

# UN CHARTER

(on rights and obligations of states)

## Article 2.4

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.

## Article 2.7

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter... but this principle shall not prejudice the application of enforcement measures under Chapter VII.

## **Chapter VII**

### **Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression**

#### Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

#### Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

## Article 51

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

# UN General Assembly

(Definition of Aggression, Resolution 3314)

## Article 3: Acts of Aggression

*Para. (f).* The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State

*Para. (g).* The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

## Article 7: Right to Self-Determination

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

# **FRIENDLY RELATIONS DECLARATION**

(General Assembly Resolution 2625)

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve the threat or use of force

# **U.S. Invasion of Afghanistan**

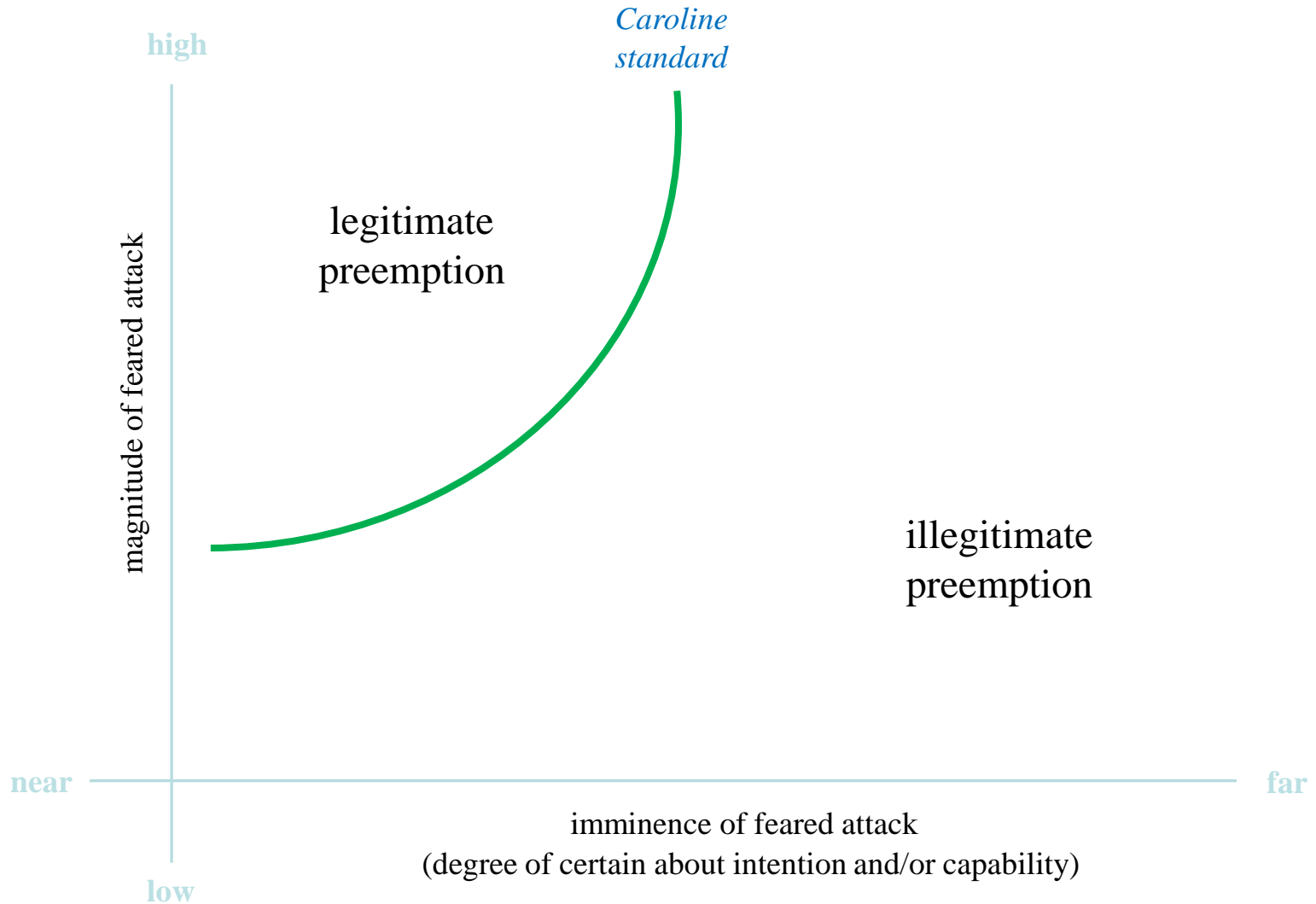
(Legal Justification)

