

The New Strategic Concept

For much of the 1990s, NATO has acted on the basis of a strategic concept that was developed in response to the profound political changes in central and eastern Europe that heralded the cold war's end. The development of the Alliance's Strategic Concept, which was endorsed by NATO Heads of State and Government at their Rome Summit in November 1991, reflected the political and military turbulence and uncertainty of the time. Popular revolts enveloped the nations of central and eastern Europe, the Warsaw Pact was dissolved, Yugoslavia disintegrated, a U.S.-led coalition intervened in the Persian Gulf, Moscow witnessed an unsuccessful coup d'état, and the Baltic republics became independent.¹ Based on its assessment of these developments, the NATO allies reached two conclusions. First, although the security environment had undergone a profound transformation and the Soviet threat had been vastly reduced, NATO's essential purpose – “to safeguard the freedom and security of the all its members by political and military means” – remained both valid and unchanged. At the same time, the allies recognized that “the opportunity for achieving Alliance objectives through political means are greater than ever before.” As a consequence, the allies could afford to adopt “a broad approach to security [consisting of] three mutually reinforcing elements of Allied security policy: dialogue, cooperation, and the maintenance of collective defense capabilities.”²

The Alliance's Strategic Concept reflected these conclusions and set forth four security tasks that NATO should perform to achieve its essential purpose:

- I. To provide one of the indispensable foundations for a stable security environment in Europe, based on the growth of democratic institutions and commitment to the peaceful resolution of disputes, in which no country would be able to intimidate or coerce any European nation or to impose hegemony through the threat or use of force.
- II. To serve, as provided for in Article 4 of the North Atlantic Treaty, as a transatlantic forum for Allied consultations on any issues that affect their vital interests, including possible developments posing risks for members' security, and for appropriate co-ordination of their efforts in fields of common concern.
- III. To deter and defend against any threat of aggression against the territory of any NATO member state.
- IV. To preserve the strategic balance within Europe.³

Although much in the concept document remains relevant today, parts of it were called into question almost as soon as it had been approved. Within weeks of the Rome Summit, the Soviet Union ceased to exist, disintegrating into twelve newly independent states. The dissolution of the Soviet empire raised questions about its continued utility, especially since one of its central tenets was the need for collective defense and maintaining a strategic balance able to counter the potential Soviet threat. In the words of the document: "Soviet military capability and build-up potential, including its nuclear dimension, still constitute the most significant factor of which the Alliance has to take account in maintaining the strategic balance in Europe."⁴ The dissolution of the Soviet Union therefore challenged the notion, which resided at the heart of the strategic concept, that Soviet military potential provided an essential strategic justification, if not the political moorings, for the Atlantic Alliance. In short, the collapse of Soviet military power raised anew the question of NATO's purpose in a post-Soviet Europe.

NATO responded to the Soviet Union's disintegration by emphasizing its potential contribution to crisis management and conflict control outside its traditional geographical arena, notably in the Balkans. In July 1992, the allies agreed to consider on a case-by-case basis the possibility of participating in peacekeeping activities under the auspices of the Organization for Security and Co-operation in Europe. This commitment was extended the following December to include activities under United Nations auspices. Subsequently, NATO involvement in Bosnia grew from limited maritime patrolling and enforcement of UN Security Council resolutions from the air to the implementation of a major peace agreement with tens of thousands of troops on the ground. However, the nature of the Alliance's evolving out-of-area activity differed in both degree and scope from the crisis management role that NATO members had envisaged in the 1991 strategic concept. That role was viewed primarily as addressing crises affecting member countries, and NATO's activities in support of crisis management were conceived predominantly within the context of its collective defense mission. This predisposition was reflected in the fundamental principles of Alliance strategy enumerated in the 1991 concept:

The Alliance is purely defensive in purpose: none of its weapons will ever be used except in self-defense, and it does not consider itself to be anyone's adversary. The Allies will maintain military strength adequate to convince any potential aggressor that the use of force against the territory of one of the Allies would meet collective and effective action by all of them and that the

risks involved in initiating conflict would outweigh any foreseeable gains. The forces of the Allies must therefore be able to defend Alliance frontiers, to stop an aggressor's advance as far forward as possible, to maintain or restore the territorial integrity of Allied nations and to terminate war rapidly by making an aggressor reconsider his decision, cease his attack and withdraw. 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.⁵

