norton, 1985).

admit that we actually are uncertain about whether a multi-polar WMD deterrence regimen would remain stable. For the larger the number of BW states, the greater the probability that one of them will use BW in warfare. Note that such a use of BW could result in a BW plague, because of technical difficulties in limiting BW agents to the battlefield.²⁸

Having considered the problem of BW proliferation, I want now to ask whether we can reasonably demand that states not possess chemical and biological weapons (CBW), when some states continue to possess nuclear weapons. First, we still should be very worried about the accidental or inadvertent or unauthorized use of nuclear weapons. Second, in light of the nuclear arms race during the Cold War, we also should be very worried that the possession of nuclear weapons by some states could stimulate other states to arm themselves with CBW. Third, if the US were to respond to a CBW attack with the “overwhelming force” of a nuclear weapon, there could be catastrophic radioactive fallout on non-belligerents (consider Chernobyl).²⁹ Fourth, a conventional war between two states with nuclear weapons (e.g., India and Pakistan) could escalate to an inadvertent nuclear war. Fifth, in general, the larger the number of WMD states, the greater the probability that a weapon of mass destruction will be used. And so forth.

Additionally, there are terrible and unavoidable uncertainties about WMD possession by non-governmental agents – e.g., revolutionaries, mercenaries, arms dealers, and, of course, terrorists.

Because of such terrible and unavoidable uncertainties about what could happen with WMD, my conclusion is that the mere possession of them – or even the attempt to possess them – constitutes a threat to the peace. Note that one of the reasons stated in Resolution 687 (1991) for the decision at the end of the Gulf War that Iraq must not possess WMD was that the Security Council was “Conscious of the threat that all weapons of mass destruction pose to peace and security

²⁸ US Congress, Office of Technology Assessment, *Technologies Underlying Weapons of Mass Destruction*, p. 73.

²⁹ In a supplementary national security document released by the Bush administration in December 2002, it is declared that, to deter the use of WMD by an enemy state, the US “reserves the right to respond with overwhelming force – including through resort to all of our options.” And among these options is a “nuclear response” [see “National Strategy to Combat Weapons of Mass Destruction,” 2002, p. 3, <http://www.whitehouse.gov/nsc> (accessed 16 March 2004)].

(in the Middle East).”³⁰ Therefore, my proposal is that, in accordance with Chapter VII of the UN Charter, the Security Council ought to maintain the peace by taking actions with the aim of realizing the goals of WMD non-proliferation and WMD abolition. In particular, in accordance with Article 42, the Security Council ought to have the option of preventive military actions.

Obviously, in order to carry out this proposal, UN culture would have to be transformed. To appreciate the difficulty of the requisite transformation, consider that the Security Council would have to take actions with the aim of abolishing the nuclear weapons possessed by its own permanent members. Let me suggest again that the US should, instead of acting alone, act together with other states to bring about such a transformation of UN culture.

III. UN PREVENTIVE MILITARY ACTIONS AND THE JUST CAUSE PRINCIPLE

I want now to return to the question of whether a UN option of preventive military actions could satisfy just war principles. To begin with, let us recall a widely held thesis in the recent literature on just war theory: whereas there are circumstances under which a pre-emptive attack could satisfy just war principles (The Six Day War is a paradigm case), a preventive war cannot be a just war. For instance, William V. O’Brien claims that “the right of defense” includes a right of “anticipatory self-defense,” a right that can be exercised only when three criteria are satisfied.³¹ First, there is a criterion of intent: “There must be a clear indication of an intent on the part of the alleged aggressor to attack.”³² Second, there is a criterion of imminence: “There must be adequate evidence that preparations for the attack have advanced to the point where it is imminent.”³³ Third, there is a criterion of proportionality: “The advantages of a pre-emptive attack must be proportionate to the risks of precipitating a

³⁰ “United Nations Security Council Resolution 687,” 1991, <http://www1.umn.edu/humanrts/peace/docs/scres687.html> (accessed 11 April 2004).

³¹ William V. O’Brien, *The Conduct of Just and Limited War* (New York: Praeger, 1981), p. 132.

³² O’Brien, *The Conduct of Just and Limited War*, p. 133.

