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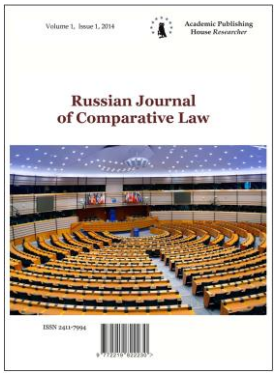

The Doctrine of Preventive Self-Defense: Where are the Limits of Reasonable?

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Abstract

The realities of the modern world brought the concept of preventive self-defense into the forefront of international law. The new doctrine of the "preventive" war as a way of eliminating international threats comes to replace the legal prohibition of war. The spread of terrorist activity together with the development and spread of weapons of mass destruction forced international community to change its views in favor of preventive self-defense. A certain operations were carried out by the West that created dangerous precedents and revealed the inconsistency of preventive self-defense with the concept of sovereignty of states. Terrorist activity started to be used as an excuse for changing the regime in sovereign countries, mainly by the US.

Keywords: self-defense, international law, terrorist.

I. Introduction

In the current century, terrorist groups operating on the territory of another state came to the forefront as a new challenge and threat, which required the use of force by one state against another state, from which a threat of non-state actors is taking place. Therefore, in the doctrine of international law attention is especially drawn to armed terrorist acts of non-state entities. This raised the issue of using pre-emptive self-defense against non-state actors. This is especially true in connection with the fact that there is a serious danger of getting of weapons of mass destruction, such as biological, chemical weapons and radiological bombs into the hands of various terrorist organizations.

Today, in conditions of returning to the "cold war", the problem of pre-emptive strikes becomes extremely urgent. The "US National Security Strategy" of 2002 (The National Security Strategy) provides for military operations outside their borders, including without the sanction of the UN Security Council. The concept of preventive self-defense (called the "Bush Doctrine") provides unilateral action as a preventive self-defense against a potential danger. During his first term, US President G. Bush introduced a new category of self-defense - preemptive or preventive self-defense, which he claimed to be legally justified in the world after September 11th. President Bush first mentioned the importance of preemptive self-defense in addressing the UN General Assembly on September 12, 2002 (Statement by President Bush).

It is sad that the world community in recent years began to get used to the idea of using military force in a preventive manner. But in fact, the preventive war against Iraq under the Bush doctrine became a huge mistake in the history of American foreign policy. And the fact is that now, fifteen years later, many Americans can not allow even the idea of repeating such a mistake about Iran, as it is horrifying.

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2. Materials and methods

International law textbooks published in Russia and the United States were used as a research basis in writing the article. Russian school of international law is more fundamental and systematic, it is represented by dozens of textbooks in which, on one hand, the place and the role of international law in the international system is present, but, on the other hand, there are different views on some aspects the system of international law and specifics of its implementation. In the analysis of the doctrines formal-legal, systemic-historical and comparative-legal methods of research were used.

3. Discussion

3.1. Principle of non-use of force in the UN Charter

The principle of non-use of force and the threat of force, which places war and other forceful methods of foreign policy outside of law, began to be formed only in the twentieth century. For the first time the principle of non-use of force or threat of force was legally enshrined in 1945 in the UN Charter. The UN Charter introduced into international law an imperative principle of prohibiting the use of force and the threat of force that encompasses all types of violence: armed, economic, political, etc. The formation in international law of the principle of prohibition of an invasive war, and later, the principle of non-use of force, institute of international legal responsibility. A state that has committed such a serious crime as aggression is responsible for it not only to the victim of aggression, but also to the entire international community. The threat to peace and security must be seen as an encroachment on the rights of all states.

Paragraph 4 of Art. 2 of the Charter reads: "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."

The principle of non-use of force or the threat of force is of a clearly expressed universal character. This provision of the Charter applies to all states, since the need to maintain international peace and security requires that all states, and not only members of the United Nations, adhere to this basic principle of international law in their relations with each other. In the Millennium Declaration, adopted at the UN Summit in 2000, the international community is faced with the task of increasing respect for the rule of law in international as well as domestic life.

According to this concept, self-defense (Article 51 of the UN Charter), together with the collective measures taken by the UN Security Council to restore and maintain international peace and security (Chapter VII of the UN Charter), are an exception to the principle of non-use of force or the threat of force (Article 2.4 of the UN Charter).

These foundational concepts contain different legal content, although the boundary is often difficult to distinguish:

1. Putting a pre-emptive strike in turn involves the imposition of an armed strike in the presence of a clear, imminent threat. There is a concept close to the notion of "preventive striking", namely "preemptive force" or "preemptive striking".

