

NATO and the anticipatory use of force

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Questions relating to the anticipatory use of force have gained new prominence for NATO since the terrorist attacks against the United States in September 2001, the articulation of a new US National Security Strategy in September 2002, and the US-led intervention in Iraq in March 2003. Various terrorist attacks (some carried out, some foiled) and other events have kept the questions on the alliance's agenda. The most recent US National Security Strategy, promulgated in March 2006, reaffirmed a doctrine of pre-emption in an international context marked by uncertainty about some states' compliance with their commitments under the nuclear Non-Proliferation Treaty (NPT) and associated safeguards. This article attempts to place contemporary debates within the alliance about prevention and pre-emption in historical perspective. It reviews definitional distinctions and disputes, examines the policies of the allies during the Cold War and the subsequent Balkan conflicts, and assesses NATO's decisions and actions since September 2001.¹

Only since the end of the Cold War, and particularly since September 2001, have questions of anticipatory action arisen in alliance deliberations concerning the use of force. In initiating their Balkan operations, it should be recalled, the allies did not face direct threats, but intervened to terminate conflicts and human rights abuses, and to shape their security environment. It has been difficult for the alliance to come to grips with the new security challenges presented by terrorism and the proliferation of weapons of mass destruction (WMD) because of its history, its intrinsic character and the nature of the new security challenges. Its history includes the strictly reactive posture adopted during the Cold War and the interventions made from a position of overwhelming superiority in the Balkan conflicts. The new security challenges place under stress the alliance's intrinsic character as a permanent coalition of sovereign independent states committed to collective defence because these challenges may endanger specific allies to differing

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¹ This article focuses on collective decisions and actions of the members of the North Atlantic Treaty Organization (NATO) and does not examine national operations undertaken outside the alliance framework.

degrees (in contrast with the overarching Soviet threat during the Cold War) and reveal differences in interests, capabilities and strategic cultures among the allies.

Definitions

Prevention is a broader and more protean concept than pre-emption. Prevention may comprise many elements and take various forms. Deterrence may, for example, be seen as a strategy of prevention. Whether based on threats of strategic-scale punishment or operational defeat, deterrence is intended to prevent aggression and coercion. Post-conflict stabilization and reconstruction measures may also prevent a resumption of conflict. In a November 2005 directive, the US Department of Defense defined stability operations as 'a core US military mission' with 'priority comparable to combat operations'. According to the directive, 'stabilization, security, reconstruction and transition operations' should 'lead to sustainable peace ... The long-term goal is to help develop indigenous capacity for securing essential services, a viable market economy, rule of law, democratic institutions, and a robust civil society.'² In other words, preventive actions need not consist of 'preventive war'. Preventive actions may also include the enforcement of weapons embargoes, the interception of illicit technology transfers, and the deployment of peacekeeping forces between former (or prospective) belligerents. Moreover, commerce, diplomacy, confidence-building measures, non-proliferation regimes, arms control negotiations, information exchanges and various other activities may also support conflict prevention.

All conflict prevention efforts are, however, subject to failure. War may be in prospect and difficult or impossible to avert. Doubts about the reliability of deterrence may raise the controversial option of pre-emptive action. According to the September 2002 US National Security Strategy,

Traditional concepts of deterrence will not work against a terrorist enemy whose avowed tactics are wanton destruction and the targeting of innocents; whose so-called soldiers seek martyrdom in death and whose most potent protection is statelessness. The overlap between states that sponsor terror and those that pursue WMD [weapons of mass destruction] compels us to action ... The United States has long maintained the option of pre-emptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively.³

The concept of 'pre-emptive action' has become controversial in recent years partly because the US administration has elevated it to the status of a doctrine,

² Department of Defense Directive 3000.05, 28 Nov. 2005, 'Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations', paras 3.2, 4.1, 4.2.

³ *The National Security Strategy of the United States of America* (Washington DC: The White House, Sept. 2002), p. 15. The last two sentences in this passage were repeated in *The National Security Strategy of the United States of America* (Washington DC: The White House, March 2006), p. 18. The last sentence was lengthened with the addition of the following words: 'in exercising our inherent right of self-defense'.

instead of what it has traditionally been considered: an option available to all governments in extreme circumstances. Moreover, definitional issues have exacerbated the controversy. The US government has chosen to call 'pre-emptive action' what many Americans, Europeans and others would call 'preventive war'. Many observers would endorse the following longstanding distinction: *pre-emptive attack* consists of prompt action on the basis of evidence that an enemy is about to strike, while—in contrast—*preventive war* involves military operations undertaken to avert a plausible but hypothetical future risk. The key factor demarcating the distinction is the imminence of the threat. For example, in 1984 the US joint chiefs of staff defined pre-emptive attack as 'an attack initiated on the basis of incontrovertible evidence that an enemy attack is imminent', and preventive war as 'a war initiated in the belief that military conflict, while not imminent, is inevitable, and that to delay would involve greater risk'.⁴ Historically, the future risk that might have been cited as a rationale for preventive war might have been an unacceptable imbalance of power, a situation of increased vulnerability or even potential subjugation. The risk of a transfer of weapons of mass destruction (WMD) to a terrorist group was one of the main justifications advanced by the US government for the military campaign against Saddam Hussein's regime in Iraq in March 2003.

Even allied governments that opposed the US-led action to end Saddam Hussein's regime in Iraq had no objection to the idea of pre-emption based on evidence of an imminent threat of attack. Pre-emption on this basis has long been recognized as a legitimate option under international law.⁵ Allied and American critics of US policy argued, however, that there was no evidence that Saddam Hussein was about to attack the United States or to transfer WMD to terrorists, and that the US-led intervention was therefore not a pre-emptive action but a preventive war—a war on the basis of a hypothetical future threat. Critics condemned the idea of preventive war as a violation of international law; conversely, those who supported the use of force against the Saddam Hussein regime in Iraq asserted the need to uphold the authority of the United Nations Security Council (UNSC).⁶

⁴ *Department of Defense Dictionary of Military and Associated Terms*, JCS Publication 1 (Washington DC: The Joint Chiefs of Staff, 1 April 1984), pp. 283, 285. These definitions are unchanged in the most recent edition of this document, now Joint Publication 1-02, as amended up to 14 April 2006, and available at <http://www.dtic.mil/doctrine/jel/doddict/>.

⁵ See, among other sources, Christopher Greenwood, 'International law and the pre-emptive use of force: Afghanistan, Al-Qaida, and Iraq', *San Diego International Law Journal* 4: 7, 2003, pp. 7–37; Oscar Schachter, 'The right of states to use armed force', *Michigan Law Review* 82: 5/6, April–May 1984, pp. 1620–46; Wolfgang Friedmann, *The changing structure of international law* (New York: Columbia University Press, 1964), pp. 259–60; and Louis Henken, *How nations behave: law and foreign policy*, 2nd edn (New York: Columbia University Press, 1979), pp. 143–5. The last three sources are those cited concerning the legality of pre-emptive action in *A more secure world: our shared responsibility. Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change* (New York: United Nations, 2004), p. 140, n. 106.

⁶ While some nations argued that an explicit authorization of the use of force in Iraq by the UN Security Council in a new resolution was required, in March 2003 the United States sent a letter to the UN Security Council stating that the military operations in Iraq were necessitated by 'Iraq's continued material breaches of its disarmament obligations under relevant Security Council resolutions, including resolution 1441 (2002)', and that these military operations were 'authorized under existing Council resolutions, including its resolutions 678 (1990) and 687 (1991)'. The US government's letter is quoted in Marjorie Ann Browne, *The United Nations Security Council—its role in the Iraq crisis: a brief overview*, RS21323 (Washington DC: Congressional Research Service, 16 May 2003), p. 6.

Critics also argued that the US approach amounted to a prescription for permanent war, unless the United States could somehow dominate the entire world. In the words of Pierre Hassner, a leading French scholar on international politics,

Certainly, the new American doctrine is based on a valid and urgent concern: the impossibility of deterring terrorists who welcome suicide and who offer no targets for retaliation. But, once again, to generalize out of this situation a *doctrine* centered around the idea of launching a unilateral first strike against any state that possesses or builds weapons of mass destruction, is suspected of helping terrorists, and hence may, one hypothetical day, facilitate the use of the former by the latter against the United States, means extending the notion of pre-emption to an arbitrary and open-ended 'anticipatory defense'. It means creating a situation of permanent or open-ended exception and insecurity—in practice, permanent war—since there will always be some terrorists and some weapons of mass destruction left, and since suspect states that have been deterred so far may themselves be tempted to pre-empt. Even conceptually, the only end in sight to such a war would be total and, so to speak, totally uncontrolled control by the United States.⁷

Hassner's analysis of the logical implications of comprehensive pursuit of the principles set out in the 2002 US National Security Strategy may be regarded as an effective *reductio ad absurdum*, because the US government, like others, must in practice identify priorities and accept risks. The all-embracing ambitions and resources posited in Hassner's incisive critique do not match up with reality. Moreover, the United States and its NATO allies are still left with the problem—'a valid and urgent concern', in Hassner's words—that some adversaries cannot be kept at bay through deterrence. In some exceptional cases—notably those involving weapons of mass destruction—pre-emption or preventive intervention may be more prudent than waiting to be attacked.

This article accepts as a point of departure the traditional and widely recognized distinction that pre-emptive action is a response to an enemy's imminent attack, while preventive war aims to forestall a potential future threat. Pre-emptive action (often called simply 'pre-emption') is generally deemed legal and legitimate, while the legality and legitimacy of preventive war continue to be disputed. It should be acknowledged, however, that political–military realities do not always fit into the clear-cut categories posited by conceptual distinctions. At what point does military action in a developing crisis cease being preventive and illegitimate and become pre-emptive and legitimate?

Walter Slocombe, Under Secretary of Defense for Policy under US President Bill Clinton, has argued for looking beyond pre-emptive attack against the imminent use of established capabilities to preventing the acquisition of harmful capabilities before it is too late to do so:

⁷ Pierre Hassner, 'Definitions, doctrines and divergences', *National Interest*, no. 69, Fall 2002, p. 32; emphasis in original. Hassner's concept of 'permanent war' has been compared to the 'long war' of indefinite duration forecast by US Secretary of Defense Donald Rumsfeld. See *Quadrennial Defense Review Report* (Washington DC: US Department of Defense, 6 Feb. 2006), pp. v–ix.