³³ O’Brien, *The Conduct of Just and Limited War*, p. 133.

war that might be avoided.”³⁴ Presumably, his imminence criterion serves to demarcate pre-emptive attacks from preventive wars. For he also claimed parenthetically that “Defense does not go so far as to justify preventive war,” a claim that he did not elaborate.³⁵

But why should imminence matter? In *Just and Unjust Wars*, Michael Walzer stated three conditions for a morally legitimate first strike. First, there is a condition of intent: “a manifest intent to injure.”³⁶ Second, there is a condition of degree: “a degree of active preparation that makes that intent a positive danger.”³⁷ Third, there is a condition of urgency: “a general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk.”³⁸ It is notable that, in contrast to O’Brien, Walzer does not require imminence. “The line between legitimate and illegitimate first strikes,” Walzer wrote, “is not going to be drawn at the point of imminent attack but at the point of sufficient threat.”³⁹ On the other hand, Walzer also supported “the moral necessity of rejecting any attack that is merely preventive in character.”⁴⁰ But notice the use of “merely.” Presumably, it is not merely preventive to launch a first strike against a sufficient threat (i.e., one that satisfies the stated three conditions) that happens not to be imminent. Accordingly, my conclusion is that he has in effect stated three conditions for morally legitimate preventive military actions.

By revising his intent and degree conditions, I shall propose an answer to the question of whether an option of UN preventive military actions could satisfy the just cause principle.⁴¹ (His urgency condition has relevance mainly to the last resort principle, and so it is discussed in the next section.) Concerning his intent condition, which is remarkably similar to O’Brien’s criterion of intent, my main question is why it is limited to manifest threats of injury that are

³⁴ O’Brien, *The Conduct of Just and Limited War*, p. 133.

³⁵ O’Brien, *The Conduct of Just and Limited War*, p. 132.

³⁶ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), p. 81.

³⁷ Walzer, *Just and Unjust Wars*, p. 81.

³⁸ Walzer, *Just and Unjust Wars*, p. 81.

³⁹ Walzer, *Just and Unjust Wars*, p. 81.

⁴⁰ Walzer, *Just and Unjust Wars*, p. 80.

⁴¹ See the “slight re-wording and generalizing” of Walzer’s three conditions by Lucas, “The Role of the ‘International Community’ in Just War Tradition,” pp. 131–133.

intentional. The *Model Penal Code* of the American Law Institute distinguishes four kinds of culpability, which are based on whether a person acts purposely (i.e., intentionally) or knowingly or recklessly or negligently.⁴² Of course, during a trial the members of the jury are deciding retrospectively about culpability, whereas I am concerned here with prospective decisions about sufficiency of threat. Nonetheless, similar to these four kinds of culpability, there are four kinds of threat. Accordingly, I would revise Walzer's intent condition as follows: a manifest threat of injury made (or done) either intentionally or knowingly or recklessly or negligently. Because of the greater generality of the revised condition, I shall rename it the *threat condition*.

Let me sketch some disputable illustrations. If fundamentalists were to seize power in Pakistan, the increased likelihood of accidental or inadvertent or unauthorized use of Pakistan's nuclear weapons would constitute a manifest threat of injury through negligence. Even if North Korea's nuclear weapons program does not involve a manifest intent to injure, it still involves a manifest threat of injury through recklessness. Implicit in the US threat to respond to a WMD attack with the overwhelming force of a nuclear weapon is a manifest threat of knowingly (even if not intentionally) injuring civilians.

Correspondingly, I would revise Walzer's degree condition as follows: The magnitude of the threat is sufficiently large to make the threat an extreme danger. And I shall rename it the *magnitude condition*. But what are the thresholds of sufficiency for the magnitudes of various threats? This question and comparable threshold questions are considered in the final section of this paper.