Nowhere in these “fundamental principles of Alliance strategy” is NATO’s crisis management role conceived in other than a collective defense context. Indeed, the use of NATO military power is strictly limited to self-defense. Yet, as the Alliance’s growing involvement in Bosnia and elsewhere in the Balkans underscores, the allies have become more convinced that NATO can and should play a major role in crisis management operations even if the locus of activity is outside the treaty area and the operation itself does not involve collective defense commitments. As a result, the Alliance has been drawn into considering non-Article 5 operations, pursued largely on the basis of the allies’ commitment under Article 4 of the North Atlantic Treaty to “consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened.” At the same time, NATO’s guiding strategic concept, while recognizing the possibility of such operations, is largely silent about their strategic and operational implications.

The collapse of the Soviet threat and the growing importance of crisis management missions raised questions about the continuing adequacy of the Alliance’s Strategic Concept. Nearly six years after it was approved, allied leaders called for an examination of “the Strategic Concept to ensure that it is fully consistent with Europe's new security situation and challenges.” They also noted that “this examination, and an update as necessary, ... will confirm our commitment to the core function of Alliance collective defense and the indispensable transatlantic link.”⁶ The terms of reference for this examination, which was to be completed in time for NATO’s fiftieth anniversary summit, suggested that the strategic concept, *inter alia*, “take into account the internal and external adaptation of the Alliance and its assumption of new roles and missions (such as crisis management, peace support operations and measures against proliferation).”⁷

The examination and possible updating of NATO's strategic concept will (or, in one case, should) focus on three key issues. First, what is the appropriate balance between Article 5 and non-Article 5 operations? Reflecting in part divergent emphases on NATO's future purpose, there are significant differences within the Alliance on this issue that need to be resolved. Second, what should be the mandate or, more appropriately, the legal basis for non-Article 5 operations? The legitimizing role of other institutions, including the United Nations and the OSCE, in authorizing NATO action in crisis management situations is a key issue requiring resolution. Finally, does NATO's nuclear doctrine and posture require rethinking? Although there is little interest in revisiting the nuclear issue prior to the Washington summit, there is room for a reassessment of the role of nuclear weapons in NATO strategy in light of both the disappearance of the Soviet threat and the increased attention to the danger of WMD proliferation.

The Balance between Article 5 and non-Article 5 Operations

NATO's collective defense commitment, as codified in Article 5, remains the core function of the Atlantic Alliance. NATO would not be NATO without Article 5. That much is agreed. But the radical transformation of Europe's security environment has altered both the nature and the centrality of Article 5 missions. During the cold war, NATO had one overriding mission: to deter and, if necessary, defend against an overwhelming and clearly identifiable threat of attack against the whole of Alliance territory. That threat has disappeared and it is virtually inconceivable that it will return within the current planning parameters.

Instead of a unified and large-scale threat to allied territory, the Alliance now must consider two types of challenges that would require a military response. First, although the threat of direct attack against Alliance territory as a whole has effectively disappeared, a military attack against the territory of a single NATO country is still quite possible. This could take the form of a ballistic missile attack against a NATO capital, a terrorist attack by state or non-state actors, or even a more conventional attack. The latter could result from deliberate action or, more likely, from the spill-over of a regional conflict. In all these cases, NATO's Article 5 commitment would come into play, necessitating an Alliance response. It is clear, however, that

the allies' interests would be affected in different ways if any of these situations arose. Whereas during the cold war forward defense in Germany was seen as the best way to defend not only Germany but also one's own country against a Soviet invasion, a regional conflict or single ballistic missile attack on one NATO country would have different implications for those allies not directly affected. The risks of direct military involvement differ consequently, raising the likelihood that not all allies would respond similarly.⁸ That such differences will arise was graphically demonstrated during the 1991 Gulf war when, faced with the possibility that Turkey might suffer Iraqi military retaliation, some senior German politicians argued, contrary to explicit NATO decisions, that Article 5 might not even apply.⁹ In other words, when the source and circumstances of an attack involving a collective defense commitment are uncertain, the interests of individual allies – and their willingness to respond militarily – will probably differ.