The right of anticipatory self-defence by definition presupposes a right to act while action is still possible. If waiting for 'imminence' means waiting until it is no longer possible to act effectively, the victim is left no alternative to suffering the first blow. So interpreted, the 'right' would be illusory ... [O]nce a rogue state has achieved a serious WMD capability, effective action to eliminate the capability may well have become impossible. The problem is not so much that WMD can be used with little warning—attacks with conventional weapons have all too often achieved tactical surprise—but that surprise use could be decisive and that the capability can be so successfully concealed that pre-emption is operationally impossible even if warning were available. On this basis, a strong case exists that the right of 'self-defence' includes a right to move against WMD programmes with high potential danger to the United States (and others) while it is still feasible to do so.⁸

Some observers have qualified Slocombe's statement that 'surprise use could be decisive' by pointing out that cases differ. A regional power probably could not take 'decisive' action against a major power in the sense of defeating it or eliminating its capacity to retaliate harshly. In other words, a regional power's use of WMD might be painful and even catastrophic, but not decisive, against a major power. This means that a major power might have to weigh the risks and costs of using force in an anticipatory fashion against an adversary state developing WMD capabilities against the risks and costs of relying on deterrence by threat of punishment, being prepared to 'ride out' a potential WMD attack, and then (if its deterrence efforts fail) using force. In either case, the major power might face the difficulties of defeating the adversary's forces, occupying its territory, establishing a new regime disinclined to resume pursuit of WMD capabilities, and dealing with potentially enhanced terrorist movements. The 'ride out' approach might entail fewer international political costs but greater domestic costs—social, political and economic—in the event of an enemy's WMD attack. The choices available to a smaller power facing a regional power developing WMD capabilities would be even more constrained, because Slocombe's observation that 'surprise use could be decisive' would apply more aptly to its circumstances. The smaller power might perceive greater incentives than a major power to take anticipatory action, but have fewer capabilities to do so. Its dependence on allies for support would therefore be greater than that of a major power.

The criteria in international law justifying the pre-emptive use of force have traditionally been drawn from the messages that US Secretary of State Daniel Webster sent to the British government protesting about the destruction of the US steamship *Caroline* by British forces in 1837. Webster argued, and the British government ultimately agreed, that a nation has a right to initiate the use of force in cases in which there is 'a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation'.⁹ How should

⁸ Walter B. Slocombe, 'Force, pre-emption and legitimacy', *Survival* 45: 1, Spring 2003, p. 125. Slocombe points out that successful pre-emptive action requires surmounting many operational difficulties in addition to obtaining 'comprehensive as well as precise' intelligence about the adversary's WMD production facilities and assets. He concludes that in some cases forcible regime change may offer greater promise of an enduring solution than simply neutralizing known WMD facilities and assets (pp. 126–8).

⁹ Daniel Webster, letter of 24 April 1841 to H. S. Fox, Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, in *British and Foreign State Papers* (London: James Ridgway and Sons, 1857), vol. 29, p.

Webster's formulation of the concepts of 'imminence' and 'necessity' be construed in a context in which terrorists and adversary states are seeking weapons of mass destruction and means to deliver them? Modern technologies raise the risk that in some cases a devastating attack could take place without a visible mobilization of forces or other preparations giving warning of imminent aggression. Slocombe points out that

Webster's formulation—which was adopted in the course of a protest against, rather than a defence of, a pre-emptive operation and therefore takes a restrictive view—speaks of a 'necessity of self-defence' that is 'instant, overwhelming'. Critics argue that only an immediate prospect of specific attack can meet that standard. But, in Webster's formulation, it is the *necessity* that must have those characteristics, and such a necessity may exist without an immediate prospect of attack.¹⁰

Defining 'imminence' in threat assessment unavoidably involves subjective elements and may be influenced by the political context. In March 2002, for example, Peter Ricketts, then the political director in the UK Foreign and Commonwealth Office, wrote as follows to Jack Straw, then the Foreign Secretary: 'The truth is that what has changed is not the pace of Saddam Hussein's WMD programmes, but our tolerance of them post-11 September.'¹¹

Reviewing the alliance's history from the outset may deepen understanding of why it has been difficult for the allies to come to grips with the challenges presented by the anticipatory use of force. For NATO, such a resort to force was unthinkable during the Cold War. Only since the Balkan conflicts of the 1990s and the terrorist attacks of 11 September 2001 have the allies had to consider undertaking pre-emptive or preventive actions involving the use of force.

NATO during the Cold War

NATO was committed to war prevention through deterrence throughout the Cold War. From the outset, the allies regularly reaffirmed their interest in pursuing positive political changes in Europe while avoiding war. Their intention was 'to live in peace with all governments and all peoples' (1949), 'to seek solutions by peaceful means' (1953) and to promote 'peaceful change' (1957).¹² Preventive war against the Soviet Union was always out of the question for NATO. Moreover, the allies did not use the word 'pre-emption', because they had no intention of initiating the use of force.

1138. See also Webster's letter to Lord Ashburton of 6 Aug. 1842 in John Bassett Moore, *A digest of international law* (Washington DC: US Government Printing Office, 1906), p. 412. Webster's analysis also established the important principle of proportionality. As Webster put it in his letter to Fox, 'the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it'.

¹⁰ Slocombe, 'Force, pre-emption and legitimacy', p. 125, emphasis in original.

¹¹ Letter from Peter Ricketts to Jack Straw, 22 March 2002, available at http://en.wikipedia.org/wiki/Iraq_document_leak_18_June_2005.

¹² Phrases used in NATO communiqués of 17 Sept. 1949, 14–16 Dec. 1953 and 16–19 Dec. 1957, in *Texts of final communiqués, 1949–1974* (Brussels: NATO Information Service, 1975), pp. 39, 79, 109.

However, allied military strategy in the 1950s called for seizing 'the initiative' in the use of nuclear weapons if enemy aggression started a war. In 1954, for example, the NATO Military Committee approved a report with the following findings:

As the initiation of a war by NATO would be contrary to the fundamental principles of the Alliance, it has been ruled out as a possibility ... In a future war employing atomic weapons the possession of the initiative will be even more important than it has been in the past ... Any delay in their use—even measured in hours—could be fatal.¹³

The report concluded by reaffirming 'the primary aim' of preventing war while underscoring the imperative need for 'early warning of attack' and 'Atomic delivery forces adequately protected from initial attack and constantly ready to launch an immediate counter-attack'.¹⁴

In MC 14/2, the Strategic Concept approved by the North Atlantic Council in 1957, the allies expressed similar conclusions about the utility of taking 'the initiative' in employing nuclear arms:

Since NATO would be unable to prevent the rapid overrunning of Europe unless NATO immediately employed nuclear weapons both strategically and tactically, we must be prepared to take the initiative in their use ... In case of general war, therefore, NATO defense depends upon an immediate exploitation of our nuclear capability, whether or not the Soviets employ nuclear weapons.¹⁵

In MC 14/3—the alliance's subsequent Strategic Concept, approved by the Defence Planning Committee in 1967—the allies articulated markedly different views about initiating the employment of nuclear weapons: 'The effects of nuclear war would be so grave that the alliance should engage in such action only after the possibilities of preserving or restoring the integrity of the NATO area through political, economic and conventional military actions had been tried and found insufficient.'¹⁶

Instead of preparing for the 'immediate' use of nuclear weapons envisaged in MC 14/2, in MC 14/3 the allies adopted a policy of 'direct defense' intended 'to defeat the aggression on the level at which the enemy chooses to fight' or to place 'upon the aggressor the burden of escalation'. Furthermore, the allies indicated their willingness to engage in 'deliberate escalation ... by deliberately raising but where possible controlling, the scope and intensity of combat, making the cost and the risk disproportionate to the aggressor's objectives and the threat of nuclear response progressively more imminent'. The 'escalatory steps' might include

¹³ MC 48, 'The most effective pattern of NATO military strength for the next few years', approved by the Military Committee on 22 Nov. 1954, in Gregory W. Pedlow, ed., *NATO strategy documents 1949–1969* (Brussels: NATO Information Service, 1997), pp. 231–50, paras 6, 10a, 22a.

¹⁴ MC 48, 'The most effective pattern of NATO military strength for the next few years', paras 33, 35a, and 35b.

¹⁵ MC 14/2 (revised final decision), 'Overall strategic concept for the defense of the North Atlantic Treaty Organization area', approved by the North Atlantic Council on 9 May 1957, in Pedlow, *NATO strategy documents 1949–1969*, pp. 277–313 (paras 13c, 14).

¹⁶ MC 14/3, 'Overall strategic concept for the defense of the North Atlantic Treaty Organization area', approved by the Defence Planning Committee in ministerial session on 12 Dec. 1967, in Pedlow, *NATO strategy documents 1949–1969*, pp. 345–70 (para. 22b).

'demonstrative use of nuclear weapons' or 'selective nuclear strikes on interdiction targets', among other options. According to MC 14/3, 'if the aggressor remains intent on his purpose' the alliance would 'confront him with such resistance that he will be compelled to withdraw or risk further escalation which, if necessary, would include the controlled use of nuclear weapons'. The strategy was explicitly based on the following assumption:

So long as the forces committed to NATO and the external nuclear forces supporting the alliance are able to inflict catastrophic damage on Soviet society even after a surprise nuclear attack, it is unlikely that the Soviet Union will deliberately initiate a general war or any other aggression in the NATO area that involves a clear risk of escalation to nuclear war.¹⁷

The differences between MC 14/2 in 1957 and MC 14/3 in 1967 reflected the profound changes in the alliance's priorities, threat assessments and views on military strategy in the intervening years. During the late 1950s and early 1960s the MC 14/2 strategy of seizing 'the initiative' in the employment of nuclear weapons lost support. This loss of support stemmed, it seems, from a combination of factors, including (a) a deepening recognition of the devastation that any large-scale exchange of nuclear strikes would entail,¹⁸ (b) a judgement that the Soviet leadership shared this recognition and would be cautious in its behaviour, and (c) an assessment that Soviet leaders would discount the credibility of continued NATO threats of large-scale use of nuclear weapons. In other words, the MC 14/3 'flexible response' strategy was intended to restore the credibility of NATO's threats to employ nuclear weapons in the event of Soviet aggression.

The Soviet development of high-yield nuclear weapons as well as intercontinental ballistic missiles (ICBMs) and submarine-launched ballistic missiles (SLBMs) after the 1957 Sputnik launch highlighted US vulnerability to prompt retaliation if Washington used nuclear arms in defence of NATO Europe. The Berlin and Cuban crises brought the United States and other NATO nations to the verge of nuclear war and persuaded many of their leaders that the Soviet leadership was no less frightened of nuclear war than they were themselves and therefore was inclined to be cautious in risk-taking and susceptible to crisis management if NATO threatened nuclear escalation. Denis Healey, Britain's Minister of Defence in the late 1960s, formulated what he called 'The Healey Theorem'—that is, 'it takes only five per cent credibility of American retaliation to deter the Russians, but ninety-five per cent credibility to reassure the Europeans'.¹⁹ Moreover, as

¹⁷ MC 14/3, 'Overall strategic concept for the defense of the North Atlantic Treaty Organization area', in Pedlow, *NATO strategy documents 1949–1969*, pp. 345–70 (paras 11, 17a, 17b, 18d).