What, then, is the relevance of these two revised conditions for the just cause principle? There is widespread agreement that there is a just cause for war when a state's territorial integrity is violated. But this sort of just cause should be understood to encompass not only intentional violations of territorial integrity but also knowing, reckless, and negligent violations of territorial integrity. Indeed, the intentional invasion of a state by the armed forces of an aggressor is a violation of territorial integrity, but then so is the invasion of a BW plague due to an accidental or inadvertent or unauthorized use of a BW agent. And so is the invasion of radioactive fallout due to the use of a nuclear weapon elsewhere. Additionally, this sort of just cause should be understood to encompass both actual violations of

⁴² *Model Penal Code* (Philadelphia: American Law Institute, 1962), Section 2.02.

territorial integrity and sufficient threats of such violations. Accordingly, my view is that there is a just cause for UN preventive military actions when a threat of a violation of territorial integrity satisfies both the threat and magnitude conditions.

To generalize, there is a just cause for UN preventive military actions when there is a threat to the peace that satisfies both the threat and magnitude conditions. Of course, when there is a threat to the peace that satisfies the threat condition but not the magnitude condition, there still could be enough justification for UN non-military measures. In the preceding section, I argued that the mere possession of WMD, or even the attempt to possess WMD, constitutes a threat to the peace. Such a threat is, I now want to add, a manifest threat of injury (whether intentional or knowing or reckless or negligent). Nevertheless, there is a just cause for UN preventive military actions only if the magnitude of such a threat is sufficiently large to make the threat an extreme danger.

IV. UN PREVENTIVE MILITARY ACTIONS AND THE LAST RESORT PRINCIPLE

Even if a preventive war authorized by the Security Council would satisfy the just cause principle, it would not be a just war if it did not also satisfy the last resort principle. Measures other than military force must be tried first. It is especially because of the last resort principle that there is considerable skepticism about whether a preventive war could be a just war. For, since the peace is only threatened – and the threat is not imminent – it would seem that there is ample time to try non-military measures first – until the threat becomes imminent or the peace is breached. In the present section, I shall challenge such skepticism. In particular, I shall contend that an option of UN preventive military actions could satisfy the last resort principle.⁴³

Roughly speaking, the last resort principle requires that measures other than war must be tried sufficiently first. Hence a key question concerns the standards for determining whether non-military measures have been tried first sufficiently. In brief, what are the sufficiency standards?

⁴³ Although Buchanan and Keohane state that their cosmopolitan institutional proposal includes “traditional just war principles,” they do not mention the last resort principle (see Buchanan and Keohane, “The Preventive Use of Force,” p. 4).

In his study of just war principles, James Childress claimed that the last resort principle does not require “that all possible [non-military] measures have to be attempted and exhausted if there is no reasonable expectation that they will be successful.”⁴⁴ Note that, when we reasonably expect that a measure will succeed, we also have to recognize that there is a significant risk that it will fail. Thus his standard of sufficiency is that there is no reasonable expectation that additional non-military measures will be successful. While agreeing that this *unsuccessfulness standard* is correct, I want to investigate whether there should be other sufficiency standards, ones that pertain specifically to preventive wars.

To begin with, let us recall Walzer’s urgency condition: “A general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk.”⁴⁵ Let me revise his condition in terms of the language of my threat and magnitude conditions. Suppose that there is a manifest threat of injury, and the magnitude of the threat is sufficiently large to make the threat an extreme danger. Moreover, if we were to delay taking preventive military actions in order to attempt non-military measures first, the magnitude of the threat would be greatly increased. In brief, the revised condition is that delaying taking preventive military actions greatly increases the magnitude of the threat. The main point is that this condition amounts to a second sufficiency standard, one that pertains specifically to preventive wars. Let us term it the “*magnitude standard*.” Even if we could reasonably expect that a non-military measure will succeed, we also have to recognize that there is a significant risk that it will fail. And so the last resort principle does not require that it has to be attempted if the magnitude of the threat would thereby be greatly increased. But, to satisfy the magnitude standard, how great does the increase in magnitude have to be? This threshold question too is considered later.

The last resort principle requires that non-military measures must be attempted first unless a sufficiency standard is satisfied. However, it does not require that, once a sufficiency standard is satisfied, non-military measures must no longer be attempted. For in some circumstances it could be most effective to use both preventive military actions and non-military measures concurrently. For instance, to

⁴⁴ James F. Childress, “Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria,” *Theological Studies* 39 (1978), p. 75. See the term “reasonable” in Regan, *Just War: Principles and Cases*, p. 64.