A second type of military 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. Bosnia and Kosovo represent two instances where the Alliance has made such a determination, deciding to use or threaten to use military force even though the Article 5 collective defense commitment was not directly at stake. In recent years, allied leaders and others have pointed to crisis management and other non-Article 5 contingencies that might require NATO military involvement – to counter proliferation, respond to terrorism, avoid or mitigate genocidal violence, and deter or defeat major aggression in non-European regions. There is no doubt that NATO could embark on these types of missions if its members so desired. Secretary Albright has said, “founders of the Alliance were wise to allow us the flexibility to come together to meet common threats that could originate from beyond our immediate borders.... [W]hile the North Atlantic Treaty involves commitments to collective defense, it also allows us to come together to meet common threats that might originate from beyond the North Atlantic area.”¹⁰ Yet it is clear that NATO is not required to act in any of these circumstances, and the questions of whether NATO should engage in non-Article 5 missions and, if so, where and to what extent remain deeply contested within the Alliance as well as within member countries.¹¹

To date, the issue of what NATO should do with regard to non-Article 5 operations, and where the balance between Article 5 and non-Article 5 missions should be struck, has not been fully joined by Alliance leaders. Much of the debate on this issue has been subsumed by the mandate question, which relates to NATO's authority to conduct crisis management missions, an issue discussed below. At the same time, some NATO governments have staked out positions on where (or where not) to draw lines regarding the type or geographical reach of NATO non-Article 5 operations. On one side stand those, like Germany and France, who oppose extending NATO's reach beyond allied territory and, especially, outside Europe. France's Foreign Minister Hubert Védrine, for example, has maintained that "NATO should not be too elastic in interpreting its global interests." To do so, would run "the risk of diluting the alliance and dividing the allies."¹² A different perspective – put forward by the United States and supported by Great Britain – holds that non-Article 5 operations could extend anywhere the allies agreed joint military action was desirable. President Clinton has argued, "Yesterday's NATO guarded our borders against direct military invasion. Tomorrow's NATO must continue to defend enlarged borders and defend against threats from our security from beyond them – the spread of weapons of mass destruction, ethnic violence, and regional conflict."¹³

While the Alliance's political leaders have yet to come to an agreement on this crucial issue, NATO's military authorities have moved forward with the development of the kind of flexible and adaptable military structure and strategy necessary to conduct a large variety of different military operations. A 1996 strategy document drawn up without clear political guidance abandoned NATO's long-standing emphasis on Alliance-wide collective defense operations and, instead, sought to prepare NATO for a full spectrum of possible military missions – ranging from peace support and crisis management to regional collective defense. Known as MC 400/1, the strategy reflected the military authorities' conclusion that, from a strictly military perspective, there was no clear distinction between collective defense and crisis management operations – both belong to the range of possible military missions.¹⁴

NATO's command structure underwent a similar evolution. The development of Combined Joint Task Forces (CJTFs) – multinational, multi-service units that can be deployed on short notice – provided the Alliance with a more flexible and streamlined command

organization. The new structure also enables NATO to fulfill the full array of military activities (both in and out of area), support the Western European Union if and when European-only operations are desired, and facilitate the deployment of coalitions of the willing (with or without partner country participation) when a NATO-led action is deemed either inappropriate or unnecessary. As a result of this command innovation, the range of options that NATO military authorities have now is considerably greater – both in terms of operational mission and area of deployment – than when the cold war ended a decade ago.¹⁵

Options

While the internal military adaptation of the Atlantic Alliance has given NATO the organizational capacity to meet a wide variety of military contingencies, the allies have not achieved political agreement on where to draw the line for possible NATO action and how, or even whether, to balance Article 5 and non-Article 5 operations. There are at least three distinct points of view, each closely reflecting the visions of NATO's future purpose discussed earlier:

- **Emphasize Collective Defense.** If the allies agree that NATO's core mission is and must remain collective defense, then it should follow that non-Article 5 missions must take a backseat. On a case-by-case basis, NATO can consider participating in non-Article 5 operations, so long as doing so does not detract from the allies' ability to prepare for and, if necessary, meet the collective defense obligation. Moreover, the allies must eschew non-Article 5 operations that risk escalating into an Article 5 commitment. Given a collective defense emphasis, finally, Alliance planning for future conduct of its operations should be strictly limited to the Euro-Atlantic region.
- **Emphasize Peace Support and Crisis Management.** In the absence of a significant military threat to allied territory, peace support and crisis management operations in Europe must become central functions of a transformed NATO. As an instrument for preserving and extending security and stability throughout the Euro-Atlantic area, such operations, conducted in conjunction with non-NATO members will increasingly become the core around which NATO is organized. Although the ability to conduct high-intensity combat operations must be retained (for the residual case of collective defense), the emphasis of NATO force planning and restructuring must be on strengthening the ability to conduct peace support missions in an environment marked by extensive civilian-military cooperation.
- **Emphasize Full Spectrum of Missions.** NATO must prepare for the full spectrum of mission – ranging from peace support to regional collective defense operations within and beyond Europe. As NATO's military authorities have recognized, the distinction between Article 5 and non-Article 5 missions is becoming irrelevant. Since a non-Article 5 mission could spill over or escalate into an Article 5 contingency (as some feared in Bosnia and Kosovo), Alliance force planning must merge these two types of missions. And while a clear-cut political and legal distinction between Article 5 and non-Article 5 operations must