¹⁸ Awareness of this potential devastation was particularly acute in West Germany, which joined NATO in May 1955. The 'simulated results' of the Carte Blanche exercise held the following month included 'more than 300 atomic bombs dropped on more than 100 targets between Hamburg and Munich, with 1.7 million Germans killed, 3.5 million wounded, and incalculable additional casualties resulting from fallout'. The West German press 'carried sensational reports' about the exercise, and 'The general population reacted with shock and fear': Catherine McArdle Kelleher, *Germany and the politics of nuclear weapons* (New York and London: Columbia University Press, 1975), p. 36. The Carte Blanche exercise became a symbol of the shortcomings of MC 14/2 and a shorthand explanation for Bonn's great interest in contributing to the definition of revised NATO nuclear strategies, including MC 14/3.

¹⁹ Denis Healey, *The time of my life* (London: Michael Joseph, 1989), p. 243.

Healey noted, the chief objective of the Allies during the Cold War was effective war-prevention, not war-fighting capability:

For most of the Europeans, NATO was worthless unless it could prevent another war; they were not interested in fighting one. They thought that for Europe, at least, a conventional conflict would be as bad as a nuclear one; they also believed that nuclear weapons could deter any sort of war, while conventional weapons could not, at least in Europe. They could scarcely fail to be aware that as the Soviet Union approached nuclear parity with the United States, America's readiness to use nuclear weapons on their behalf would become less certain ... But they espoused the 'Healey Theorem' without knowing it: so long as there were American troops in Germany, and plenty of American nuclear weapons with them, the Kremlin would never deliberately risk an attack which might lead, however irrationally, to the use of those weapons.²⁰

A strategy of preparedness to seize 'the initiative' in conducting extensive nuclear attacks was deemed inconsistent with this assessment, because such a strategy might have sent disturbing signals to the Kremlin in an era in which NATO wished to cultivate detente and arms control and thus reassure the Soviet Politburo of its interest in peace and stability. The assessment that the Soviet Union feared nuclear war and would seek to avoid escalating hostilities to the level of nuclear strikes led logically to the MC 14/3 'flexible response' strategy's assumption that 'deliberate escalation', perhaps including 'demonstrative' or 'selective' strikes, could succeed in convincing the Soviet leadership 'to withdraw or risk further escalation'. In other words, the allies had gained greater confidence in the robustness of NATO's deterrence posture. From this perspective, a strategy of seizing 'the initiative' in large-scale nuclear weapons use seemed unnecessary and reckless. With increased confidence in strategic stability based on mutual vulnerability and (if tensions should rise) the feasibility of 'crisis management', NATO moved away from a strategy that prescribed initiating extensive employment of nuclear weapons in the event of enemy aggression.

NATO's MC 14/3 strategy was a compromise that won support from most of the allies thanks in part to its ambiguity.²¹ In contrast to the preceding strategy, it did not call for initiating the use of nuclear weapons unless Soviet aggression made that unavoidable. Moreover, it held out a hope that limited and selective use of nuclear weapons might persuade the Soviet leadership to withdraw its forces and accept a prompt restoration of the security and integrity of the NATO area.²²

²⁰ Healey, *The time of my life*, p. 308.

²¹ For a detailed account, see Jane E. Stromseth, *The origins of flexible response: NATO's debate over strategy in the 1960s* (London: Macmillan, 1988). The French objections to 'flexible response' meant that the MC 14/3 strategy was not approved by the North Atlantic Council, but by the Defense Planning Committee, a body composed of all the allies except France. The West German government provided a classic example of the carefully constructed ambiguity in the MC 14/3 strategy in its *White Paper 1975/1976: The security of the Federal Republic of Germany and the development of the federal armed forces* (Bonn: Press and Information Office of the Government of the Federal Republic of Germany, 1975), p. 20, para. 38: 'The initial tactical use of nuclear weapons must be timed as late as possible but as early as necessary, which is to say that the doctrine of Forward Defence must retain its validity, the conventional forces of the defender must not be exhausted, and incalculability must be sustained so far as the attacker is concerned.'

²² Experts recognized that several problems in NATO strategy, such as how to control nuclear escalation, were never satisfactorily resolved during the Cold War. For background, see David S. Yost, 'The history of NATO theater nuclear force policy: key findings from the Sandia conference', *Journal of Strategic Studies* 15: 2, June 1992.

MC 14/3, also known as 'flexible response', remained the alliance's military strategy until the end of the Cold War in 1989–91. The alliance did not rule out the first use of nuclear weapons under either MC 14/2 or MC 14/3, but its conception of what this first use might involve and achieve changed substantially. In both strategies, owing to perceptions of the alliance's conventional military weakness in relation to the Soviet Union and its allies, the NATO allies envisaged taking the initiative in use of nuclear weapons if Soviet forces attacked using conventional weapons. The assumption was that the Soviet Union and its allies might try to overrun NATO territory rapidly by conventional means, and that NATO might then choose to initiate the use of nuclear weapons. That is, NATO would not have initiated the fighting, but it might well have initiated the use of nuclear weapons. In short, the alliance during the Cold War had no policies resembling pre-emption in the sense of initiating the use of force; and preventive war was, as noted earlier, always out of the question for NATO.

Throughout the Cold War the alliance was committed to war prevention as its top priority. The Soviet interventions in East Germany (1953), Hungary (1956) and Czechoslovakia (1968), and the actions of communist regimes in Eastern Europe against domestic adversaries (such as the imposition of martial law in Poland in 1981), were not deemed in any way occasions calling for the alliance to intervene. Indeed, the alliance went out of its way to signal its restraint and its desire to avoid an East–West war during such incidents. It was perhaps principally for this reason that the allies were reluctant to put their forces on alert during crises, much less consider actually undertaking pre-emptive military action. Admiral of the Fleet Sir Peter Hill-Norton, who served as chairman of the NATO Military Committee in 1974–7, wrote as follows in 1978:

There have been isolated causes for alarm, but none of these, for reasons which may be a matter of opinion, involved the alliance as a collective entity, even to the extent of ordering a Simple Alert. The fact that crises involving alert measures have not happened, or have been avoided, could be taken as a tribute to the success of the alliance, but it could also, and less attractively, be attributed to a collective reluctance to take unpalatable decisions or to the absence of the machinery so necessary for rapid political consultation in fast-moving situations such as the Hungarian rising of 1956 and the invasion of Czechoslovakia in 1968.²³

While the allies never ordered a 'Simple Alert' (or, of course, either of the two higher readiness stages of 'Reinforced Alert' and 'General Alert') during the Cold War, they did declare 'Military Vigilance' sixty hours after the Soviet-led invasion of Czechoslovakia. General James H. Polk, Commander of the US Seventh Army at the time,²⁴ characterized this as a 'mild alert', 'the lowest official measure of increased readiness'. Prior to the alliance's 'Military Vigilance' decision, the US European Command had specifically ordered General Polk not to fly reconnaissance

²³ Peter Hill-Norton, *No soft options: the politico-military realities of NATO* (London: Hurst, 1978), p. 103.

²⁴ General Polk was also Commander of the US Army Europe (CINCUSAREUR) in a national capacity and Commander, Central Army Group (CENTAG) in a NATO capacity. Upon transfer of authority from nations to NATO, he would have commanded US and West German ground forces in the southern half of West Germany. Such a transfer of authority was linked to the NATO alert system at the time.

aircraft, even at the normal distance of 20 miles from the Czechoslovak border; not to increase the number of daily ground patrols and helicopter flights; not to recall troops in the four mechanized cavalry squadrons then in school or on leave or other authorized absence; and not to dig 'any foxholes or weapons emplacements that could be observed by the Czech border guards, a thought that had occurred to no one this side of the National Command Center in Washington'.²⁵ As General Polk noted,

we never received any directives or queries as to our possible reactions or even suggestions on how to proceed in the event of trouble on the border between Bavaria and Czechoslovakia. To the contrary, all our orders were negative and forbade us to increase either air or ground patrols or undertake any sort of activity that might be interpreted as inflammatory or supportive of Czech political actions ... The whole concept was defensive in nature with no thought of any kind of supportive incursions across the border into Czechoslovakia under any conceivable circumstance. Rather, it was to overwatch and protect the border, assist refugees, either military or civilian, as circumstances dictated and insure that a competent military force was immediately available in the event of any untoward incidents.²⁶

In short, NATO eschewed the anticipatory use of force during the Cold War. The allies had no interest in fighting a Third World War if there was any hope that the conflict with the Soviet Union and its allies could be contained through deterrence and diplomacy and ultimately resolved by peaceful means. NATO emphasized war prevention and had no interest in preventive war or in any other anticipatory resort to force.

NATO and the Balkan conflicts

The allies agreed in 1991 that NATO's foremost preoccupations after the Cold War might be containing the consequences of potential civil and interstate conflicts in Eastern Europe and the former Soviet Union, 'including ethnic rivalries and territorial disputes'.²⁷ The November 1991 Strategic Concept nonetheless suggests that NATO did not then envisage participating in any crisis management or peace-keeping operations beyond the alliance's borders; the agreed mission remained collective defence against aggression affecting alliance territory, not intervention beyond that territory. 'The Alliance is purely defensive in purpose: none of its weapons will ever be used except in self-defence ... The role of the Alliance's military forces is to assure the territorial integrity and political independence of its member states, and thus contribute to peace and stability in Europe.'²⁸

Contrary to its expectations at the end of the Cold War, NATO soon engaged in operations in the Balkans. The term 'pre-emption' was generally not used

²⁵ General James H. Polk, US Army, Retired, 'Reflections on the Czechoslovakian invasion, 1968', *Strategic Review* 5: 1, Winter 1977, pp. 34–5, 37.

²⁶ Polk, 'Reflections', pp. 33–4. For a valuable analysis of the alliance's cautious and risk-averse behaviour during the Czechoslovak crisis, see John G. McGinn, 'The politics of collective inaction: NATO's response to the Prague Spring', *Journal of Cold War Studies* 1: 3, Autumn 1999, pp. 111–38.

²⁷ North Atlantic Council, Strategic Concept, 7 Nov. 1991, para. 10.