⁴⁵ Walzer, *Just and Unjust Wars*, p. 81.

coerce a WMD state not to possess WMD, limited military strikes could help to bring about a diplomatic solution. Indeed, war must be a last resort, but it also may be a concurrent resort.

In light of this qualification, let me propose a third sufficiency standard, termed the "*minimization standard*." (There might be other sufficiency standards, but I cannot pursue this possibility here.) In summarizing his strategy of the indirect approach in a set of maxims, Basil Liddell Hart included the maxim: "Exploit the line of least resistance."⁴⁶ For the purpose of strategy is "to diminish the possibility of resistance."⁴⁷ By exploiting the line of least resistance, one aims both to increase the likelihood of securing one's military objective and to decrease one's costs in doing so. His military maxim has a moral analogue: Exploit the line of least harm. For the purpose of just war theory is to diminish the destructiveness of war, but the purpose of morality also includes diminishing the harm of unjust threats. I want to stress that the line of least harm is sometimes best exploited by using non-military measures concurrently with military actions. Most importantly, it is sometimes best to use as many non-military measures as possible concurrently with as little military force as possible. Therefore, the last resort principle should permit using minimal preventive military actions and maximal non-military measures concurrently if the magnitude of an extremely dangerous threat to the peace would thereby be greatly decreased. In short, the minimization standard is that using minimal preventive military actions and maximal non-military measures concurrently decreases greatly the magnitude of the threat. But, to satisfy the minimization standard, how great does the decrease in magnitude have to be? Again there is a threshold question to be considered later.

Let us imagine an arguable example set in the future. North Korea has sold a nuclear weapon to Syria, and the nuclear weapon is on a ship at sea. The possession by Syria of this nuclear weapon would constitute a manifest threat of injury to other states, and the magnitude of the threat would be sufficiently large to make the threat an extreme danger. However, there is a reasonable expectation that Syria would be persuaded to relinquish the nuclear weapon by means of diplomacy, and so the unsuccessfulness standard is not satisfied. Although there is a significant risk that diplomacy would fail, the

⁴⁶ Basil Liddell Hart, *Strategy*, second revised edition (New York: Praeger, 1967), p. 348. Italics removed.

⁴⁷ Hart, *Strategy*, p. 337. Italics removed.

magnitude of the threat would not be greatly increased by attempting it, and so the magnitude standard is not satisfied. Nevertheless, the line of least harm would be to immediately use limited military force, to board the ship and seize the nuclear weapon, while using a variety of non-military measures to prevent further escalation of the ensuing crisis. Even though the other sufficiency standards are not satisfied, the minimization standard is satisfied.

V. UN PREVENTIVE MILITARY ACTIONS AND THE PROPORTIONALITY PRINCIPLE

Even if a preventive war authorized by the Security Council would satisfy the just cause and last resort principles, it would not be a just war if it did not also satisfy the proportionality principle. It might be thought that the just cause and last resort principles, as I have interpreted them in the preceding two sections, are too permissive, that they allow recourse to preventive war too readily. I want to emphasize that the proportionality principle, as I shall interpret it in the present section, is highly restrictive. A common aim of just war theories is to constrain war, and my particular aim in this paper is to show how UN preventive military actions should be constrained.

Roughly speaking, the proportionality principle requires that the probable good consequences achieved by war should outweigh the probable harmful consequences caused by it.⁴⁸ In short, benefits should outweigh harms. But what are benefits and harms, and how should they be weighed? In particular, how should we weigh immediate (and often relatively certain) benefits and harms against remote (and often relatively uncertain) benefits and harms? Evidently, as Nick Fotion asserts, the principle “suffers from a severe measurement problem.”⁴⁹ This problem is very severe for preventive wars, especially when the threat to the peace is far from imminent.

Whatever our measurement procedures, we will ordinarily distinguish three sorts of cases: cases where we are reasonably certain that benefits outweigh harms, cases where we are reasonably certain that harms outweigh benefits, and intermediate cases. Therefore, as

⁴⁸ See O'Brien, *The Conduct of Just and Limited War*, p. 27.