2. A preventive war is started to prevent the enemy from changing the balance of power in his favor. Because of the threat of speculation by preventive wars, classical international law considers these wars as acts of aggression. Sometimes it is difficult to understand whether war is an aggression or a preventive action. Preventive strike involves a blow to the sources of imminent danger.

Terry Gill uses the notion of "preemptive self-defense" to refer to the exercise of self-defense in connection with the sheer threat of an armed attack that is being triggered in the process or at the point. "Preventive measures" against "preventive self-defense" refer to the exercise of self-defense in connection with attack threats, which are somewhat more remote in time, but nevertheless are, or at least are likely, in the current circumstances that have developed at the moment. Phrases "preemptive self-defense" or "pre-emptive actions" apply to both options. None of these terms is intended to describe actions taken in response to a simple possibility of attack at some uncertain future time in response to a threat that has not yet manifested itself in any significant sense. "Efficiency" is the concept of an immediate or immediate threat of attack in the context of pre-emptive self-defense, although secondary attention will be paid to the term as one of the conditions for exercising self-defense in a more general sense (Gill, 2007: 114).

The new doctrine of the "preventive" war as a way of eliminating international threats comes to replace the principled prohibition of war. In the doctrine of international law, a new form of the institution of self-defense, namely, preventive self-defense, is widely discussed.

3.2. Expansion of the meaning of the concept of "pre-emptive war" by the Bush administration

The administration of President George W. Bush tried to impart the new meaning of the concept of "preemptive war" and expand it so much that the difference between the pre-emptive war (for the purpose of self-defense) and the preventive war has practically disappeared, in order to justify his senseless invasion of Iraq in 2003 (the White House's official position was to allegedly prevent Saddam Hussein from gaining possession of weapons of mass destruction) – not caused by necessity and leading to catastrophic consequences. Due to the irresponsible actions of the US administration, events took place, which in no way were desired. Iraq being dissolved, the regional puppet war between Sunnis and Shiites has begun, and the "Islamic state" has arisen.

It seems that the notion of a "preemptive strike" is introduced into international law from the military regulations of the armed forces, which regulate the tactics of conducting military operations. At the same time, there is a fine line between the concepts of "anticipation" and "prevention". Evidence of positions regarding the extent to which the actions of states that have used force or the threat of force were lawful will depend on the degree of their credibility and would be interpreted subjectively. And in this case, it is highly likely that not the force of law, but the law of force, will act.

Prior to the arrival of President George W. Bush, the use of preventive war as a means of preventing the spread of nuclear weapons was considered illegal by the United States. The Bush doctrine of preventive self-defense was originally designed to significantly expand the already blurred and uncertain criteria of imminent threat. Here is the very place for saying by Inis Klaud-Jr.: "almost any government program, from military supply to construction of highways and education, can be justified in part as the protection of national security" (Inis, 1990: 36).

It is difficult to disagree with this. Any national security doctrine, unfortunately, brings the problem to the sphere of the rule of law, since claims related to national security often do not fit into the generally accepted legal framework. The principle of government under the rule of law is under pressure, since the need to protect the vital interests of the state presupposes the use of a brute force. In Matthews's opinion, the danger that such doctrines contain is that a temporary withdrawal from the rule of law tends to acquire a fairly permanent character (Mathews, Albino, 1966: 37-38).

It should be noted that all states, and especially the hegemons of the planet, have national security doctrines and approach the problem of the correlation of law and power in different ways. On the issue of national security doctrines, most states have two priorities: on the one hand, the protection of national security, and on the other, the protection of the dignity and freedom of every person. This is so, since in a democratic society, striving for freedom and security, there is no other choice except for creating a balance between the freedom and independence of the individual, the state and overall security (Nagan, 2004: 390-400).

October 26, 2015, in an interview to the CNN, former British Prime Minister Tony Blair acknowledged that one of the causes for the formation of the Islamic State was the invasion of Iraq by NATO countries in 2003. Tony Blair actually apologized for the chaos that swept the country after the overthrow of Saddam Hussein (Former UK Prime Minister). Let's add: Iraq has become an academy of global terrorism, from where the skillful terrorists spread all over the world. The actual situation that has developed in Iraq after March 2003 is unlikely to fit into any satisfactory theory of imminence. Life has convincingly proved that terrorist threat is used by US as an instrument of geopolitics for establishing an unipolar world.