²⁸ North Atlantic Council, Strategic Concept, 7 Nov. 1991, para. 36.

to characterize these operations because the alliance did not face any threat of imminent military attack. However, these operations were generally oriented towards quelling current clashes or preventing or containing further conflicts in the region; and the allies increasingly attempted to anticipate and forestall violence as they dealt with the conflicts involving Bosnia, Kosovo and the Former Yugoslav Republic of Macedonia (FYROM). In June 1992 the allies declared their willingness 'to support, on a case-by-case basis in accordance with our own procedures, peacekeeping activities under the responsibility of the CSCE, including by making available Alliance resources and expertise'. This decision was made in the light of the outbreaks of 'violence and destruction ... in various areas of the Euro-Atlantic region', notably in the former Yugoslavia.²⁹ In December 1992 the allies extended the same principle to 'peacekeeping operations under the authority of the UN Security Council'. This decision formalized the various NATO activities under the Security Council's auspices that had been under way since the middle of that year. As a December 1992 communiqué noted, 'For the first time in its history, the Alliance is taking part in UN peacekeeping and sanctions enforcement operations.'³⁰

In mid-1992 NATO began to assume responsibility for aspects of peacekeeping and sanctions enforcement aimed at containing conflicts in the former Yugoslavia. By the end of 1992 the alliance, in cooperation with the Western European Union (WEU), was enforcing the UN economic sanctions against Serbia and Montenegro and the arms embargo against the former Yugoslavia as a whole. The United Nations Protection Force (UNPROFOR), composed to a large extent of European troops (particularly from Britain and France), was using elements from NATO's Northern Army Group command for its operational headquarters, and NATO airborne early-warning aircraft were monitoring the no-fly zone over Bosnia.³¹ NATO subsequently enforced the no-fly zone, provided close air support to UNPROFOR in Bosnia, and conducted air strikes to break the siege of Sarajevo and other areas. When the Bosnian Serbs defied the no-fly zone on 28 February 1994, NATO shot down four Bosnian Serb aircraft. This was the first use of deadly force in the alliance's history; with that act, in the words of one analyst, 'NATO redeemed its credibility'.³²

NATO imposed an end to the fighting in Bosnia with the Operation Deliberate Force air campaign from 30 August to 12 September 1995. These operations were preceded by Croatia's highly effective offensive against the Serbs in Krajina in early August—an offensive that met with no reaction from the Serbian leader, Slobodan Milosevic, in Belgrade. The Bosnian Serbs were in effect forced to accept the Dayton agreement by three factors: the Croatian offensive; the determination and military strength of the NATO forces, led by the United States; and Milosevic's decision to stop supporting them.

²⁹ North Atlantic Council communiqué, 4 June 1992, paras 4, 11.

³⁰ North Atlantic Council communiqué, 17 Dec. 1992, paras 4–5.

³¹ North Atlantic Council communiqué, 17 Dec. 1992, para. 5.

³² Stephanie Anderson, 'EU, NATO, and CSCE responses to the Yugoslav crisis: testing Europe's new security architecture', *European Security* 4: 2, Summer 1995, p. 349.

The US government's long-term geostrategic assessments in this crisis highlighted the implications for the alliance. Washington clearly saw it as imperative to maintain NATO's general cohesion and effectiveness. In early 1995 the United States had agreed to send 20,000 troops to Bosnia to assist UNPROFOR in conducting an emergency withdrawal, if such a withdrawal became necessary. When the Bosnian Serbs began taking UNPROFOR troops as hostages in May 1995, the only choices were to conduct a risky emergency withdrawal or to intervene to impose a settlement, lest the United States risk the collapse of the alliance. According to Richard Holbrooke, then Assistant Secretary of State, the critical moment of decision came in a conversation involving President Clinton, President Jacques Chirac of France, Secretary of State Warren Christopher, and Holbrooke on 15 July 1995: 'The option of noninvolvement that had existed from the summer of 1991 to 1995 had disappeared ... We were in ... At that point, the [US] president saw the degree to which involvement was now inevitable, and how much better it would be to have involvement built on success rather than failure.'³³

Another factor that made effective military action possible was the reworking in mid-1995 of the dysfunctional NATO–UN 'dual-key' arrangement, which stipulated that a UN official had to approve NATO decisions to use air power in certain ways. UN Secretary General Boutros Boutros-Ghali held the UN 'key' to NATO's conduct of offensive air strikes, and he delegated the UN authority to approve close air support strikes to his special envoy, Yasushi Akashi. In July 1995 Boutros-Ghali delegated air strike authority to UNPROFOR's commander, French General Bernard Janvier. With this revision, the 'dual key' arrangement no longer functioned to hamper NATO action.³⁴

The allies were clearly interested in taking vigorous action—in practice, Operation Deliberate Force—to prevent a politically and strategically damaging outcome to the crisis. Beyond the humanitarian concerns, US and allied leaders wished to contain the risks of the fighting spilling over to other parts of the former Yugoslavia (such as Kosovo) and to other countries, such as Albania, Greece, FYROM and Turkey. Failure to contain the conflict would undermine the credibility of the alliance and set a dangerous precedent with regard to other ethnic antagonisms in Central and Eastern Europe. In the event, Operation Deliberate Force helped to make possible the Dayton agreement, concluded in late 1995 and known formally as the General Framework Agreement for Peace in Bosnia and Herzegovina. This agreement called for NATO forces to assist in carrying out an elaborate plan for the construction of a single, democratic and multi-ethnic Bosnia.³⁵

³³ Richard Holbrooke, quoted in Michael Dobbs, 'Holbrooke's parting shot—for now', *Washington Post*, 3 March 1996, p. C1. See also Richard Holbrooke, *To end a war* (New York: Random House, 1998), pp. 65–8.

³⁴ For a useful concise discussion of Operation Deliberate Force, see Ryan C. Hendrickson, 'Crossing the Rubicon', *NATO Review*, Autumn 2005. For the 27 July 1995 statement by Boutros-Ghali on the delegation of the UN 'dual key' authority, see Dick A. Leurdijk, *The United Nations and NATO in former Yugoslavia, 1991–1996: limits to diplomacy and force* (The Hague: Netherlands Atlantic Commission and Netherlands Institute of International Relations 'Clingendael', 1996), p. 77. The 'dual key' arrangement did not apply to enforcement of the no-fly zone, but to offensive air strikes and close air support strikes to defend ground forces. For background, see Colonel Robert C. Owen, USAF, 'The Balkans air campaign study: part 1', *Airpower Journal* 11: 2, Summer 1997.

³⁵ From Dec. 1995 to Dec. 1996 NATO forces were present on the ground in Bosnia as part of the Implementation

NATO's decisions to take action concerning the Kosovo conflict were influenced by a determination to avoid repeating the experience with Bosnia. The allies saw that Kosovo and FYROM could each become a new Bosnia—that is, a new battlefield of antagonistic ethnic groups—with an even higher potential for spillover, including refugee movements, involving neighbouring states. Kosovo was (and to date remains) legally part of Serbia, and the allies did not then support self-determination for the ethnic Albanian majority in the sense of independence for Kosovo—only a restoration of Kosovo's previous autonomy within Serbia. While FYROM is a recognized state (though its name remains controversial), it was feared that ethnic turmoil in either Kosovo or FYROM (or both) could draw in Albania and other countries, ultimately including NATO allies such as Greece, Turkey and the United States.

To forestall such undesirable outcomes, the allies were prepared to take action. The United States was perhaps the first to express warnings to Belgrade that were intended to prevent what became known as 'ethnic cleansing'—that is, Serbian actions to expel or kill ethnic Albanian Kosovars. In December 1992 US President George H.W. Bush wrote to Serbian President Slobodan Milosevic as follows: 'In the event of conflict in Kosovo caused by Serbian action, the United States will be prepared to employ military force against the Serbians in Kosovo and in Serbia proper.'³⁶ This warning was repeated by US President Bill Clinton in March 1993.³⁷ In March 1998 Secretary of State Madeleine Albright said, 'We are not going to stand by and watch the Serbian authorities do in Kosovo what they can no longer get away with doing in Bosnia.'³⁸

Albania brought its concerns about Kosovo to the alliance's attention on 11 March 1998, when it became the first partner country to exercise its Partnership for Peace (PfP) emergency consultation rights. Albania's Deputy Defence Minister, Perikli Teta, addressed the North Atlantic Council (NAC) and asked whether 'the deployment of a NATO peacekeeping contingent on the Albania–Yugoslav border [that is, the border with Kosovo] would contribute to stability in the region'. The allies responded that there was no 'urgent requirement' to send such forces, and decided to take other measures to demonstrate, in the words of Javier Solana, then

Force, known as IFOR. In Dec. 1996, IFOR was replaced by another NATO-led force, the Stabilization Force (SFOR). In July 2003 the European Union (EU) and the alliance agreed on a vision for the western Balkan region: stability, democracy, prosperity, and closer cooperation with (and possibly eventual membership in) European and Euro-Atlantic organizations. In support of this vision the alliance decided at the June 2004 Istanbul summit to conclude its SFOR operation in Bosnia by the end of 2004 and to work with the EU in the 'Berlin Plus' framework to organize the transition to an EU-led operation in Bosnia named Althea, which began in Dec. 2004. The commander of Operation Althea is NATO's Deputy SACEUR, who acts in close cooperation with NATO and with access to NATO assets and capabilities. The EU has established liaison missions at SHAPE and at NATO's Joint Force Command in Naples. Since the termination of the SFOR operation in Dec. 2004, NATO has maintained a presence in Bosnia via a military liaison and advisory mission in Sarajevo and has assisted local authorities with defence reform, the fight against terrorism and the country's prospective membership in NATO's Partnership for Peace (PfP). NATO invited Bosnia (and Montenegro and Serbia) to join PfP at the Riga Summit on 29 Nov. 2006, and all three countries joined on 14 Dec. 2006.

³⁶ President George Bush, cited in John M. Goshko, 'Bush threatens "military force" if Serbs attack ethnic Albanians', *Washington Post*, 29 Dec. 1992, p. A10.

³⁷ 'Clinton warns Serbian leaders on military action in Kosovo', *Washington Post*, 2 March 1993, p. A14.

³⁸ Secretary of State Madeleine Albright, cited in 'US credibility on the line', *Washington Post National Weekly*, 23 March 1998, p. 24.

the NATO Secretary General, that 'Albania has the solidarity of NATO'.³⁹ The other measures included civil emergency and humanitarian assistance (to help deal with ethnic Albanian refugees from Kosovo), military training, and aid in securing ammunition stockpiles and other military depots.⁴⁰ In an attempt to deter Milosevic from mistreating the ethnic Albanian Kosovars, the allies also let it be known in July and August 1998 that they were engaged in anticipatory planning with a view to possible military action.

This approach proved inadequate. Subsequent conflict in 1998 between Serbian military and police forces and ethnic Albanian Kosovars in Kosovo led to the displacement of hundreds of thousands of the latter. In October 1998 the NAC approved activation orders for air strikes. The threat of air strikes was intended to persuade the Milosevic regime in Belgrade to withdraw its forces from Kosovo and cooperate in the return of ethnic Albanian Kosovar refugees. Coercive diplomacy (including the Rambouillet conference negotiations) based on the threat of force failed over the subsequent months, and in March 1999 Serbian military and police forces intensified their operations against ethnic Albanian Kosovars. From 23 March to 10 June 1999 NATO conducted Operation Allied Force, an air campaign against the Federal Republic of Yugoslavia, that—in conjunction with other factors, including Russia's decision to withdraw support from Belgrade and the prospect that NATO might conduct ground operations—induced Milosevic to withdraw Serbian military and police forces from Kosovo.