remain, given that allied interests in responding to crises increasingly diverge this distinction will lose its operational meaning.

Recommendation

Of the three possible options for balancing Article 5 and non-Article 5 missions, only an emphasis on the full spectrum of missions will serve NATO's interests over the long term. An exclusive focus on collective defense would prepare the Alliance for the least likely contingency, in effect marginalizing NATO as a Euro-Atlantic security institution. Similarly, insisting that NATO give priority to peace support and crisis management operations and placing a premium on preparing NATO forces and organizational structures for these missions, will likely erode the Alliance's ability to conduct more robust combat missions – missions for which NATO remains uniquely capable. If NATO exclusively becomes a peacekeeping organization, it will no longer be able to provide a credible and sustainable foundation for joint action, especially in high-intensity combat situations. This would negate a key reason for retaining and strengthening the Alliance.

In preparing for a full range of possible military missions then, it nevertheless will be necessary to set clear priorities for NATO planning. Without these the Alliance could quickly turn into an organization that is all things to all people in theory, while in practice being capable of conducting few, if any, missions. What, then, should be the Alliance's focus? Where should lines be drawn, at least for planning purposes? While being prepared in principle to conduct a whole range of missions, NATO should concentrate its efforts and resources in three areas:

- Crisis management operations within the Euro-Atlantic area designed to enforce agreed norms, rules, and codes of conduct for relations within and between states in the region. The focus should be on situations involving particularly egregious violations of these standards of behavior and providing the decisive military capabilities necessary to enforce compliance. This could include the deployment of forces in the crucial phases of a peace support operation, when (as in Bosnia and possibly Kosovo) implementation of an agreement's provisions must be enforced and the general security environment stabilized.
- Crisis management operations that could spill over or escalate into an Article 5 contingency. Relevant cases would include conflicts near Alliance territory whose outcome is crucial to a member state's security (*e.g.*, conflict involving Albania or Macedonia) and threats involving the use of weapons of mass destruction.
- Regional collective defense missions in NATO's southeastern (and perhaps its eastern) region, where the possibility of direct attack or the escalation of conflict, though not

immediate, is not unrealistic. This would include contingency plans for regional collective defense of Turkey, Greece, Hungary, and possibly Poland and the Czech Republic.

In considering whether to conduct such missions, NATO countries should generally act on the basis of a formal decision by the North Atlantic Council. However, the possibility for joint military action in a non-Article 5 context should not be conditioned on unanimous consent, as some have argued.¹⁶ Doing so could require a prolonged effort to build an Alliance-wide consensus for action that could result in an unacceptable delay or even the failure to act. Such was the case in Kosovo in 1998. The search for a NATO consensus delayed a military response past the point at which it could have been effective in mitigating the consequences of the violent Serb crackdown in Kosovo and laying a foundation for a plausible political resolution to the conflict that would have been sustainable without a large international military presence.

At a time when Allied views on the nature of likely threats and the scope and extent of possible responses increasingly diverge, insisting on unanimity for joint action is as likely to result in stalemate as in deliberate intervention. While always striving to achieve an Alliance consensus, the allies should agree that joint military action by some NATO allies (possibly with non-member countries) may in certain circumstances be both possible and desirable even without a formal decision by the North Atlantic Council. Some may fear that this will undermine Alliance unity. Others may worry that certain allies will abstain from any participation and in effect become “free riders.” These concerns are real. But they must be weighed against the requirements for a flexible and adaptable instrument for joint military action at a time when allied interests vary more than ever before. In the end, an Alliance that provides the basis for rapid and effective responses to crises in and outside allied territory, even if action is taken by a subset of allies, is preferable to one that conditions action on unanimous support when such support may be unattainable.