The overthrow of the Hussein regime in Iraq was only one destroyed support during the breakdown of the Greater Middle East, the underbelly of Eurasia. The next victim of the Bush doctrine of preventive defense was Libya, Tunisia, Egypt, Yemen, Syria... There is a firm opinion that if there were no terrorist attacks on September 11, 2001, then neoconservatives, who gave birth to the doctrine of preemptive strikes allegedly for self-defense purposes, would simply have invented them.

Official Washington during the years of Bush's rule provoked an outburst of broad interpretation of the right to use of force or threat of force. According to his doctrine, the question

of the extent to which a particular situation corresponds to the lawful use of force in self-defense is left not only at the discretion of the UN Security Council, but, in essence, the states themselves.

The essence of Obama's foreign policy in general remained the same as that of Bush, except for the introduction of a limited number of offensive operations. In the course of his seven-year presidency, the US president reiterates that foreign policy, "smart power", as Hillary Clinton calls it, should help strengthen American global leadership. The concept of "smart power" is aimed at separation of Obama's foreign policy from the similar policy of Bush. But it failed. The US national security strategy for Obama advocated the need to "redefine" the security of the United States.

What changed after the coming to power of Donald Trump? Indeed, it remains as it was: the central element of Washington's foreign policy concept is a pre-emptive/anticipatory strike, justifying the right of the US to strike such a blow against anyone who will be considered at least potentially dangerous. The new US doctrine of preventive self-defense under President Barack Obama also placed the superpower state in a special position, as President Bush loudly announced it at the time, and under Donald Trump it still calls for a unipolar world. According to American researcher Harold D. Lasswell, such a claim presupposes the existence of a "state of national security" or "garrison state" for an indefinite period of time (Lasswell, 1941).

Acts of pre-emptive self-defense in the past decades have generated varying assessments from the international community as a whole, and the United Nations in particular. In some cases, there was a tacit permission for this problem from the United Nations. For example, when Israel conducted a "preventive" attack on Egypt in 1956, the UN did not criticize its actions, but in fact authorized the deployment of UN peacekeepers in Sinai. This universal international organization did not allocate any blame for the outbreak of hostilities and specifically refused to condemn the exercise of Israel's self-defense.

The decision of the International Court of Justice in Nicaragua in 1986, which had a great influence on the behavior of States regarding the meaning of Art. 51 of the UN Charter, not only happened during the final stage of the decolonization era, but also during a period of growing awareness of the threat of international terrorism. One of her first symptoms was the adoption by the United States of the so-called Schulz doctrine, two years before the International Court of Justice session concerning the *Nicaragua* case. This teaching was aimed at protecting the Israeli doctrine of self-defense. According to the latter, the state, which does not want to prevent terrorist attacks from its territory, will be responsible from the point of view of international law.

3.3. From passive intimidation to preventive self-defense: the inflation of legal principles

If we retrospectively look at US foreign policy, it is clear that Bush's doctrine replaced the passive concept of intimidation of the Cold War era, which relied heavily on preemptive action and active defense. The new doctrine of preventive self-defense serves two purposes of American geopolitics aimed at establishing a unipolar world. Initially, it provided a political justification for the use of force to overthrow the political regimes that threaten peace and security, as it appears to the United States. Further, it could help the US to expand the initial framework that defines the parameters of lawful self-defense of states (Sapiro, 2003: 600).

After September 11, 2001, when international terrorists attacked the United States, the international community agreed that even under the limited reading of Article 51, American self-defense was justified. The UN Security Council, for the first time in its history adopted a resolution, confirming the inalienable right to self-defense of the state in response to terrorist attacks. The Security Council unequivocally described the September 11 attacks as an "armed attack" in accordance with Article 51 of the UN Charter. But the UN Security Council has not expanded the range of states' application of the principle of the use of force and the threat of force, since it is limited by the requirements of immediacy, necessity and proportionality (Cohan, 2003: 241).

On the other hand, R. Wadgewood is also right in that the restrictive treatment of Article 51 of the UN Charter, which requires waiting for an attack to take place before responding, fetters effective actions to prevent a tragedy, does not correspond to the new circumstances in connection with the possible use of weapons of mass destruction by terrorists (Wedgwood, 2003: 583).

Until October 7, 2001, when the United States began bombing Afghanistan, interference in the affairs of a sovereign state, according to American researchers W. Nagan and C.Hammer, claimed more than self-defense in international law. In general, it was a claim to the right to intervene and change the composition of the state within the framework of the international regulatory system. This claim required an extensive interpretation of the right to self-defense in a

situation where the enemy is not the state itself, but a significant group of terrorists in that state (Nagan, Hammer, 2004: 380).