NATO's use of force in the Kosovo conflict was noteworthy because it was not conducted in self-defence or under an explicit mandate from the UN Security Council (UNSC). While all the allies held that Operation Allied Force was justified on grounds of humanitarian necessity, some also based their policy on interpretations of relevant UNSC resolutions, including Resolution 1199 of 23 September 1998, although no UNSC resolution explicitly authorized the alliance's use of force in the Kosovo conflict. The allies agreed that they had an 'appropriate' or 'sufficient' 'legal base in international law' for their use of force, but they did not agree on its specific content. The allies were therefore not able to make a common declaration about the official legal basis for their use of force. Each ally was responsible for formulating its own national justification, and some allies chose to make reference both to humanitarian necessity and to UN Security Council resolutions.⁴¹

NATO's air campaign successfully imposed an end to large-scale violence and forced the withdrawal of Serbian police, military and paramilitary forces. In June 1999 the NATO-led Kosovo Force (KFOR) was established to help provide security in this province of Serbia, pending a decision on its final status. This stabilization and conflict-prevention mission has continued under NATO leadership to the present.

³⁹ Perikli Teta and Javier Solana, cited in Paul Ames, 'NATO to give Albania extra aid', 12 March 1998, Associated Press Online.

⁴⁰ William Drozdiak, 'NATO to send more aid to Albania, but no troops', *International Herald Tribune*, 12 March 1998; Brooks Tigner, 'Kosovo fray forces NATO's hand', *Defense News*, 16 March 1998.

⁴¹ For an illuminating discussion, see Dick A. Leurdijk, 'NATO as a subcontractor to the United Nations: the cases of Bosnia and Kosovo', in Rob de Wijk, Bram Boxhoorn and Niklaas Hoekstra, eds, *NATO after Kosovo* (The Hague: Netherlands Atlantic Association, Netherlands Institute of International Relations 'Clingendael' and Royal Netherlands Military Academy, 2000), pp. 130–32, 135–7.

In the late 1990s NATO considered deploying forces to replace the United Nations Preventive Deployment Force (UNPREDEP) in FYROM but did not do so. NATO's formal involvement in FYROM began in June 2001, when the NAC replied to FYROM's request for assistance under a plan brokered by the European Union and the United States to disarm the ethnic Albanian National Liberation Army (NLA). NATO's conditions included a ceasefire and agreement by the main political parties. In Operation Essential Harvest from 27 August to 26 September 2001, NATO's mission consisted of collecting weapons from former NLA forces. In Operation Amber Fox from 27 September 2001 to 15 December 2002, NATO protected observers from the EU and the Organization for Security and Cooperation in Europe (OSCE). Finally, in Operation Allied Harmony from 16 December 2002 to 31 March 2003, alliance forces provided further protection to EU and OSCE observers, pending the EU's assumption of this responsibility.⁴²

NATO's Balkan operations as a form of pre-emption

In initiating the use of force in the Kosovo conflict in 1999, the allies plainly intended to prevent further adverse consequences for the ethnic Albanian Kosovars and for neighbouring states, particularly Albania and FYROM. Because NATO's action was intended to halt egregious abuses of human rights, it had broad public support in alliance nations. In 2003 Lord Robertson, then the NATO Secretary General, used the term 'pre-emption' to describe NATO's intervention in that conflict:

Nineteen NATO countries decided that they would act pre-emptively to stop the slaughter that Milosevic was the architect of in Kosovo, to stop the torture, to stop the ethnic cleansing that was going on there. We didn't wait until the end of that process before action was taken. We took it, inevitably pre-emptively. And pre-emption is obviously something that is part of the elements of deterrence.⁴³

Lord Robertson might have added that the Kosovo intervention was a specific type of pre-emption, in that NATO was acting not in anticipation of an attack against one or more of its members, but to terminate transgressions by the Milosevic government and avert further atrocities.

The word 'pre-emption' had become controversial following its publication in the 2002 US National Security Strategy, but Robertson had no objection to using it to describe NATO actions in the Balkans and the new strategic requirements facing the alliance:

Well, we are a defensive organisation, but we've had to use pre-emptive action in the past and pre-emption is anyway part of deterrence. An aggressor needs to know that it will not simply be when he crosses a border or when he attacks to kill that something will happen. There has to be something much more flexible than that, and that has always been part of

⁴² The EU conducted its first peacekeeping mission, Operation Concordia in FYROM, from March to Dec. 2003. NATO made assets available to the EU for this operation, whose commander also served as Deputy SACEUR. In Dec. 2003 the EU replaced Operation Concordia with Operation Proxima, a police mission.

⁴³ Questions and answers with NATO Secretary General, Lord Robertson, at the press conference following the working session for allied and invitee defence ministers, Colorado Springs, 9 Oct. 2003, available at www.nato.int/docu/speech/2003/s031009b.htm.

our policy. But we acted pre-emptively in Kosovo in 1999 to stop Milosevic from doing what he was doing and increasingly doing the ethnic cleansing in a systematic way. We acted pre-emptively in Bosnia in 1995 before the violence got way out of hand there as well. And frankly, we acted pre-emptively in Macedonia in 2001 as well. So, I don't get het up about the word pre-emptive. You've got to be able to act when it's necessary to act. And you've got to be able to act where the threat is. The threat to New York and to Washington on the 11th of September came from Afghanistan on the other side of the world. And that is why the foreign ministers of NATO at Reykjavik in 2002 decided that the old debate about out-of-area was out of time and that we had to be prepared to go where the threat was if we were actually going to protect the people who rely on us for protection.⁴⁴

In other words, Robertson argued, preparedness to take pre-emptive action could contribute to deterrence and to effective intervention in the event of deterrence failure. Robertson also pointed out a pattern of increasingly timely anticipatory action by NATO in dealing with Balkan conflicts:

Bosnia and Herzegovina, Kosovo and the former Yugoslav Republic of Macedonia are no longer in the headlines because NATO acted, and because NATO learned lessons and put them into practice. We helped stop civil war in Bosnia and Herzegovina. We acted to prevent ethnic cleansing in Kosovo. We intervened to prevent a civil war in the former Yugoslav Republic of Macedonia. In each successive crisis, our involvement came at an earlier stage and was therefore increasingly effective in saving lives and preventing overspill.⁴⁵

While allied actions in the Balkans have been likened retrospectively to pre-emption by Lord Robertson and others, it should be kept in mind that in these episodes the allies did not face any direct threat of aggression against alliance territory. That is, the allies were not undertaking defensive operations in the face of an imminent threat of attack, but intervening on humanitarian grounds to protect the Bosniaks (sometimes called the Bosnian Muslims), the ethnic Albanian Kosovars and others, and to shape their security environment. The allies were intervening from a position of overwhelming military superiority, with little or no risk to their own national territories and populations, as long as external powers exercised restraint.⁴⁶ In most cases, before using force they issued public ultimatums to the Bosnian Serbs, the Milosevic government in Belgrade, and others. In other words, while the Balkan conflicts drew the allies out of their strictly defensive and reactive Cold War posture and led them increasingly to use force in an anticipatory fashion, these operations did not prepare them fully for the new security challenges highlighted by the terrorist attacks of September 2001.

⁴⁴ Lord Robertson, video interview at NATO HQ, 16 Dec. 2003, available at www.nato.int/docu/speech/2003/s031216a.htm.

⁴⁵ Lord Robertson, 'Change and continuity', *NATO Review*, Winter 2003.

⁴⁶ There were incidents in both the Bosnia and Kosovo conflicts in which the allies faced a risk of confrontation with Russia. For background on the Bosnia case, see Laura Silber and Allan Little, *The death of Yugoslavia*, rev. edn (London: Penguin Books and BBC Books, 1996), pp. 311–18, 328–34. For the Kosovo case and the Pristina airfield incident in particular, see General Wesley K. Clark, US Army, Retired, *Waging modern war: Bosnia, Kosovo, and the future of combat* (New York: PublicAffairs, 2001), pp. 375–403. The accidental bombing of the Belgrade embassy of the People's Republic of China on 7 May 1999 during the course of Operation Allied Force damaged US–Chinese relations, but did not create as great a risk of confrontation for the alliance as the incidents involving Russia.

NATO since 11 September 2001

The terrorist attacks against the United States on 11 September 2001 led the allies to invoke, for the first time in history, the mutual defence pledge in article 5 of the North Atlantic Treaty. At the request of the United States, the allies agreed in October 2001 to take several measures in response to these attacks. Some of these measures were clearly oriented towards preventing future terrorist attacks; these ranged from enhanced intelligence-sharing and increased security for US and allied facilities to Operation Active Endeavor, the maritime surveillance operation in the Mediterranean that continues to this day.

The alliance's engagement in Afghanistan has been a response to terrorist threats and is intended to prevent the emergence of future terrorist challenges, although NATO and the other organizations active in Afghanistan clearly have additional purposes. After the US-led coalition deposed the Taliban government in Operation Enduring Freedom, the UN Security Council authorized the establishment of an International Security Assistance Force (ISAF) to provide a secure environment for post-conflict reconstruction. The alliance began to play a role in ISAF in October 2002, when the NAC approved a German–Dutch request for NATO support in force generation, intelligence, communications and other areas for the German–Dutch command of ISAF beginning in early 2003. ISAF was not yet a NATO-led mission, however. It was in April 2003 that the allies decided that NATO would take over the ISAF command in August that year. In 2006 the allies began the process of extending this operation from Kabul to the south of Afghanistan, and at the time of writing they are expanding their reliance on civil–military provincial reconstruction teams, intending to sustain their commitment to the security of Afghanistan for the foreseeable future. While NATO's main mission in Afghanistan is sustaining security, the allies support a comprehensive approach in which other international organizations, notably the UN and the EU, and non-governmental organizations undertake complementary missions in support of reconstruction.

NATO's engagement in Afghanistan suggests that the allies have recognized the need for this form of preventive action—that is, operations intended to provide a security environment for political, social and economic reconstruction and thereby to avert the emergence of new threats. In the words of the current NATO Secretary General, Jaap de Hoop Scheffer, 'A passive, reactive approach may have been alright during the Cold War. It clearly has become insufficient now. Either we tackle the challenges to our security when and where they emerge, or they will end up on our doorstep.'⁴⁷ The anticipatory use of force remains controversial, however, and inextricably linked to debates among the allies about legality and moral legitimacy.

⁴⁷ Jaap de Hoop Scheffer, 'Addressing global insecurity', speech in Vienna, Austria, 3 Nov. 2005, available at www.nato.int/docu/speech/2005/s051103b.htm.

Legal justifications for initiating the use of force

Preventive measures based on deterrence and protection are less politically sensitive than actions initiating the use of force, such as pre-emption and preventive war. The latter actions inevitably raise legal, political and moral questions of paramount importance in the democratic societies of NATO's member states. It is widely agreed in NATO nations that the UN Charter provides two legitimate grounds for initiating the use of force: 'the inherent right of individual or collective self-defense' (article 51), and the UN Security Council's authority to 'take such action by air, sea, or land forces as may be necessary to maintain or restore international peace or security' (article 42).

