On the Ethics of Preemptive Strikes

The South Korean presidential candidate Yoon Suk-yeol recently stated that he thought a preemptive strike against the DPRK would be justified, since, if the latter were to launch a rocket armed with a nuclear warhead against Seoul, it would be almost impossible to intercept it. The only option would be to forestall the attack.

This statement triggered a great deal of heated discussion, and the left-leaning daily Hankyoreh published an article in response, quoting Otto von Bismark’s famous dictum that “Preventive war is like committing suicide out of fear of death.”

Nevertheless both the US and Israel have at various times launched attacks that they described as preemptive strikes. Given the situation on the Korean peninsula there appears to be a real risk that an attack on the DPRK’s missile launchers could trigger a full-scale war - but in other parts of the world the principle that “attack is the best form of defense” seems more justified, at least in relation to the bases of terrorist groups.

But the concept of a preemptive strike raises a number of problems, some of which relate to ethical issues, as will be discussed below.

In principle, a preemptive strike can be a viable strategy: “Strike first and do not let your adversary strike you back.”
In a fight between a weaker and a stronger party, where a first blow by your enemy or an extended struggle would manifest your defeat, the best way to turn the situation to your advantage is to strike first.” In the US and many other countries, this principle is applied by law enforcement officers, who frequently shoot first when faced with suspicious activity. In a country where citizens have the right to bear arms, if a suspect puts their hand in their pocket during an arrest, then the police officer is likely to assume they are reaching for a gun. The officer will naturally shoot first, before it is too late.

Although in theory a preemptive strike is a first blow, in practice it is a last resort, adopted only when a fight seems inevitable. But if the fight is NOT inevitable then the preemptive strike closes off all other options for resolving the conflict, leaving force as the only option.

That leads us to the first problem: the need to have a proper justification for such a strike. Whether it is a conflict between individuals or between states, it is essential to have cast iron proof that the party against which the strike is directed was staging an attack. Otherwise the result will be the same as so often happens on American streets when the police get involved. The “suspicious” activity turns out to have been misinterpreted, but it is too late - the shots have already been fired.

To make things more difficult, the decision to strike preemptively is often made in a split second and in response to incomplete information, and, at least in a political context, what Dick Cheney referred to as the “one per cent doctrine” also comes into play. As Mr. Cheney put it: “if there’s a 1% chance that Pakistani scientists are helping al-Qaeda build or develop a nuclear weapon, we have to treat it as a certainty in terms of our response. It’s not about our analysis... It’s about our response.”

In terms of what could be called the “bodyguard’s reflex” (a quality common to security professionals all over the world - it’s in the nature of their job) that approach is justifiable - a one percent risk may represent a significant threat if we are talking about what Cheney refers to as low-probability, high-impact events.

For example if there is a 1% risk of a car accident due to technical failure it is essential to check all parts of the vehicle and ensure that everything is working properly. A 1% risk of an epidemic would justify strict quarantine measures against a person who may be infectious - even if it turns out to be a false alarm.

The US Patriot Act allows official to block potential terrorists’ bank accounts and their telephones without need for any proof, in order, on the off chance that he really is a terrorist, to prevent him from carrying out an attack. And if it turns out that he is not a terrorist and protests about these measures, no harm is done - in relation to such a serious threat, it is better to be safe than sorry.

That is why, for example when the US started looking for weapons of mass destruction in Iraq, it paid no heed to the potential consequences for that country: “We need to be absolutely certain that you do not and cannot obtain such weapons, and any suspicious or dual use technology will be taken as proof of our suspicions, and any reluctance to cooperate (or failure to comply in full with all our instructions) will be treated as indirect evidence and an indication that you have got something to hide.”

This bears some explanation. Certain media outlets have promoted the theory that the US knew right from the beginning that Iraq did not have any WMDs, and that it fabricated the data it needed in order to launch the invasion. But in fact it is now clear that the reality was rather different, and perhaps even worse. In view of Saddam Hussein's reputation, the US was convinced (or better, convinced itself) that it was impossible that such a tyrant did not have a WMD program, and the lack of evidence simply meant that the program was well hidden - it was just a question of carrying on the search. And there was no need to check that the information was true as a pro-democracy defector could not possibly be lying!