The Legal Basis for non-Article 5 Operations

In October 1998 and again in January 1999, the then sixteen NATO members confronted a critical question. Should the Alliance 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, without first obtaining an explicit UN authorization for the use of force? The issue was complicated by the fact that while the United Nations Security Council had unanimously voted in September 1998 to demand both a halt to the indiscriminate attacks against civilian populations in Kosovo and the withdrawal of those security forces engaged in attacks, a new resolution authorizing NATO to enforce compliance with these demands faced a near-certain Russian and/or Chinese veto. After an agonizing series of diplomatic discussions and last-minute reports of a possible diplomatic breakthrough, the North Atlantic Council voted on October 13, 1998, to activate NATO forces and authorize the Supreme Allied Commander Europe (SACEUR) to commence air strikes following a ninety-six hour delay.¹⁷ In January 1999, the breakdown of the cease-fire and the discovery of the brutal slaying of forty-five ethnic Albanian men led the NAC to place the decision on authorizing air strikes in the hands of NATO's secretary general, who could order NATO planes into the air if progress toward a political settlement was stymied by the parties' obstinacy at the negotiating table.¹⁸

NATO's decision to authorize the use of force against Serbia came only after months of internal debate about the so-called mandate question, *i.e.*, under what authority or on which legal basis can NATO use or threaten military force against a sovereign European state? At the outset of this debate, most allies believed that NATO should not act in this type of situation without an explicit mandate or authorization from the United Nations or the OSCE. Allied leaders had agreed as much at their 1994 Brussels Summit: "We reaffirm our offer to support, on a case by case basis in accordance with our own procedures, peacekeeping and other operations under the authority of the UN Security Council or the responsibility of the CSCE."¹⁹ In the debate over Kosovo, France and others argued that NATO, as a defensive alliance, could not act in situations other than self-defense unless the action was explicitly authorized by the United Nations. Rejecting a NATO capable of issuing its own mandate as a "Holy Alliance," French President Jacques Chirac argued that Paris "insists ... on the need for a Security Council mandate for every NATO military intervention."²⁰ This view was shared by most NATO governments in Europe, including Germany. Always hesitant about using military force, Bonn was particularly cautious in staking out a new position in the run-up to the October Kosovo decision given that elections in late September 1998 had brought to power a new, center-left government. The United States, in contrast, argued that UN authorization would be welcome but not necessary for NATO to act.

As the Pentagon's spokesman argued in early October, "The U.S. view has always been that NATO has the right to act on its own – the right and the obligation to act on its own in matters of European security."²¹

Faced with the likelihood that the UN Security Council would veto NATO action while a looming humanitarian catastrophe threatened tens of thousands of refugees stuck in the Kosovo mountains during winter, NATO decided to act. Allied nations offered a variety of different legal rationales for their decision – including the fact that the UN Security Council had on two separate occasions identified the crisis inside Serbia as posing a "threat to international peace and security." The situation thus warranted enforcement action under Chapter VII of the UN Charter. The Serbs had also clearly violated the Geneva Convention on warfare.²² What proved decisive for many allies, however, was not that NATO under these circumstances could mandate itself to act, but rather the belief that the humanitarian crisis inside Kosovo could not be prevented without forceful action.²³ As NATO's Secretary General Javier Solana argued days prior to the decision, "NATO has to have the opportunity on a case by case basis to act, if necessary, under [its] own decision, always with an appropriate legal base, and always within the spirit of the [UN] charter.... There may be moments in which it is necessary to act for humanitarian reasons, when a UN Security Council resolution will not be necessary or will not be even appropriate because the UN charter does not contemplate humanitarian acts." As for NATO's right to act without explicit UN authorization, Solana argued that "it is a serious organization that takes a decision by consensus among serious countries with democratic governments," implying this fact alone conferred sufficient legitimacy on the contemplated action.²⁴