How should the allies apply these principles to current and prospective security challenges? The argument that modern technologies may be employed to pose threats not anticipated in the UN Charter's reference in article 51 to self-defence in response to 'an armed attack' long predates September 2001. It was in 1962, for example, that US President John F. Kennedy said, 'We no longer live in a world where only the actual firing of weapons represents a sufficient challenge to a nation's security to constitute maximum peril.'⁴⁸ Although the debate about whether nations can legitimately take preventive action to stop actual or potential adversaries from acquiring nuclear weapons goes back to the dawn of the nuclear age,⁴⁹ it has become a topic for discussion within the alliance only since the early 1990s. NATO first referred to WMD proliferation as a source of 'new security risks' in 1990.⁵⁰

The allies have not agreed, however, on how to deal with WMD proliferators. The German scholar Harald Müller has noted, for example, that 'many European governments reacted with great anxiety' to US Secretary of Defense Les Aspin's 1993 proposals about counterproliferation.⁵¹ As Müller has pointed out, the last point of German Foreign Minister Klaus Kinkel's ten-point non-proliferation initiative in December 1993 can be construed as a reply to Aspin's proposals: 'Military enforcement measures against proliferators, pursuant to Chapter VII of the UN Charter, can only be conceived of as ultima ratio in case of a threat to international security and peace. Military measures necessitate—except in the case of defense against armed attack—always the legitimization by the UN Security Council.'⁵² As Müller has observed, 'This was meant to obviate any thought of

⁴⁸ President John F. Kennedy, 'Radio and television report to the American people on the Soviet arms buildup in Cuba', 22 Oct. 1962, available at <http://www.cs.umb.edu/jfklibrary/j102262.htm>. President George W. Bush quoted President Kennedy's statement in his speech in Cincinnati, Ohio, on 7 Oct. 2002.

⁴⁹ For a brief overview of discussions in the United States and the United Kingdom in the late 1940s concerning the possibility of 'preventive war' to neutralize the Soviet Union's nuclear assets, see Marc Trachtenberg, *History and strategy* (Princeton, NJ: Princeton University Press, 1991), pp. 100–107.

⁵⁰ North Atlantic Council communiqué, 18 Dec. 1990, para. 15. The subject was not even mentioned in the alliance's July 1990 London Declaration. See also the alliance's Strategic Concept, 7 Nov. 1991, paras 50–51.

⁵¹ Harald Müller, 'Counterproliferation and the nonproliferation regime: a view from Germany', in Mitchell Reiss and Harald Müller, eds, *International perspectives on counterproliferation* (Washington DC: Division of International Studies, Woodrow Wilson International Center for Scholars, Jan. 1995), p. 29.

⁵² Foreign Office of the Federal Republic of Germany, 'Deutsche 10-Punkte-Erklärung zur Nichtverbreitungspolitik', Bonn, 15 Dec. 1993, p. 4, quoted in Reiss and Müller, *International perspectives on counterproliferation*, p. 30.

a [UN Security Council] mandate-free solitary NATO action, and as a show-stopper for US unilateralism.’⁵³

Prior to NATO’s use of force in the Kosovo conflict in 1999, France and Germany held that an explicit UN Security Council authorization was necessary for any use of force other than in self-defence. While Paris and Berlin eventually agreed to the use of force in the Kosovo conflict without such an explicit Security Council authorization, primarily on grounds of humanitarian necessity, they argued in 2002–2003 that in the Iraq case an additional resolution authorizing recourse to force was necessary. In contrast, the United States and its coalition partners held (a) that they had sufficient authority to use force in existing resolutions and (b) that the use of force was necessary to uphold the authority of the Security Council.

The reluctance of Belgium, France and Germany in early 2003 to approve measures intended to defend Turkey against a possible Iraqi attack can be interpreted as reflecting misgivings about initiating the use of force against the Saddam Hussein regime, given their view that the threat of WMD acquisition by Iraq could be contained by other means. It was not until 16 February 2003 that the alliance, in the form of the Defense Planning Committee (DPC), approved the precautionary steps to protect Turkey in the event of an Iraqi attack. (France chooses not to participate in the DPC, owing to its withdrawal from the integrated military structure.) Belgium and Germany had finally dropped their objections, so 18 of the 19 allies agreed in the DPC to initiate the planning and related work for deployment of AWACS aircraft, theatre missile defences, and allied chemical and biological defence capabilities to Turkey.⁵⁴

This incident should be placed into perspective by noting that only three of the then 19 allies delayed the precautionary steps for Turkey’s defence, and even France—the only nation to hold out—insisted that it would honour its article 5 commitment if Turkey were really threatened or attacked. The French argued that it was a matter of timing, not substance, and that they could not logically endorse the prospective US-led use of force against the Iraqi regime in the NAC when they had not approved it in the UN Security Council. The split within the Alliance was in fact not simply a US–European divide, but also a rift among Europeans.

Because of the political importance to many allies of UNSC approval for any action initiating the use of force, some NATO observers noted with interest the deliberations in 2004 of the UN Secretary General’s High-Level Panel on Threats, Challenges and Change. In its final report the High-Level Panel quoted the reference in article 51 of the UN Charter to the right to self-defence in response to ‘an armed attack’ and noted the lawfulness of pre-emptive action as traditionally defined: ‘However, 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.’⁵⁵

⁵³ Reiss and Müller, *International perspectives on counterproliferation*, p. 30.

⁵⁴ See the statement by the NATO Secretary General, Lord Robertson, after the NATO Defence Planning Committee Meeting on 16 Feb. 2003, available at www.nato.int/docu/speech/2003/s030216a.htm.

⁵⁵ *A more secure world*, para. 188, emphasis in original.

The High-Level Panel then raised the question whether preventive war against nuclear proliferators could be legitimate:

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 weapons-making 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 visit 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.⁵⁶

In short, the High-Level Panel's discussion of article 51 of the UN Charter did not offer the alliance any new latitude for action, nor did it throw any new light on the subject.⁵⁷ Key questions remain unresolved. Should the international legal regime be explicitly modified to provide in extreme situations for new defensive options, even preventive war, that take into account unprecedented vulnerabilities arising from modern technologies? How should the classical criteria for pre-emption of 'necessity', 'imminence' and 'proportionality' be construed in the light of modern technologies and strategic options? Should additional principles govern the decisions? What might be the consequences for international order of recognizing such new precedents and principles in international law? How could risks of precipitate and/or ill-founded actions be diminished? If multilateral legitimization via the UNSC is not available, what constraints should states and coalitions observe in exercising the right to self-defence recognized in article 51 of the UN Charter?⁵⁸

Nor did the September 2005 world summit convened by the UN break any new ground regarding pre-emption or preventive action. The summit's outcome document did not even refer to article 51, let alone to the legitimacy of pre-emption, in its discussion of the use of force under the Charter.⁵⁹ As in the Kosovo

⁵⁶ *A more secure world*, paras 188–91.

⁵⁷ The assertion that 'Allowing one to so act is to allow all' disregards the fact that in practice few states will be in a position to take such action and that some of them could be expected to do so regardless of the example set by others.

⁵⁸ These questions and others are raised in David S. Yost, 'Debating security strategies', *NATO Review*, Winter 2003, available at <http://www.nato.int/docu/review/2003/issue4/english/art4.html>.

⁵⁹ '2005 world summit outcome', 16 Sept. 2005, resolution adopted by the General Assembly, UN doc. A/RES/60/1, paras 77–80.

crisis, the allies may justify actions initiating the use of force only by referring to their national interpretations of what is permitted under article 51 or existing UNSC resolutions.

New security imperatives

Security imperatives—and associated practical and operational necessities—may induce some allies to pursue strategies of pre-emptive or preventive action. That is, the requirements for effective action against terrorists and/or WMD proliferators may oblige allies to look beyond their preference for prolonged deliberation and the emergence of a clear mandate authorizing the use of force from the UN Security Council.⁶⁰ Karl-Heinz Kamp of the Konrad Adenauer Foundation in Berlin offered the following observations in 2003:

Given the increasing dissemination of chemical, biological, or even nuclear weapons and of long-range delivery systems (missiles and aircraft), situations can arise today in which one would not expect an intended victim to wait until there was cast-iron evidence of the enemy's intention to attack. In the worst-case scenario, waiting would imply that a country would have to suffer the explosion of a weapon of mass destruction on its own territory before being justified in striking back ... The [United Nations] Charter, written half a century ago, concentrates too much on the danger of inter-state conflict and does not address today's dangers of intra-state conflict, threats from non-state actors (terrorists), or the extremely short time required to launch an annihilating attack.⁶¹

Non-state adversaries are generally not subject to deterrence based on threats of punishment, owing to the difficulty of identifying assets that they value and that might be held at risk. This fact may constitute another incentive for governments to take pre-emptive or preventive action, once they learn of terrorist attack plans.

Without using the word 'pre-emption', the British government in 2002 highlighted 'the possibility of action in the face of an imminent attack':

We have made clear that our responses will be proportionate and in accordance with our international legal obligations. But we will not let the less scrupulous think we do not mean business, or simplify an aggressor's calculations by announcing how we would respond in particular circumstances. The only certainty we should offer is that we shall respond appropriately if we need to, using any of a wide range of options open to us. It should be clear that legally the right to self defence includes the possibility of action in the face of an imminent attack.⁶²

As noted earlier, even some allied governments that opposed the coalition action to end Saddam Hussein's regime in Iraq endorse the principle of pre-emption

⁶⁰ As the Kosovo case demonstrated, security imperatives might also concern humanitarian responsibilities to intervene in a conflict in the absence of an explicit mandate to use force from the UNSC. China and/or Russia might withhold approval and prevent legitimization by the UNSC.

⁶¹ Karl-Heinz Kamp, 'Prevention in US security strategy', *Internationale Politik*, transatlantic edn, 4, Spring 2003, p. 19.