The author of these lines noted earlier that according to the statements of the American researcher M. Hakimi, the question of the use of a protective force is still unresolved, and thus military operations in Syria against international terrorists have not resolved, but rather aggravated the existing contradictions. The assertion that international law categorically prohibits defensive use of force against non-state actors loses legal power, but has not yet perished. The fact is that many states that have strategic reasons for supporting the operation against the so-called Islamic state did not themselves participate or put forward a legal justification for this operation (Hakimi, 2015 : 30).

American officials who made such decisions and wanted to solve the Afghanistan problem "inflated" the principle of self-defense in such a way that international law was not limited by any time frame for the inevitability of future attacks or the need for urgent action to repel an attack, say Nagan Winston and Hammer Creig. At the same time, the United States, intruding into Afghanistan, set itself the task of destroying all the characteristics of the "terrorist state" in it and substituting them with a new concept of statehood and sovereignty, which, according to the apologists of the "Bush doctrine", seemed more in line with the UN Charter (Nagan, Craig, 2004: 380).

Unfortunately, violence, terrorist attacks, the threat of further spread of terrorism as the consequences of US mindless foreign policy, still remain a serious problem in Afghanistan, as well as in Iraq, Syria, Libya ... As it is said in Russia, "they wanted it better, but it turned out as always."

The US doctrine of preventive self-defense is sometimes seen as a strategic goal of humanitarian intervention. It includes a claim to use force unilaterally, to which legitimacy has clearly been added since NATO troops bombed, for example, Serbia and Kosovo in 1999. Various international commissions established to consider the legality of these actions came to conclusions that although such actions were not lawful, given the circumstances, this was the right decision (House of Commons, 2000).

In fact, the expansion of the US geopolitical zone of influence has nothing to do with humanitarian and liberal goals. The US is trying to fill the emerging geopolitical vacuum in the Caucasus, Central Asia and throughout the world, which appeared after the collapse of the USSR, pursuing its economic and geostrategic goals.

Meanwhile, refraining from the threat of force or its use in international relations is a universally binding rule of conduct for states. However, in accordance with the doctrine of preventive defense, the US continues to be flagrantly trampled under art. 51 of the UN Charter, as well as the basic principles and norms of international law in general.

3.4. Bush doctrine: paradox of national and international security

The war in Afghanistan provided the necessary justifications for those officials who for a long time interpreted the UN Charter as a limited concept of self-defense, necessary to legitimize US security interests (Karon, 2003). National security parameters are not static. For example, technological advances in the field of weapons of mass destruction strengthen both the degree of protection and the sense of insecurity. The fact that one state includes in the sphere of its national security can be a cause for concern for another state. Moreover, claims aimed at ensuring the security of one state can pose a threat to the security of the entire world community. Thus, this strange neighborhood, enshrined with the help of law, consists in the fact that the claims of both state and collective national security are legally valid (Nagan, 2004: 381).

The concept of preventive self-defense began to be developed by M. McDougal, the classic of the American school of international law, who called attempts to construct Article 51 of the UN Charter as limiting the inherent right to self-defense historically unfounded and logically unsupported: “There is no conclusive evidence that the founders of the UN Charter (...) had the intention to impose new restrictions on the traditional right of states to self-defense” (Mc Dougal, 1963 : 599). He is echoed by modern authors: "Article 51 of the Charter of the United Nations recognizes and confirms, but does not limit this inalienable right... Article 51 simply expresses in part the right that exists independently of the Charter." (Yoo, 2003: 571).

The question arises: should the unilateral actions of the United States in the light of the doctrine of preventive self-defense be consistent with certain legal principles and norms of US domestic law, in particular constitutional law, as well as international law? In other words, is the

doctrine of the United States on preventive self-defense not inconsistent with their national legislation and interstate treaty obligations of both a multilateral and bilateral nature?

Alas, violations in this area are evident. Therefore, the doctrine of preventive self-defense put forward by the Bush administration has met strong opposition from many scholars. Moreover, most of the American scientists also rejected this doctrine. For example, the American researcher Mary O'Connell called the Bush doctrine of preventive self-defense a myth (O'Connell, 2002).

This is also eloquently demonstrated by a symposium organized by the American Journal of International Law on the legality of the invasion of American-British troops in Iraq. Of the nine authors who appeared on the pages of this authoritative publication, only three expressed their support for the doctrine of preventive self-defense, two of them authored by US government officials: the State Department's legal adviser William Taft and the Attorney General of the Ministry of Justice John Yu (in 2001–2003). The rest pointed to the discrepancy of this doctrine with international law, its dangerous character as precedent (Agora, 2003: 553-642).