⁴⁹ Nick Fotion, “Proportionality,” in Bruno Coppieters and Nick Fotion (eds.), *Moral Constraints on War: Principles and Cases* (Lanham: Lexington Books, 2002), p. 93.

Fotion remarks, the proportionality principle is “best applied at the extremes.”⁵⁰ Note also that, concerning intermediate cases, he claims that the principle is “permissive”: even when we are not reasonably certain whether benefits outweigh harms, the principle is satisfied.⁵¹ By contrast, concerning intermediate cases, my claim is that the principle is prohibitive: when we are not reasonably certain that benefits outweigh harms, the principle is not satisfied. For with the aim of constraining war, just war theories are (usually) based on a strong moral presumption against war. To override this moral presumption, we have the burden of proving that the just war principles are satisfied.⁵² In particular, we have the burden of proving that the proportionality principle is satisfied. When we are not reasonably certain that benefits outweigh harms, we have not fulfilled this burden of proof (because we also have the burden of proving that the just cause and last resort principles are satisfied, they also are quite restrictive, even as I have interpreted them in the preceding two sections).

Consequently, to ensure that we can fulfill the burden of proving that projected UN preventive military actions satisfy the proportionality principle, we ought to follow this roughly stated rule: Use minimal military force. Let us term it the “*minimization rule*.” Similarly, O’Brien claimed that, to satisfy the proportionality principle, “a military action must conform to the principle of economy of force.”⁵³ But the economy of force principle is limited to military actions, for it requires that no more military force should be employed “than is necessary to achieve the [military] objective.”⁵⁴ By contrast, the minimization rule is not limited to military actions. As has already been noted, the line of least harm is sometimes best exploited by using as many non-military measures as possible concurrently with as little military force as possible. Accordingly, the minimization rule can be elaborated as follows. To

⁵⁰ Fotion, “Proportionality,” p. 93.

⁵¹ Fotion, “Proportionality,” p. 93.

⁵² I discuss these ideas of moral presumption and burden of proof more fully in John W. Lango, “Is Armed Humanitarian Intervention to Stop Mass Killing Morally Obligatory?,” *Public Affairs Quarterly* 15 (2001), pp. 173–191. For an interpretation of just war principles in terms of W. D. Ross’s conception of *prima facie* duties, see Childress, “Just-War Theories.”

⁵³ O’Brien, *The Conduct of Just and Limited War*, p. 228.

⁵⁴ O’Brien, *The Conduct of Just and Limited War*, p. 227. The quoted words are from a US Army Manual.

ensure that we can fulfill the burden of proving that UN preventive military actions satisfy the proportionality principle, we ought to follow the rule: use minimal military actions and maximal non-military measures concurrently.

In striving to satisfy the proportionality principle, we should always keep in mind that the smallest quantity of military force is 0. For coercive threats of military action (whether deterrent or compellent) are themselves (in a broad sense of the term) military actions. When a coercive threat is successful – when military force does not actually have to be exerted – the quantity of military force is 0. “In peacekeeping, we have a doctrine that you sometimes have to show force in order not to use force,” Annan remarked, “that you arrive in such a robust, credible manner that the other side may do what you wish to see done, without having to fight.”⁵⁵ Ideally, non-military measures should be buttressed merely by robust, credible threats of preventive military actions. Therefore, in accordance with the minimization rule, let me propose a rule of coercion: Use maximal non-military measures and coercive threats of minimal military actions concurrently.

VI. THRESHOLDS AND TREATIES

Of course, sometimes non-zero military force has to be used, and so there still is a threshold question about the minimization rule: how minimal do preventive military actions have to be? Now recall that comparable threshold questions were asked about the just cause principle’s magnitude condition and the last resort principle’s magnitude and minimization standards. Concerning his conception of supreme emergencies, Walzer stated: “We need to make a map of human crises and to mark off the regions of desperation and disaster.”⁵⁶ Analogously, to answer these questions, we need to make a map of threats to the peace and to mark off the regions that warrant U.N. preventive military actions.

⁵⁵ Annan is quoted in “UN Secretary General Faces His ‘Most Difficult’ Moment,” *New York Times* (30 March 2003), p. B1.