The bodyguard’s reflex is based on the idea that it is better to arrest 10 potential terrorists, even if they then turn out to be innocent, rather than miss one real terrorist whose actions would cause far more harm than the unpleasantness suffered by the ten mistakenly arrested individuals. Which is better, to be cautious but earn a reputation for infringing civil liberties, or to fail to take action and thus allow a catastrophic attack to occur?

But there is another, much darker, side to the coin. Any fast-track procedures such as those provided by the Patriot Act or other special regulations can streamline processes and minimize bureaucracy, but they can also make it easier for the authorities to abuse their powers, as the normal checks and balances have been weakened. It is not surprising that government critics and conspiracy theorists see such measures as primarily aimed at making such abuse easier.
That approach also erodes the distinction between likely and unlikely scenarios, which can result in self-fulfilling prophecies. This response, however, is clearly insufficient. This combination - demonizing the enemy and applying the 1% doctrine - is doubly dangerous: firstly because we assess the likelihood of a scenario (often using such phrases as “it is impossible to exclude the risk of X”) based on our a priori assumption that the enemy regime is evil, and secondly because the 1% doctrine allows us to treat a small likelihood in the same way as a certainty.

Moreover, the public reaction to a preemptive strike will inevitably be mixed: generally people approve of government actions when they are a response to another party’s conduct. Following a terrorist attack, the government strikes back and those responsible are punished. But when measures are taken, not in response to events that have occurred, but to prevent something that thus never happens, then many people question whether the measures were morally justified. Was the preemptive strike really proportionate to the danger? Or was it just a provocation? What if the claims that the attack was a preemptive strike are just an attempt to justify the decision to strike first?

The present author could cite a number of unpleasant situations in which people are forced to choose between two versions of the truth, their choice being determined in each case by religious considerations or their political views.

Once such dilemma has become quite common thanks to the #MeToo movement. A woman accuses a man of raping her many years ago, and apart from her own claim there is no evidence of the alleged crime. As a result, we have two conflicting presumptions: the presumption of an accused person’s innocence, which is a foundation of the criminal justice system, and the widespread presumption that a person accused of rape is guilty. If the accused defends himself he is often seen as slandering his accuser, but in reality it is often the case that the only evidence for a rape is the woman’s accusation. There is no satisfactory solution to this dilemma.

Here’s another example. States are often accused of torturing political dissidents, and then using the confessions extracted under torture against them. In many cases the torture is impossible to prove, due to the lack of any physical evidence - we just have to take the victim’s word for it. Thus we again have two presumptions: the presumption of innocence, and the presumption that the regime is guilty - as there are many types of torture which leave no physical mark on the victim.

But public opinion will always favor simple solutions. People want a universal rule like “if the state is accused of using violence, it means it used violence,” or “if he was tortured, it means he is innocent.” In the absence of such simple solutions, people resort to the logic of “us and them” - they are terrorists, and we are freedom fighters. Or he is a rapist, and we are victims.

The problem is the same with preemptive strikes: it is often hard for society to accept that the events that we have averted would have been worse than what has actually happened. After all, what has happened is a certainty, while what might happen could be just a 1% chance, or it could be more. No one would fall for the argument that “this cute puppy would have grown up into a killer dog, so we shot him to stop this happening.” We need other arguments.

Especially if people generally believe that “the authorities are hiding the truth,” or if distrust of the government takes some other form, in which case the regime is inevitably assumed to be guilty: “Of course they attacked innocent civilians and then accused them of being terrorists for some political reason or other self-serving motive.” And, naturally, dead militants, or persons accused of being militants, cannot say anything - they were killed by a preemptive strike before they could launch an attack.

This article will necessarily lack a clear conclusion - as normally dilemmas of the types discussed above have specific features that allow us to make a balanced rational assessment in each case, without having to resorting to a crude rule of thumb. The present author simply wishes to draw attention to these kinds of conflicting presumptions, and point out the importance of carefully assessing the circumstances and causes in each individual case.

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