In particular, Richard Gardner explicitly called the doctrine of Bush to be "counterproductive." For the same reasons, the American scholar sees a danger in using the doctrine of preventive self-defense at the present stage: if the Bush doctrine attributes the right to preventive self-defense only to the United States, this is "obviously unacceptable." If the Bush doctrine is positioned as a new legal principle for universal application, then it "tacitly deserves universal condemnation".

Such a doctrine can legitimize, for example, the pre-emptive attacks of Arab countries against Israel, China against Taiwan, India against Pakistan, North Korea versus South – these are the most obvious examples. It can even serve as an excuse for the post-facto Japanese attack on Pearl Harbor. As a result, R. Gardner concludes that "by expanding the right to prevent imminent attacks before the right of preventive war against potentially dangerous enemies, the Bush administration is charging a gun that can be used against the US and against the fundamental interests of a stable world order."

Of course, there were also troubadours of Bush's doctrine. For example, John Yoo, a professor of law at the University of Berkeley, along with other authors, suggested perhaps the most "weighty" excuses for a preventive war in an essay entitled "The Bush Doctrine: Can Preventive War Be Justified?", published in the Harvard Journal of Law and Public Policy in 2009 (Delahunty, 2009). The author of the essay tried to erase the differences between the concepts of "preemptive war", "preventive war" and "preventive strategy".

By the way, John Yoo was one of the main authors of the notorious and now canceled "CIA Interrogation Allowance Handbook" (notorious as a torture manual) stating that the president has the legal right to issue orders for torture by drowning imitation, sleep deprivation , inconvenient posture and other types of physical and psychological torture.

A significant number of scientists oppose any notion of pre-emptive self-defense before the actual launch of an armed security attack (Brownlie, 1963: 275-278; Bothe, 2003: 227; Randelzhofer, 2002 : 803). Another group of scientists assumes that preemptive self-defense is allowed only within the strict framework of the Caroline criteria (Greenwood, 2004; Bowett, 1958: 185-86; Franck, 2002: 97; Waldock, 1952: 451). The second opinion raises the question of whether self-defense will be permissible in response to potential threats of attack and, more specifically, whether the notion of an immediate threat for reconsideration in the UN Security Council needs in the light of changed circumstances such as terrorist threats and the possible use of weapons of mass destruction by terrorist organizations and so called rogue states.

Well-known Russian scholar R.B. Tuzmukhamedov does not include the right to self-defense provided for in the Charter of the United Nations to categorical exceptions to the principle of non-use of force. Article 51 recognizes the inherent right to self-defense, and from the legal point of view, a law can not be an exception. This, of course, does not mean that Article 51 prevails over other provisions of the Charter. He is convinced that it certainly acts in conjunction with them. As for Article 2, paragraph 4, which prohibits the threat or use of force, it includes actions aimed, firstly, against the territorial inviolability of states, secondly, against the political independence of states, and thirdly, incompatible with the purposes of the United Nations (Tuzmukhamedov, 2002).

What is the immediate threat of an armed attack, what is the correct interpretation of the relationship between the provisions of the UN Charter and customary law relating to self-defense,

and what is the relationship between the necessary defense and the rest of the law governing the use of force?

As the preemptive strikes against Iraq showed, all these debates are not exclusively theoretical. Paradoxically, the neocons assumed that there was no evidence that the Israeli attack of 1981 was ineffective and could not stop Saddam Hussein's weapons program for a long time. And they justified the war in Iraq in 2003 as a preventive – a kind of second and more massive attack on the Osirak nuclear reactor, which was supposed to destroy the still existing threat in the form of Iraqi weapons of mass destruction. That weapon, which, as it turned out after the invasion and capture of Iraqi territory, did not exist.

At the same time, it should not be forgotten that after the June 7, 1981, when Israeli aircraft launched an unprovoked attack on the Osirak nuclear reactor in Iraq, the Reagan administration supported a unanimously adopted UN Security Council resolution condemning Israel's actions. The United States representative in the United Nations, Jean Kirkpatrick, compared the "shocking" attack of Israel to the invasion of the USSR into Afghanistan. British Prime Minister Margaret Thatcher, friendly with Israel, like Reagan, condemned the raid of Israeli aviation (The Bush doctrine). Even then, Anthony D'Amato, for example, used this interpretation to justify Israel's attack in 1981 against the Iraqi nuclear reactor in Osirak. Israel would like to prevent Iraq from developing nuclear weapons. The attack was allegedly aimed at securing Israel's long-term security. According to D'Amato, the Israeli attack did not jeopardize the territorial integrity or political independence of Iraq, and was not incompatible with the purposes of the UN, as it did not violate article 2 (4) (D'Amato, 1983).