⁶² Ministry of Defence, *The Strategic Defence Review: a new chapter*, presented to Parliament by the Secretary of State for Defence by Command of Her Majesty, Cm 5566, vol. 1 (London: Stationery Office, July 2002), p. 12.

on the basis of evidence that an enemy is about to attack. This principle appears explicitly in a recent and authoritative expression of French security policy, the military programme law for 2003–2008:

Nuclear deterrence remains our fundamental guarantee. In parallel, the general military strategy consists of actions of prevention, protection, and power-projection in order to be able to deal with other types of threats with the necessary flexibility ... Outside our frontiers, in the framework of prevention and power-projection, we must therefore be able to identify and guard against threats as soon as possible. *In this framework, the possibility of a pre-emptive action could be considered, as soon as a situation of explicit and known threat was recognized.* This determination and the improvement of capabilities for long-range strikes should constitute a deterrent threat for our potential aggressors, all the more so because transnational terrorist networks are being organized and prepared for action most often outside our territory, in zones not controlled by states, or even with the support of enemy states.⁶³

The controversy generated by the US government's use of the term 'pre-emption' since June 2002 to encompass what has historically been regarded as 'preventive war' has made a number of allied governments reluctant to employ the term 'pre-emption'.⁶⁴ However, in the interests of their own security, these governments have endorsed the concept of pre-emptive action (that is, action in the face of an imminent threat) while avoiding the term. Perhaps the most telling example of this terminological prudence may be found in the alliance's Military Concept for Defence Against Terrorism, published in October 2003:

The Political Guidance provided by [the North Atlantic] Council ... stipulated that NATO's actions should: ... Help deter, defend, disrupt and protect against terrorist attacks or threat of attacks, directed from abroad against populations, territory, infrastructure and forces of any NATO member state, including by acting against these terrorists and those who harbour them ... [and] Work on the assumption that it is preferable to deter terrorist attacks or to prevent their occurrence rather than deal with their consequences and be prepared to deploy as and where required to deal with particular circumstances as they arise. The Concept states that in order to carry out successful Counter Terrorism operations, NATO must have adequate Command and Control and intelligence structures, as well as forces trained, exercised and maintained at the appropriate readiness levels ... Therefore the following planning aspects need special attention: Procedures and capabilities that support accelerated decision cycles, in order to be successful in detecting and attacking time sensitive targets in the Counter Terrorist environment ... Once it is known where the terrorists are or what they are about to do, military forces need the capability to deploy there. Due to the likelihood that warnings will be received only at very short notice, forces need to be at a high state of readiness ... In addition to the capabilities described above, the Concept identifies certain procedures that need to be developed or enhanced. These include: ... Making Alliance decision making as effective and timely as possible in order

⁶³ Loi no. 2003–73 du 27 janvier 2003 relative à la programmation militaire pour les années 2003 à 2008, sec. 2.3.1., 'Les fonctions stratégiques', available at www.legifrance.gouv.fr; emphasis added (translation by the author).

⁶⁴ The US administration's use of the term 'pre-emption' to encompass what has been (and remains) widely regarded as preventive war is usually dated from President George W. Bush's speech at West Point on 1 June 2002. In May 2002 Lord Robertson provoked no controversy when he declared that, 'In the face of new threats, our forces must be better able to deter, pre-empt and defeat, attacks'. Opening statement by NATO Secretary General, Lord Robertson, at the opening session of the meeting of the North Atlantic Council in ministerial session, Reykjavik, Iceland, 14 May 2002, available at www.nato.int/docu/speech/2002/so20514b.htm.

that, given the very short warnings that are likely for terrorist activity and intentions, Alliance forces can be deployed and employed appropriately.⁶⁵

Since it is obvious that it may be impossible to 'disrupt' the 'threat of attacks' or 'prevent their occurrence' or take action 'once it is known where the terrorists are or what they are about to do' without engaging in pre-emptive action, it appears that the allies are in fact willing (at least as a matter of abstract principle) to make effective use of 'the very short warnings that are likely for terrorist activity and intentions'.

The EU offered a similar noteworthy example of terminological reticence in its European Security Strategy. The first version of this document, published in June 2003, included the following statements:

The most frightening scenario is one in which terrorist groups acquire weapons of mass destruction ... In this event, a small group would be able to inflict damage on a scale previously possible only for states and armies. In such cases, deterrence would fail ... Pre-emptive engagement can avoid more serious problems in the future ... With the new threats the first line of defence will often be abroad. The new threats are dynamic. Left alone, they will become more dangerous. The risks of proliferation grow over time; left alone, terrorist networks will become ever more dangerous (we should have tackled Al Qaeda much earlier) ... This implies that we should be ready to act before a crisis occurs. Conflict prevention and threat prevention cannot start too early ... We need to develop a strategic culture that fosters early, rapid, and when necessary, robust intervention.⁶⁶

In the second and final version of December 2003, the statements that 'In such cases, deterrence would fail' and that 'we should have tackled Al Qaeda much earlier' were omitted. Moreover, the word 'pre-emptive' was replaced by 'preventive'.⁶⁷ Evidently at least one member of the EU (and possibly others) did not wish to acknowledge that deterrence could fail and preferred to avoid a direct reference to Al-Qaeda. The word 'pre-emptive' was apparently unacceptable as well, perhaps owing to its recent prominence in US national security strategy. While the term 'preventive' is even more elastic and ambiguous than 'pre-emptive' and can encompass a wide range of activities, including diplomatic and economic measures, the European Security Strategy retained language acknowledging the presence of 'dynamic' threats that 'will become more dangerous' if 'left alone' and the corresponding need for 'early, rapid, and when necessary, robust intervention'. Critics noted, however, that EU member nations left 'robust intervention' undefined and chose not to declare explicitly that the EU could initiate the use of force to defend its interests. Since 19 of the EU's 25 member nations are NATO allies, the EU's reticence is significant as an expression of attitudes that may influence the definition of alliance policy.

⁶⁵ NATO's Military Concept for Defence Against Terrorism, Oct. 2003, available at www.nato.int/ims/docu/terrorism.htm. This document is an authoritative description of the concept endorsed at the NATO summit in Prague on 21 Nov. 2002.

⁶⁶ *A secure Europe in a better world* (Brussels: Council of the European Union, 20 June 2003), pp. 5, 10–13. This paper, a draft EU security strategy prepared by Javier Solana, the EU High Representative for the Common Foreign and Security Policy, was delivered at the European Council in Thessaloniki on 20 June 2003.

⁶⁷ *A secure Europe in a better world* (Brussels: Council of the European Union, 12 December 2003), pp. 4, 7, 11.

The European Security Strategy and the alliance's Military Concept for Defence Against Terrorism have the merit of recognizing key issues at stake in the anticipatory use of force, despite the reluctance to use the words 'pre-emption' and 'pre-emptive'. The true question concerns not the particular word used, but whether the allies can muster the political will to take timely and effective action to defend their security interests. The allies clearly have an interest in reconciling international law and political legitimacy with perceived strategic necessity. However, they have not yet resolved questions concerning the legality and legitimacy of the anticipatory use of force.

Key issues for NATO

To what extent can and should the NATO allies surmount the political obstacles to taking pre-emptive or preventive action? The prospect of taking such action—even against WMD proliferators—is intrinsically unattractive to some governments, notably in an alliance consisting of democracies and oriented for decades to collective defence. Throughout the Cold War, it should be recalled, the alliance maintained a strictly defensive and reactive posture. It is only since their involvement in the Balkan wars in the early 1990s that the allies have had to deal with the strategic, political and legal issues associated with initiating the use of force. No comprehensive consensus has been reached on this issue, despite the alliance's success in formulating its Military Concept for Defence Against Terrorism and other policy documents.

It would be politically difficult for NATO to undertake the pre-emptive destruction of WMD assets or facilities and/or to impose a change of regime in a proliferator state unless the proliferator took hostile action or unambiguously indicated that an attack was imminent. As long ago as 1994 Michael Rühle concluded that 'NATO, given its democratic, multinational, and defensive nature, is incapable of any deliberately planned offensive action ... [I]t is simply inconceivable that NATO Allies would find the political will to launch a preventive military strike even against the facilities of a state which persisted in its development of WMD in the light of international opposition.'⁶⁸

If published reports are correct, the crisis management exercise at NATO headquarters in January and February 2002 lent support to Rühle's judgement. The exercise posited a threat to Turkey by a fictional 'Amberland' armed with missiles bearing biological and chemical warheads. In the face of Amberland's attempt to annex some oil-rich Turkish territory and its threats to attack Turkey, the NAC asked the Military Committee to recommend military options. The Military Committee was, however, unable to offer any recommendations because national capitals disagreed. Only Turkey and the United States were prepared to undertake pre-emptive action, while France, Germany and Spain preferred to try

⁶⁸ Michael Rühle, 'NATO and the coming proliferation threat', *Comparative Strategy* 13: 3, July–Sept. 1994, pp. 317–18.

to settle the crisis by political means.⁶⁹ In an analysis of this exercise, Karl-Heinz Kamp concluded that 'in extreme cases the decisions of individual countries will probably depend less on conceptual interpretations of international law than on nations' sheer proximity to the threat'.⁷⁰

Subsequent NATO crisis management exercises appear to have focused on familiarizing allies and PfP partners with procedures for decision-making at times of crisis, for example in hypothetical contingencies such as terrorist attacks using radiological dispersion devices or launching explosives against chemical plants in NATO countries, as well as threats of terrorism and WMD use against NATO forces operating outside the Euro-Atlantic area. It is not clear from published accounts whether and to what extent these exercises have raised the question of preventive war or pre-emptive action.⁷¹

The problems likely to arise in decision-making in actual crises, highlighted both by Michael Rühle and by evidence from exercises and past contingencies, make it hard to forecast whether the alliance could take pre-emptive actions or initiate preventive war in specific cases. As Lord Robertson noted in 2003, the consensus rule means that the alliance cannot act without the agreement of all its members: 'NATO doesn't take any decisions unless they are taken with unanimity in the [North Atlantic] Council. So, there is no question about anybody being bounced into pre-emptive action if they don't want to do it'.⁷²

The alliance has historically been a defensive and reactive organization; only under the prolonged pressure of perceived political and strategic necessity have the allies been led to make more 'proactive' decisions in the Balkans and Afghanistan. Moreover, the strategic cultures of the allies continue to differ, owing in part to their distinct national historical experiences with the results of employing military force; and these differences are particularly sensitive in relation to the anticipatory use of force.⁷³ Also, as the 2002 crisis management exercise suggested, differences in geographical exposure to certain threats may tend to divide the allies.⁷⁴

The degree to which an ally has its own national sources of intelligence, or access to (or confidence in) the intelligence provided by other allies, may also be a significant source of division. An ally (or group of allies) discerning the necessity

⁶⁹ Annalisa Monaco and Sharon Riggle, 'NATO squares off with Middle East foe: threat of WMD challenges alliance', *NATO Notes* 4: 2, 1 March 2002, available at www.cesd.org, the website of the Centre for European Security and Disarmament.

⁷⁰ Kamp, 'Prevention in US security strategy', p. 20.

⁷¹ Annalisa Monaco, 'CMX 04: terrorists attack NATO', *NATO Notes* 6: 2, April 2004, available at www.isis-europe.org, the website of the International Security Information Service, Europe. See also the press releases about the 2005 and 2006 NATO crisis management exercises available at the NATO website, www.nato.int/docu/pr/2005/p05-003e.htm and www.nato.int/docu/pr/2006/p06-019e.htm.

⁷² Questions and answers with the NATO Secretary General, Lord Robertson, at the press conference following the working session for allied and invitee defence ministers, Colorado Springs, 9 Oct. 2003, available at www.nato.int/docu/speech/2003/s031009b.htm.