*Letter from UN Ambassador Negroponte*

In accordance with Article 51 of the Charter of the United Nations, I wish, on behalf of my Government, to report that the United States of America, together with other States, has initiated actions in the exercise of its inherent right of individual and collective self-defense following armed attacks that were carried out against the United States on September 11, 2001....

The attacks on September 11, 2001, and the ongoing threat to the United States and its nationals posed by the Al-Qaeda organization have been made possible by the decision of the Taliban regime to allow the parts of Afghanistan that it controls to be used by this organization as a base of operation.

# Legitimacy of Preemptive Military Attacks



# U.S. National Security Strategy

(September 2002)

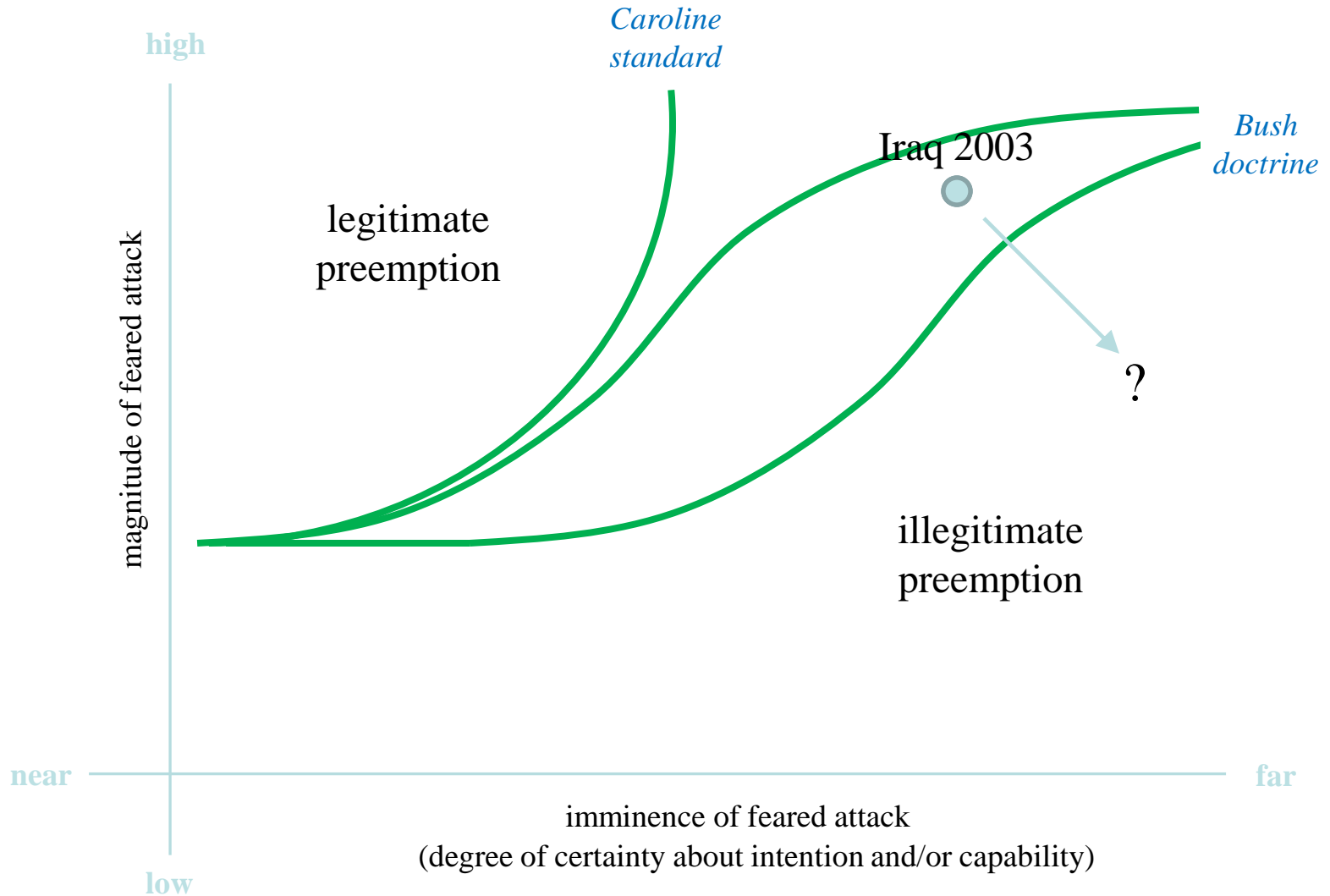
We must be prepared to stop rogue states and their terrorist clients *before they are able to threaten or use weapons of mass destruction* against the United States and our allies and friends. Our response must take full advantage of strengthened alliances, the establishment of new partnerships with former adversaries, *innovation in the use of military forces*, modern technologies, including the development of an effective missile defense system, and increased emphasis on intelligence collection and analysis.