Options

Until the debate over whether to intervene militarily in Kosovo, there had been no need for NATO to address the issue of what the legal basis for the use of force should be. The legal foundation for an Article 5 mission is provided by the right of individual and collective defense guaranteed by Article 51 of the UN Charter. And while Article 2(4) of the UN Charter prohibits "the threat or use of force against the territorial integrity or political independence of any state," this prohibition does not apply if force is deployed or used at the invitation of the local

government, as was the case in Bosnia. It is only when force is contemplated in situations, like Kosovo, where there is neither a question of self-defense nor an explicit agreement allowing the use of force by the government concerned, that the issue of an appropriate legal basis for its use arises. Although NATO's decision to threaten and possibly use force in Kosovo did not rest on an explicit authorization by the UN or OSCE, this did not solve the mandate issue for NATO. Whereas the United States claimed that Kosovo provided an important precedent for NATO to act without a UN or OSCE mandate, other governments steadfastly maintained that this decision should not be seen as creating a right for NATO to arrogate a mandate for itself.²⁵

Given NATO's experience and the debate regarding Kosovo, it is clear that at least three possible options exist for constructing a legal base for non-Article 5 operations:

- **An Explicit UN or OSCE Mandate:** Since the UN Charter provides the relevant fundamental legal basis, the threat or use of force must be governed by it. A strict interpretation of the Charter suggests that using force against another country would contravene international law unless it is in self-defense, occurs with that country's consent, or has been authorized by the UN Security Council under Chapter VII, which addresses remedial action in case of threats to international peace and security. Since the OSCE is recognized by its members to be a regional organization under the terms of Chapter VIII of the UN Charter, an OSCE mandate could substitute in appropriate circumstances for a UN Security Council resolution.
- **A NATO Mandate:** Although NATO is a collective defense alliance, it is also a community of nineteen democratic states that acts on the basis of consensus. In cases involving neither self-defense nor consent, a NATO decision to threaten or use force would be legitimate if it conforms to the basic purposes and principles of the UN Charter, including the members' commitment "to maintain international peace and security [and] to promote and encourage human rights and fundamental freedoms for all."²⁶
- **An Appropriate Legal Basis:** The Kosovo model, in which there is general agreement that NATO can act militarily given an appropriate legal basis, is a compromise option. During the NAC discussions, members used a variety of different legal arguments for the use of military force against Serbia, including the UN Security Council's repeated determination that the situation in Kosovo threatened international peace and security, the emergency nature of the humanitarian situation which threatened key purposes and principles outlined in the UN Charter, and violations of the Geneva Convention. These collective legal arguments, it was agreed, provided "an appropriate legal basis" for NATO action, even though not all members agreed as to which legal principles and instruments actually provided that basis. In future cases, NATO may rely on such constructive ambiguity about the nature of the appropriate legal basis to threaten or use force.

Recommendation

In principle, NATO should embark on non-Article 5 missions without the consent of the parties involved only if its actions enjoy the authorization of the UN Security Council or, in appropriate cases, the approval of the OSCE. In practice, however, limiting NATO to those actions that have been approved by these bodies would subject the Alliance to an effective veto by China or Russia in the Security Council or by any non-NATO members in the OSCE if it opposed the contemplated action. For this reason, NATO should not bind itself to a position that bars action in non-Article 5 contingencies if UN or OSCE approval is not forthcoming. At the same time, although consensus among nineteen democratic states does provide a certain degree of legitimacy, the notion that NATO may arrogate the legal right to intervene in conflicts against the will of the government concerned is unsustainable. Given the lack of consensus within NATO on this score, the point may be moot. Nevertheless, the use or threat of force ought to have a legal basis sound enough to be acceptable both to NATO publics and to other members of the international community.

The Kosovo model of constructive ambiguity goes a long way toward filling the gap between requiring an express UN/OSCE mandate on the one hand and self-mandating on the other. This approach recognizes that the authority to act in difficult cases may not be viewed in precisely the same way by NATO member states, some of which may embrace a right of humanitarian intervention in response to gross violations of human rights or genocide, while others may require at least some relevant Security Council resolution short of express authorization (*e.g.*, a finding that the conflict in question threatened international peace and security). Constructive ambiguity can thus allow agreed action to occur at a time when legal norms regarding the use of force in non-conventional or self-defense situation are evolving.²⁷

Although this approach may be politically expedient (and close to what NATO is likely to favor), it does not provide a sound foundation for planning or public diplomacy, if only because the formula's very ambiguity rules very little in or out. This raises the question whether an agreed legal foundation can be found to provide an appropriate basis for the possible use of force by NATO in non-Article 5 contingencies. One answer is that the provisions of three key documents to which all NATO members are signatories could potentially furnish such a basis:

the UN Charter, particularly its key purpose of maintaining international peace and security; the Helsinki Final Act, which underscores that respect for “human rights and fundamental freedoms ... is an essential factor for the peace, justice, and well-being necessary to ensure the development of friendly relations and cooperation” among the signatory states (*i.e.*, all OSCE members); and the 1990 Charter of Paris for a New Europe (also signed by all OSCE states), which further elevated human rights and fundamental freedoms and declared that their “observance and full exercise are the foundations of freedom, justice, and peace.”

