

EMERGING

BY IVO H. DAALDER

For much of its 50-year existence, the question of when and how the North Atlantic Treaty Organization could or would use force was never in dispute. As a military alliance formed to provide for the collective defense of its members, NATO sought to deter and, if necessary, defend against an attack by the Soviet Union and its Warsaw Pact allies on the territory of one or more of its members. Only in the 1990s did the question of when, where, and how to use force for purposes other than collective defense emerge. NATO's involvement in the Balkans—first in Bosnia, now in Kosovo—suggests that while the allies may remain divided in theory on issues relating to the use of force, they have in practice arrived at a consensus.



ANSWERS

KOSOVO, NATO, & THE USE OF FORCE

NATO's Kosovo war provides answers to three questions that have stymied the allies during the 1990s. First, under what circumstances should NATO threaten or use force? Second,



although the threat of direct attack against Alliance territory as a whole has effectively disappeared, an attack against the territory of a single NATO nation is still quite possible. A country could launch ballistic missiles armed with conventional or more destructive weapons against a NATO capital or a military installation on allied territory. State or nonstate actors could unleash a terrorist attack. Or a more conventional attack could result either from deliberate action or, more likely, from the spillover of a regional conflict. In every case, NATO's Article 5 commitment to collective defense would come into play. Though the threats differ in nature from

Failure would have sealed NATO's future fate—ensuring not just that NATO would be much less likely to embark on Kosovo-type missions in the future, but also that the Alliance would have become increasingly marginal to the interests of its major members.

In considering whether to conduct non-Article 5 missions, NATO countries should generally act on the basis of a formal decision by the North Atlantic Council. Indeed, NATO's action in Kosovo dramatically demonstrated the importance of such unity of purpose. But the possibility for non-collective defense missions should not be conditioned on unanimous consent.

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those of the Cold War, NATO's military response would be guided by the same collective defense principles.

A second type of challenge that may require a NATO military response involves crises or threats that do not directly affect allied territory, but that may have implications for important national or humanitarian interests. In both Bosnia and Kosovo, the Alliance has made such a determination, deciding to use military force even though the Article 5 collective defense commitment was not directly at stake. These non-Article 5 uses of force by the Alliance will increasingly define NATO's future purpose. The decision to threaten and launch an extensive bombing campaign against the former Yugoslavia in defense of Kosovar Albanians is a defining moment for the Alliance. Its success helps ensure NATO's place in the next century as the pre-eminent security organization for defending and extending security and stability within the Euro-Atlantic area.

Requiring a prolonged effort to build an Alliance-wide consensus for such action could result in unacceptable delay or even the failure to act, as happened in Kosovo in 1998. There the search for a NATO consensus delayed a military response past the point when it could have prevented the worst effects of the violent Serb crackdown in Kosovo and laid a foundation for a political resolution to the conflict that would not require a large international military presence to enforce it.

While always striving for consensus, the allies should agree that joint military action by a group of NATO allies may in certain circumstances be both possible and desirable even without a formal decision by the North Atlantic Council. Some very real concerns about such action must be weighed against the need for a flexible and adaptable instrument for joint military action at a time when allied interests vary more than ever. In the end, an Alliance that responds rapidly and effectively to crises in and outside

how far should NATO's writ extend geographically? Third, what is the legal basis for the threat or use of force by NATO in any of these situations?

When Should NATO Threaten or Use Force?

At least two types of challenges could require a NATO military response. First,

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allied territory, even if action is taken by a subset of allies, is preferable to one that conditions action on potentially unattainable unanimous support.

NATO's Geographic Reach

In principle, nothing in the Alliance treaty prevents NATO from taking military action wherever its members agree—in or out of Europe. In fact, the treaty encourages the allies to consult with one another and to coordinate their policies when and where possible.

In practice, however, no agreement exists on how far NATO's geographic reach extends. The United States, as a global power with global interests, argues that NATO should address threats to the common interests of its members, wherever the threats arise. From this perspective, NATO's fundamental purpose should shift, with the Cold War's end, from defending common territory to defending the common interests of Alliance members. At the same time, U.S. officials stress that such an alliance of collective interests would become not a "global NATO," but rather a NATO that is globally active.

But for most European allies—including even those, like Great Britain and France, whose interests extend well beyond Europe—the Atlantic Alliance remains a quintessential European security organization, whose fundamental purpose is to provide security in and for Europe. The debate among the European allies is not whether the Alliance should have a role beyond Europe, but rather how far beyond allied territory its role should extend. As the air campaign against Belgrade underscores, the allies have come to accept that NATO's role extends into the Balkans. At the same time, the difficul-

ties of the Kosovo operation confirm for many allies that this is about as far as NATO should go.

Many European allies are also quick to point out that their views of NATO's common interests, of the challenges and threats to those interests, and of the best way to respond to them often differ from those of the United States. These differences make it unlikely that they will agree to extend NATO's reach beyond Europe any time soon. For most allies, NATO is a regional organization



whose role is and will remain confined to the Euro-Atlantic region. Its members, however, may wish to act together outside of Europe on an ad hoc basis.

The Legal Basis of NATO's Threat or Use of Force

Of the many contentious issues relating to the threat and use of force by NATO, none has so divided the allies as the so-called mandate question—under what authority or on which legal basis can NATO threaten or use military force in other than a collective defense contingency. At the outset of this debate in the early 1990s, most allies (including Washington) believed that NATO should not act in this type of situation without an explicit mandate or authorization from the United Nations or the Organization for Security and Cooperation in Europe. Today Alliance views diverge sharply about the role and authority, if any, of the UN and other organizations in legitimizing or mandat-

ing the use of force by NATO.