But once again, the international reaction to the Israeli blow to Iraq, however, was evenly negative. The Security Council adopted a unanimous resolution condemning this as a violation of the UN Charter. This condemnation helped strengthen the common understanding that article 2 (4) is a general ban on the use of military force. But, alas, times have changed, and the rules of the game on the international arena have changed with them.

So, the threat of international terrorism, especially in the face of weapons of mass destruction, is a powerful justification for the triumph of national security forces over the rule of law in international relations. Moreover, even in the absence of an armed attack against them, on the basis of its own unilateral decision and without the sanction of the UN Security Council. That is, they go against the norms of modern international law, based on attempts to legitimize the concept of preventive and pre-emptive strikes, "preventive self-defense" and military operations around the world under the slogan of "humanitarian intervention" bypassing the UN. As a result, the concepts of the preventive use of force were formed as a natural development of the concept of self-defense.

"We will not permit the world's most dangerous regimes and terrorists to threaten our Nation and our friends and allies with the world's most destructive weapons," George W. Bush said categorically in his report on the US situation in 2002 (The White House). These concepts were expanded in a document created in September 2002, which reflects that the new concept of deterrence is strikingly different from previous concepts. According to the head of the White House, there are three principles for countering the proliferation of nuclear weapons: deterrence under the new rules, defense and mitigation. Defense and mitigation are applied if it can not be restrained. The special nature of the threat of weapons of mass destruction makes this exception justified, which means the introduction of three more doctrinal steps: the prevention, detection and destruction of weapons of mass destruction before their use.

3.5. Bush doctrine: a respond to the post-Soviet threats

During the Cold War, the United States had only one enemy: the Soviet Union. The Bush Jr.'s doctrine was an attempt to respond to the new threats that America faced. It completely rejected the long-standing doctrine of deterrence, since it is of little use for a world of boundless economic systems and aggressors that do not have a state.

So, Bush's doctrine is a modern national security strategy of the United States, which later formed the basis for the foreign policy of Barack Obama, and then Donald Trump. The doctrinal statements of the top officials of the state play a big role in US foreign policy. The emerging doctrine is the response of official Washington to some external events that hurt American national interests. Foreign policy doctrine has no legal force. The doctrine in the American sense represents

a system of views of the country's leadership, primarily the president, concerning the place and role of the US in world politics, the interests of the country and ways to achieve them.

Beginning with President Truman, a special place for such statements is assigned to military components. The Bush Jr. Doctrine is a collection of public speeches that are arranged thematically, not chronologically. It contains an overview of the international strategies of the US: the nation as a champion of human dignity, strengthening the alliance against terror and renewed cooperation to disperse the regional conflict. Part 5 also discusses what Bush called the "Axis of Evil" regimes, as they have weapons of mass destruction. In his report on the US situation in 2002, President George W. Bush pointed to Iraq, Iran and North Korea as terrorist states that together with their terrorist allies form the axis of evil that threatens world peace (The President's State).

UN Security Council Resolution № 1373, adopted unanimously on September 28, 2001, declared the invasion of Afghanistan a counter-terrorism measure in response to the September 11 terrorist attacks on the United States. Such a decision meant that the Security Council expanded the interpretation of the notion of "armed attack", extending it to large-scale terrorist acts committed not by the state but by an international terrorist organization clearly supported by the state power of a country or acting with its connivance against another state.

Thus, the use of preventive self-defense in Afghanistan has shown that regime change is an important element of the emerging national security doctrine. The situation in Afghanistan made the concept of regime change an important element of the new concept of national security of President George W. Bush. His administration clearly saw an acceptable option for the future policy in Iraq in the regime change.

Operation "Freedom for Iraq" became a test drive of the version of preventive self-defense developed by the US administration (Kritsiotis, 2004: 246). In view of the uniqueness of the situation with Security Council resolutions on Iraq in the future in similar cases with regard to rogue states possessing weapons of mass destruction and supporting terrorism, the United States and its allies may be forced to rely solely on the right of preemptive self-defense to use force against such states.

The adoption by the United States of the doctrine of preventive or even preventive self-defense as part of its national security strategy, as a partial support to justify the war against Iraq, has sparked many discussions. It was about the admissibility of early or preventive self-defense on the eve of an armed attack. But many international lawyers generally hold the view that self-defense will be permissible in response to a direct attack or when there is a threat of attack.