Given the goals of rogue states and terrorists, the United States can no longer solely rely on a reactive posture as we have in the past. The *inability to deter* a potential attacker, the *immediacy of today's threats*, and the *magnitude of potential harm* that could be caused by our adversaries' choice of weapons, do not permit that option. We cannot let our enemies strike first.

For centuries, international law recognized that *nations need not suffer an attack before they can lawfully take action to defend themselves* against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of preemption on the *existence of imminent threat*—most often a visible mobilization of armies, navies, and air forces preparing to attack. We must *adapt the concept of imminent threat* to the capabilities and objectives of today’s adversaries.... [T]hey rely on acts of terror and, potentially, the use of weapons of mass destruction—weapons that can be easily concealed, delivered covertly, and used without warning.

The United States has long maintained the option of preemptive actions to counter a *sufficient threat* to our national security. The greater the threat, the greater the risk of inaction—and the more compelling the case for taking *anticipatory action* to defend ourselves, *even if uncertainty remains as to the time and place of the enemy’s attack*.

# Legitimacy of Preemptive Military Attacks



# UN High-Level Panel on Threats, Challenges and Change

*(A More Secure World: Our Shared Responsibility, 2004)*

A threatened State, according to long established international law, can take military action as long as the threatened attack is *imminent*, no other means would deflect it and the action is proportionate. The problem arises where the threat in question is not imminent but still claimed to be real: for example the acquisition, with allegedly hostile intent, of nuclear weaponsmaking capability.

Can a State, without going to the Security Council, claim in these circumstances the right to act, in anticipatory self-defence, not just pre-emptively (against an imminent or proximate threat) but preventively (against a non-imminent or non-proximate one)?

Those who say “yes” argue that the potential harm from some threats (e.g., terrorists armed with a nuclear weapon) is so great that one simply cannot risk waiting until they become imminent, and that less harm may be done (e.g., avoiding a nuclear exchange or radioactive fallout from a reactor destruction) by acting earlier.

The short answer is that if there are good arguments for preventive military action, with good evidence to support them, they should be put to the Security Council, which can authorize such action if it chooses to. If it does not so choose, there will be, by definition, time to pursue other strategies, including persuasion, negotiation, deterrence and containment - and to revisit again the military option.

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