⁷³ Some allies might be more likely than others to minimize the gravity and urgency of an emerging threat that other allies would consider as justifying an anticipatory use of force. Sceptical allies might doubt whether the projected enemy attack would be fully effective, even if it materialized, and/or might argue that 'riding out' the attack and then retaliating would place the alliance in a stronger political, moral and legal position.

⁷⁴ Ballistic missiles armed with WMD may lessen the significance of this factor in that more NATO allies may be placed at risk as the range of these strike systems increases.

for anticipatory action would have to possess a high level of credibility among the other allies in order to gain their assent and participation. The track record of the ally (or allies) proposing such action in accurately assessing ambiguous threats and successfully intervening against them would be an important credibility factor. Other factors that would no doubt affect the decision-making of the allies would be the magnitude and urgency of the projected military operation; the adversary's capacities for resistance and retaliation, including via terrorist means; the scale and duration of the probable post-conflict reconstruction and stabilization responsibilities; and judgements about the feasibility of democratization and a lasting peace, sometimes called 'sustainable security'.⁷⁵ Difficult experiences in Iraq and Afghanistan would probably be cited as cases in point. Allies would be well aware of the fact that the anticipatory use of force is not a panacea, but a damage-limiting strategy that may itself entail grave and unpredictable consequences. The obstacles to alliance decisions to engage in the anticipatory use of force, particularly against state adversaries (as opposed to terrorist organizations), could be formidable, especially in the presence of ambiguous and closely held intelligence and disputes about the necessity for action.⁷⁶

With regard to the gravity of the projected military operation, one might imagine a spectrum running from the most serious to the more manageable. In this context, the issue of obtaining collective agreement in the alliance for the pre-emptive or preventive use of nuclear weapons is not considered, as such use is not consistent with or part of the declared policy of any of NATO's three nuclear weapon states.⁷⁷ The most difficult endeavour for which to gain NAC approval might be non-nuclear operations aimed at occupation and regime change without an explicit UNSC mandate or widespread political endorsement. Some alliance actions might nonetheless be politically feasible in the absence of a specific UNSC mandate for the use of force—for instance, conventional attacks against terrorist facilities and training camps, even if they were embedded with host state forces, in order to disrupt or prevent imminent WMD attacks against one or more NATO

⁷⁵ Laure Borgomano-Loup, 'NATO and sustainable security', in Jean Dufourcq and Laure Borgomano-Loup, eds, *Promoting sustainable security*, occasional paper no. 12 (Rome: NATO Defense College, Feb. 2006), pp. 26–33.

⁷⁶ The potential impact of missile defences on alliance decisions concerning the anticipatory use of force deserves analysis. With defences against ballistic missiles, the allies would in principle be freer to consider options other than preventive or pre-emptive action against adversaries equipped with WMD-armed ballistic missiles. Some critics of missile defences are concerned that they might encourage governments to take military action, owing to a presumption of reduced risks in the use of force. It seems at least as likely, however, that missile defences could support arguments for restraint and deliberation in taking action and could reinforce deterrence and enable the alliance to navigate crises with greater steadiness and solidarity. Missile defences could bolster deterrence because an adversary would face the risk of operational defeat of his attack as well as the prospect of NATO's retaliation. See David S. Yost, 'Missile defence on NATO's agenda', *NATO Review*, Autumn 2006, available at <http://www.nato.int/docu/review/2006/issue3/english/analysis1.html>.

⁷⁷ See David S. Yost, 'New approaches to deterrence in Britain, France, and the United States', *International Affairs* 81: 1, Jan. 2005, pp. 85–6, 91, 93, and 95; David S. Yost, 'France's new nuclear doctrine', *International Affairs* 82: 4, July 2006, p. 708. Britain and the United States have promised to consult their NATO allies before using nuclear weapons, 'time and circumstances permitting', but only London and Washington can make employment decisions regarding their weapons. For background on the so-called Athens guidelines, see Shaun R. Gregory, *Nuclear command and control in NATO* (London: Macmillan, 1996), pp. 34–5, 99, 103–104, 163.

allies.⁷⁸ Such attacks might well be regarded as consistent with the collective defence pledge in article 5 of the North Atlantic Treaty. Moreover, in the Kosovo conflict in 1999 the allies demonstrated their willingness to intervene with force in support of humanitarian objectives, despite the absence of a clear UNSC mandate.

The next category in the spectrum of increasing political feasibility might be described as ‘raids’—precision attacks against terrorist and/or WMD targets by special forces and/or cruise or ballistic missiles. Strike operations of this kind would be intended to neutralize imminent threats, and such time-sensitive objectives could hardly be discussed in the UN Security Council without simultaneously alerting the enemy to the forestalling action at hand. The category of operations that would most easily win approval in the NAC would encompass those explicitly authorized by the UNSC and benefiting from general public support—for example, removal of a regime after it had committed atrocities.⁷⁹ Such action could hardly be called ‘anticipatory’, however, unless (as in the Kosovo conflict) it was intended to prevent further atrocities. In short, anticipatory uses of force involving greater public legitimacy and legal authority—and less violence and fewer risks for NATO forces and populations—would be most likely to gain support.

Owing to various modern technologies, however, state and non-state adversaries are increasingly capable of causing great damage with little warning. As the risks of inaction grow, the allies may give even greater attention to defining strategies of anticipatory action, despite the risks and sensitivities associated with such strategies. Furthermore, some allies are likely to rethink the definition of ‘imminence’ in threat assessment, going beyond the usual temporal meaning to a qualitative understanding of the term. Some allies may find merit in Walter Slocombe’s analysis, cited above, with its suggestions that ‘the right of “self-defence” includes a right to move against WMD programmes with high potential danger ... while it is still feasible to do so’ and that the ‘necessity may exist without an immediate prospect of attack’. This analysis implies that in some cases, owing in large part to the exceptionally lethal capabilities offered by modern technologies, governments may deem a capability-dependent definition of imminence (the adversary’s progress in acquiring certain means) more compelling than a time-dependent definition (an attack in near prospect). If the temporal definition of imminence justifying anticipatory defence is to be supplemented, or even supplanted in certain instances, by a qualitative capability-based one, allied governments will have to determine what to do by applying general principles to specific cases. The choice may be whether to accept the acquisition of certain means by actual or potential adversaries or to take diplomatic and/or military action to prevent it, even though an attack or even the elaboration of an operational military capability may not be in immediate prospect.

⁷⁸ In the absence of agreement in the North Atlantic Council, some allies might put pressure on others to support action passively in various ways—for instance, permitting use of alliance logistic and communications assets, granting overflight rights, and facilitating the forward deployment of special forces.

⁷⁹ However, contemporary cases such as Sudan (Darfur) suggest that the fact that atrocities have taken place offers no guarantee that strong public support for intervention can be mustered in specific NATO nations, much less consensus on a comprehensive plan of action in the North Atlantic Council.

Political and technological trends make it virtually certain, moreover, that contingencies will arise in which specific allies will consider pre-emptive actions or preventive war to defend their security interests, if necessary without the legitimacy furnished by NATO, the United Nations, and other multilateral and collective decision-making frameworks. If the timelines for effective anticipatory action shorten and the stakes at risk in delay grow, some allies may conclude that defending their security interests is more important than upholding multilateralist principles. In certain contingencies, some allies may decide that the issues are so contentious that it would be impossible to persuade the other NATO members to support action in a timely fashion while preserving the operational security of their forces and achieving tactical surprise.

Alternatively, if the allies wish to preserve a measure of cohesion and alliance legitimacy, they may be obliged to consider the scope for 'constructive abstention' within a broad framework of consensus (which need not always equate to unanimity)—that is, political support without active participation in the operation, or 'coalitions of the willing' within the alliance. For example, in 1998–9, Greece supported the consensus within the NAC that authorized the NATO Secretary General to initiate the Operation Allied Force air campaign, but Greece chose not to contribute aircraft to the operation. Such a 'constructive abstention' approach might be a means to avoid an impression that the alliance functions to restrain individual allies (or groups of allies) from taking actions that they deem imperative for their security. Some allies might, however, prefer not to accept the political responsibility implicit in endorsing an anticipatory use of force on a 'constructive abstention' basis.⁸⁰

Another way of maintaining alliance cohesion while enabling a coalition of allies to seize the initiative in anticipatory action might be to exploit the officially approved distinction between 'NATO in the lead' and 'NATO in support' counterterrorist operations. According to NATO's Military Concept for Defence Against Terrorism, 'NATO in support' options to assist 'coalitions involving Allies' could include expressing political commitment; serving as a 'coalition enabler and interoperability provider'; offering host-nation support and logistic assistance, such as basing and overflight rights; and back-filling national requirements (for example, as when NATO deployed AWACS aircraft in the United States in order to allow Washington to send national AWACS capabilities to Afghanistan).⁸¹

The allies have not yet fully explored the implications of concepts such as 'constructive abstention' and 'NATO in support' with regard to pre-emptive or preventive operations undertaken by a group of allies. However, in view of the normal and predictable differences in interests, threat assessments, political

⁸⁰ Allies often engage in 'silent' constructive abstention when they decide not to contribute personnel and/or other military assets to a specific NATO operation. Greece's policy in Operation Allied Force was noteworthy because the air campaign involved a large-scale anticipatory use of force. All the allies at the time (aside from Greece) contributed sorties, except for the allies that lack air forces (Iceland and Luxembourg) and the new allies that had just joined NATO when the operation began (the Czech Republic, Hungary and Poland).

⁸¹ For a fuller discussion of the distinction between 'NATO in the lead' and 'NATO in support' counterterrorist operations, see NATO's Military Concept for Defence Against Terrorism, Oct. 2003, available at www.nato.int/ims/docu/terrorism.htm.

priorities, and military and intelligence capabilities among the allies, particularly with reference to terrorist and regional-power threats, they may find it to their advantage to organize coalitions for specific purposes, from the anticipatory use of force to stabilization and reconstruction operations.⁸²

In some future crises, the allies may be as fully united as they were in conducting Operation Deliberate Force in the Bosnia conflict in 1995. In others, they may be in agreement about taking action but divided as to the legal and political rationale, as in the Kosovo conflict in 1998–9; or they may be at odds concerning both the proposed action and its legal and political justifications, as in the 2002–2003 Iraq crisis. As the Iraq example suggests, in some cases one or more allies may take pre-emptive actions or initiate preventive war outside the Alliance framework. Even if the allies prove collectively incapable of using force on a pre-emptive or preventive basis in some contingencies, NATO as a whole may well have to deal with the political and strategic consequences of such action by one or several allies.

⁸² According to Nora Bensahel, 'the United States should pursue multilateral cooperation in the financial and law enforcement areas of counter-terrorism, while pursuing military and intelligence cooperation on a bilateral basis': Nora Bensahel, *The counterterror coalitions: cooperation with Europe, NATO, and the European Union* (Santa Monica, CA: RAND, 2003), p. 45.