The invasion of Iraq by coalition forces in 2003 was motivated by the fact that Iraq possesses weapons of mass destruction and their means of delivery, continues to actively develop them, and also maintains links with international terrorist organizations, primarily Al-Qaeda, harboring, training and financing terrorists.

However, these allegations, at the time of the invasion, were assumptions, and after the occupation of Iraq were not confirmed. The argument of the United States regarding self-defense from the imminent threat that Iraq posed was unconvincing from the point of view of facts, since there was no factual situation on which the United States relied in its theoretical constructs. "Despite the power of intelligence, the United States has not been able to demonstrate the imminence of the threat. Linkages with Al-Qaeda or rudimentary nuclear capabilities would be very serious ways to tie Iraq to an imminent threat to the United States, but intelligence on these issues turned out to be mildly inconclusive," notes Miriam Sapiro (Sapiro, 2003: 603).

Meanwhile, the protection of the sovereignty of the state is clearly reflected in the UN Charter: para. 2 of Art. 1 of the UN Charter ("On Equal Rights and Self-Determination of Peoples"), Art. 55 ("On the equality and self-determination of peoples"), para. 7 of Art. 2 (prohibition of UN intervention "in matters essentially falling within the internal jurisdiction of any state").

Even if the weapons of mass destruction attributed to Saddam Hussein would pose a threat to the security of the United States and Britain, there is no certainty that the armed invasion was the most reasonable means of protecting US and British national security. But in principle such measures could not be successfully undertaken by the UN Security Council. The claims of Western countries are particularly vulnerable in the critical examination of the principle of self-defense in international law. It is in this area that the Bush doctrine is the most controversial (Nagan, Hammer, 2004: 414).

3.6. Regime change as a goal of American doctrine

The new US doctrine, as mentioned above, is aimed at expanding the policy of self-defense based on the threat of non-state terrorist groups and "rogue states" sponsoring such groups. The key sanction of the doctrine is the concept of regime change. However, if these principles to a large extent affect the behavior of the state, they can be established as new rules within the international legal system, even if they are actively challenged. The main issue is that if any political regime is to play the role of a potential "rogue state" and this regime is involved in possessing weapons of mass destruction that can be detected, this regime risks. This means that the principle of non-interference in the sovereignty of the state may be less binding than it was in the established practice (Nagan, Hammer, 2004: 428-433).

In accordance with Article 51 of Chapter VII of the Charter of the United Nations, a UN member state can use force only in response to an armed attack that has occurred. However, the unilateral, preemptive use of military force is beyond the scope of this formulation.

The modern approach to self-defense, according to Bert V.A. Rolling, is that Article 51 clearly allows at least one type of appeal to force, namely the use of armed force to repel an armed attack (Roling, 1986). It is true, since Article 2 (4) does not establish a general ban on force, but only a ban on forces aimed at territorial integrity and political independence of states or incompatible with the purposes of the United Nations.

The broad interpretation of the concepts of "armed attack" and "the right to self-defense", undertaken by the Security Council, is in accordance with the definition of the International Court of Justice. Thomas Frank states: "The Security Council's interpretation in specific cases of the rule prohibiting the use of force, with the exception of self-defense, in practice, defines the notion of "armed attack" as including cases of imminent attacks." (Franck, 2002: 97).

The strategic doctrine of any state provides for the possibility of using force in certain circumstances in relations with other states to protect its interests and contains justification for such use of force (Kotlyar, 2007: 45). The US attack on Iraq, Libya, and indirectly Syria required a more explicit expression of the structured doctrine of national security. It required a significant reassessment of the borders of self-defense in an age when terrorists have access to weapons of mass destruction and can use it.

Moreover, the question of changing the regime in the light of the abuse of sovereignty typical for the "rogue state" requires experts to assess the issues of national sovereignty and the state of international law in its modern sense. Such an approach can help us assess the relationship between national security doctrines and modern practice in the international sphere. It can also help to adequately assess the challenge that the doctrine presents for the rule of law, as well as its legal reflection in the protracted bloody Syrian crisis.

Applying his theory of preventive self-defense towards Iraq, the following conclusion is drawn: "The use of a reformulated test of the use of force as a preemptory self-defense ... against Iraq shows that the threat of Iraqi attacks using weapons of mass destruction, either directly or indirectly through Iraq's support for terrorism, was unavoidable enough to address the force needed to protect the United States, its citizens and its allies. The use of force was in proportion to the threat posed by Iraq; in other words, it was exactly what was needed to eliminate the threat, including the destruction of Iraq's capabilities to create weapons of mass destruction and the removal of the source of Iraqi hostile intentions and actions - Saddam Hussein." (Yoo, 2003: 574).