⁵⁶ Walzer, *Just and Unjust Wars*, p. 253. I have no room to consider the question: “In a supreme emergency, may one or more of the just war principles be set aside?” Even if the question is answered affirmatively, it still is important to understand how the principles hold of preventive wars. For before we can decide whether a principle may be set aside, we first have to understand how it holds.

To articulate the map, a tool of threat cartography is conceptual analysis, but I have no space here to continue using this tool. Additionally, there are more pragmatic tools, ones that are political or diplomatic. More specifically, let me suggest that a principal goal of the Security Council ought to be to formulate procedures for answering the questions that are politically acceptable. And let me also suggest that no state should answer them unilaterally. Again I have to admit that, to realize this goal, UN culture would have to be transformed. Let me sketch one course that this transformation might follow. In accordance with Chapter VII (Article 43) of the UN Charter, and with the aim of contributing “to the maintenance of international peace and security,” the Security Council might negotiate “special agreements” with UN members that would establish and govern “armed forces.”⁵⁷ In so doing, the Security Council might negotiate procedures for answering the questions that are politically acceptable.

But what might be the purposes of such UN armed forces? Without attempting to answer this question completely, let me suggest one purpose. The Biological Weapons Convention (BWC) is not sufficiently effective, and so attempts have been made to negotiate a protocol designed to enhance its effectiveness. However, the BWC does provide minimally for compliance in terms of the Security Council. According to Article VI of the BWC, “Any State Party to the Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations.”⁵⁸ Note also that Article VII of the BWC can be interpreted as providing for collective military action authorized by the Security Council. What the history of WMD inspections by the UN in Iraq indicates is, I think, that sometimes compliance with the BWC might be secured by means of UN preventive military actions, or by means of coercive threats of such actions. To generalize, in negotiating or renegotiating treaties to limit or abolish WMD, provisions for non-military measures might be buttressed by provisions for an option of UN preventive military actions. To generalize further, an option of UN preventive military

⁵⁷ See Alton Frye (ed.), *Humanitarian Intervention: Crafting a Workable Doctrine* (New York: Council on Foreign Relations, 2000), pp. 31–32.

⁵⁸ “Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction,” <http://disarmament.un.org:8080/wmd/bwc> (accessed 16 March 2004).

actions might be embodied in an appropriate framework of Security Council resolutions, international treaties, and international laws.⁵⁹

In conclusion, let us imagine a future Security Council resolution:

The Security Council,

Emphasizing its responsibility under Article 39 of the United Nations Charter to determine the existence of threats to the peace and to take actions to maintain the peace,

Expressing its determination that both the continued possession and the further proliferation of weapons of mass destruction constitute threats to the peace,

Recognizing that it is an erroneous double standard to require some states to abolish such weapons while allowing other states to possess them,

Finding that existing arms control treaties do not provide for compliance measures that are sufficiently effective,

Stressing the importance of the option of military actions as a compliance measure,

Emphasizing its responsibility under Article 42 to take military actions, if necessary,

Affirming its responsibility under Article 43 to negotiate a special agreement with Members of the UN whereby armed forces will be made available to it,

Recognizing the unique standing of the US as a military power,

1. *Requires* that the states possessing nuclear weapons take prompt and verifiable steps to destroy them,
2. *Requires* that the states possessing chemical or biological weapons take prompt and verifiable steps to destroy them,
3. *Requires* that all states sign the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention, and the Biological Weapons Convention,
4. *Requires* the negotiation of protocols for these three treaties that provide for effective compliance measures, including measures about taking military actions,
5. *Convenes* Members of the UN to negotiate a special agreement for making armed forces available to it,
6. *Declares* that it will, if necessary, use these armed forces to compel compliance with the three treaties,

⁵⁹ Additionally, such a framework might incorporate the conception of “accountability” that is central to the cosmopolitan institutional proposal of Buchanan and Keohane, “The Preventive Use of Force.”

7. *Calls upon* the US, which led in the founding of the UN at the close of the Second World War, and was a leader of an alliance of nations in that war, to once again lead the world in taking “effective *collective* measures for the prevention and removal of threats to the peace.”⁶⁰

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⁶⁰ Article 1 of the UN Charter, emphasis provided.