One perspective, strongly supported by France and, to a lesser extent, Germany, is that the use of force in international affairs, by a single state or group of states like NATO, is ultimately governed by the United Nations Charter. Under the Charter, NATO can resort to force in self-defense, either of a member state that is attacked or of a nonmember state whose government requests NATO's assistance. The former situation falls squarely within the collective defense commitment of the Washington Treaty; the latter, as Bosnia demonstrated, follows logically from the right of collective self-defense. At the same time, a narrow reading of the UN Charter suggests that NATO cannot use force against another UN member state without its government's consent unless the action is itself in defense

of another UN member state or is specifically authorized by the UN Security Council. It follows from this reasoning that NATO can use force in non-Article 5 contingencies only if it is invited to do so by the state involved or if it is explicitly authorized by the UN Security Council.

This view is rejected most forcefully by the United States, which opposes holding NATO action hostage to the interests of non-NATO members like Russia and China. Moscow and Beijing want to avoid setting the precedent that NATO or any other group of states can intervene in the internal affairs of sovereign states. If such intervention were to be conditioned on UN approval, either or both of them would be bound to use a veto in the Security Council to prevent forceful NATO action. The insistence on a UN mandate thus implies that the brutality Europe has witnessed in the Balkans during the past decade, including the widespread abuse of

human rights and denial of fundamental freedoms, would go effectively unpunished or undeterred.

Not until the Kosovo crisis erupted in early 1998 were the NATO allies confronted with the practical implications of what had been up to that point a largely theoretical argument. By early fall, the Alliance was forced to consider whether to threaten significant air strikes against Serbia, a sovereign country in the middle of Europe engaged in indiscriminate violence against civilians in the province of Kosovo. Although the UN Security Council had unanimously voted in September 1998 to demand a halt to the attacks against civilians in Kosovo and the withdrawal of Serb security forces, a new resolution authorizing NATO to enforce compliance with these demands faced a near-certain Russian or Chinese veto. Nonetheless, the North Atlantic Council decided in October to activate NATO forces and authorize its supreme commander to commence air strikes—a threat that finally was carried out on March 24.

Faced, in the case of Kosovo, with the likelihood that the UN Security Council would veto NATO action in spite of a looming humanitarian catastrophe, NATO decided to act without explicit UN approval. But the larger issue remains unresolved. At the Alliance's Washington Summit in April, the allies acknowledged that the "UNSC has the primary responsibility for the maintenance of international peace and security," but they were silent on the question of who, if anyone, needs to authorize NATO's participation in non-Article 5 operations. And the NATO allies remain divided over whether Kosovo sets a precedent for the future. Whereas Washington argues that Kosovo demonstrates that NATO can act without an explicit UN Security Council mandate, other governments steadfastly maintain that the decision to launch airstrikes should not be seen as creating a right for NATO to arrogate a mandate.

Nevertheless, the Alliance seems to have struck a balance between principle and practice on the mandate question. While NATO should embark on non-Article 5 operations with the approval of the UN Security Council whenever possible, if its 19 members deem such action necessary then they should not be prevented from doing so by the likely veto of one of the Council's permanent members.

A Defining Test for NATO

The Atlantic Alliance is the premier security organization in Europe. In contrast to the European Union, the Organization for Security and Cooperation in Europe, and even the United Nations, NATO is today viewed by members and nonmembers alike as Europe's "go-to" organization. In Kosovo, the Alliance faces a defining test. Kosovo underscores that while NATO's core function must be to provide for the collective defense of its members, its central purpose in the new century must be to extend the security and stability its members have long enjoyed to other countries throughout the Euro-Atlantic area. The allies can achieve this purpose in part by continuing to hold the door of Alliance membership open to other European states. But they must also promote the values and interests that set Europe apart from other regions in the world—including support for democracy and the protection of human rights and fundamental freedoms. NATO brings to this task the unquestioned ability to deploy and use overwhelming military force. As Kosovo demonstrates, however, sometimes more than threats is required.

If NATO's central purpose becomes promoting security and stability throughout the Euro-Atlantic area, then it will be possible for the allies to agree when and how NATO should threaten or use force. Specifically, the allies need to see force not only as a credible deterrent and means of defending allied territory,

but also as a critical tool for helping to enforce the norms, values, and codes of conduct that govern behavior within and between states in the Euro-Atlantic region. That is what NATO has been doing in the Balkans during the past decade—including the use of force against tyrants terrorizing innocent civilian populations in Bosnia and Kosovo.

As for NATO's geographical reach, although the Alliance should provide a solid foundation for joint military action by allies when and wherever they deem it necessary, the focus should be on Europe rather than beyond. The Alliance is not today—or likely to become any time soon—an appropriate instrument for using force outside of Europe. Its planning horizon should therefore remain on Europe.

Finally, whenever possible, NATO should threaten or use force with the full backing of the international community, as expressed by the UN Security Council. It did so in Bosnia. The draft Rambouillet agreement for Kosovo stipulated that the UN be invited to endorse a NATO-led peace operation to support its implementation. But the Alliance cannot be held hostage to the dictates of non-NATO members. As an alliance of democratic states acting by consensus, NATO must preserve the possibility of acting without specific UN authorization. Even then, the allies should base their action on appropriate legal instruments, including the UN Charter and, for actions in Europe, the Helsinki Final Act and the Charter of Paris.

In sum, NATO enters the new century as the only major security organization capable of wielding significant military force in Europe. It should do so only in support of efforts to extend security and stability throughout the Euro-Atlantic region. And it can do so without recourse to non-European institutions so long as force is employed in support of sound purposes and principles to which all states in Europe subscribe. ■