In fact, it turned out that the American troops did not have any sense in entering Iraq, they did not achieve anything. The very course of this war and the subsequent development of events indicate the weakness of the strategic planning of the US military and political leadership. Because they well planned the beginning of the war, everything was correctly and beautifully held, but it turned out later that they did not envisage the solution of neither interethnic issues, nor interreligious issues of relations with other states, nor envisaged overlapping borders with Syria or Iran.

Of course, the weakness of strategic planning is a common problem. When a preventive war is planned, it often seems that it is quick enough to conduct a "blitzkrieg", and all tasks will be immediately solved. And then it turns into a bloody war for many years, it turns out that everything is not so simple. This is a typical situation for American foreign policy.

The doctrine of preventive self-defense regarding the use of a preventive military strike against Iraq allowed its supporters to single out three factors on which the use of force for the purpose of preventive self-defense against terrorist groups and their rogue states supporting them depends.

First, the regime has weapons of mass destruction and hostile intentions, and the assessment should be based primarily on intelligence.

Second, there is a limited convenient response time: "If the United States were waiting for rogue states to transfer weapons of mass destruction to terrorist groups, it would be extremely difficult to determine where and when weapons of mass destruction would be used based on the sporadic nature of terrorist attacks and terrorists tactic "to dissolve" among the civilian population."

Thirdly, the catastrophic degree of damage from weapons of mass destruction: "The combination of the enormous potential destructive power of weapons of mass destruction and the latest means of their delivery makes it more threatening than the armed forces of many states. Chemical weapons of mass destruction and biological agents can be easily hidden, and even its small number can have a tremendous effect on the civilian population."

Thus, even if the likelihood that a rogue state will attack the United States directly with the use of weapons of mass destruction is uncertain, exceptionally high degree of damage that can be caused, coupled with a limited time frame for a response and the likelihood that if the United States will not act, the threat will increase, can lead the state to the conclusion that military actions are necessary as self-defense." (Nagan, Hammer, 2004: 575-576)

4. Results

International terrorism continues to be a serious threat to peace and security on the planet, but looking at the foreign policy of Donald Trump, this situation will be used by official Washington to advance expansive US policy in the countries of the Middle East, North Africa, Eurasia in the whole.

By the preventive blow, American strategists presuppose a kind of preventive war, rather than a precedent of international law or contractual practice. The doctrine's authors suggest that a preventive war, even if unprovoked, against an ascending adversary is preferable to an inevitable war later, when the balance of power is no longer in their favor. Trump administration justifies this expanded definition of a preventive strike based on today's circumstances. Meanwhile, the line between preventive and preemptive self-defense is as thin as human hair. The nature of modern weapons of mass destruction, ranging from long-range missiles to information warfare, excessively complicates a situation.

5. Conclusion

Thus, in the XXI century the problem of interpreting the principle of self-defense from an unavoidable or real armed attack by non-state factors was extremely topical. Meanwhile, the obligation to refrain from the use of force or threat of force is recognized as the basic principle of international law.

The new doctrine of the "preventive" war as a way of eliminating international threats comes to replace the legal prohibition of war. In addition to the established criteria of extreme necessity and proportionality, when deciding on the unilateral preemptive use of military force, it is necessary to take into account the provision of a minimum invasion of the scope of application of the principle of territorial integrity, as well as the limited purpose of the strike, which can only be the source of the threat, and the contiguity of the territory, where this source is located.

According to classical international law, there is a difference between a preemptive strike (with the goal of self-defense in the presence of an obvious and imminent threat) and a preventive (anticipatory) blow to the sources of the threatening threat. In the first case, military actions by international norms are allowed, and in the second case they are their violation. Strictly following Article 51 of the UN Charter, preventive strikes are a violation of international law, although this is not stated explicitly.

Until recently, there were two points of view on the content of this right: a literal interpretation of Art. 51 of the UN Charter, which excludes any self-defense if it is not carried out in response to an armed attack, and an extensive interpretation allowing self-defense in the face of the threat of an armed attack looming over the state.

International legal measures to use protective force against non-state actors are still debatable. The ongoing military operations in Syria did not resolve, but rather exacerbated the ambiguities and contradictions in this area. For many international lawyers, as the American

expert Monika Hakimi concludes, a meaningful interpretation of the legal norms has come to replace the initial instinctive reaction. Since the states did not unite to establish a legal standard for regulating the parameters of self-defense, each of the legal positions "is still in play and could plausibly be invoked or applied in future cases" (Hakimi, 2015: 30).

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