The Charter of Paris, in particular, could supply the foundation on which to build a solid legal basis for NATO action in non-Article 5 situations, including the threat or use of military force, at least in cases involving genocide or other extreme violations of human rights. To be sure, this document, like the UN Charter and the Helsinki Final Act, affirms the principle of non-use of force against the territorial integrity and political independence of any state. But by emphasizing the primacy of human rights and affirming that “full respect for these precepts is the bedrock on which we will seek to construct the new Europe,” the Charter provides a foundation for military action in response to gross violations of human rights or the denial of fundamental freedoms. Of course, whether such an extreme violation has occurred will always remain subject to differing interpretations among the allies. Nevertheless, if and when a NATO of at least nineteen democratic states can agree that such a violation has occurred and forceful action is deemed necessary, then such action could be judged to be legitimate. In short, an agreed legal basis along these lines would enable the Alliance to take such action as it sees fit in case of threats to or breaches of international peace and security involving gross violations of the human rights principles that are articulated in the UN Charter and the Final Act, and further refined in the Charter of Paris.

Nuclear Weapons Issues²⁸

In considering how NATO’s strategic concept ought to account for the changing security environment, most allies assumed that the nuclear weapons issue would need only cursory review, if any. A revised NATO nuclear doctrine was agreed in 1991, and the nuclear inventory has been reduced by well over ninety percent – from some 6,000 weapons in the mid-1980s to

about 150 today. Few, if any, allies believed the Alliance should reexamine these decisions when revising its strategic concept. That calculation may have been right in the short term. NATO will not undertake a major review of its nuclear doctrine and posture prior to the Washington Summit. However, it is evident that the allies will sooner or later have to evaluate the decisions it made in 1991. Two key allies – Canada and Germany – have publicly come out in favor of such a review, indicating that they might support the adoption of an Alliance policy not to use nuclear weapons first.²⁹ As NATO (at U.S. instigation) considers how the Alliance should respond to the threat posed by WMD proliferation, the role, if any, of nuclear forces in Europe also will have to be reexamined. Pressure for such a review of NATO nuclear weapons issues is likely to rise at or immediately following the Washington Summit.

NATO's current nuclear policy was forged as the cold war ended. Allied leaders agreed in July 1990 that as soon as a conventional balance of forces had been established, the Alliance would adopt a new strategy "making nuclear forces truly weapons of last resort."³⁰ During the months in which this new strategy was being formulated, NATO stepped back a bit from this commitment in response to the concern of the major allies that the phrase "weapons of last resort" would soon lead to a demand for a nuclear "no-first-use" policy and possibly the complete withdrawal of the remaining U.S. nuclear forces from Europe.³¹ Accordingly, the 1991 strategic concept merely noted that, as a result of the improved security environment in Europe, "the circumstances in which any use of nuclear weapons might have to be contemplated are ... even more remote." It then defined the remaining functions for nuclear weapons:³²

- *Deterrence*: "The fundamental purpose of nuclear forces of the Allies is political: to preserve peace and prevent coercion and any kind of war. They will continue to fulfill an essential role by ensuring uncertainty in the mind of any aggressor about the nature of the Allies' response to military aggression."
- *Coupling*: "Nuclear forces based in Europe ... provide an essential political and military link between the European and North American members of the Alliance."
- *Risk-sharing*: "A credible Alliance nuclear posture and the demonstration of Alliance solidarity and common commitment to war prevention continue to require widespread participation by European Allies ... in nuclear roles, in peacetime basing of nuclear forces, and in command, control, and consultation arrangements."

To support these roles, allied leaders agreed that NATO should retain a small arsenal of air-delivered nuclear bombs. These U.S. weapons (which today number somewhere between

150 and 200 bombs) are deployed in seven NATO countries – Belgium, Britain, Germany, Greece, Italy, the Netherlands, and Turkey. Some are available for U.S. aircraft deployed in the region, while the remainder are assigned for use by allied air forces of the six non-nuclear countries.³³ (Britain has given up its own nuclear free-fall bombs and relies solely on its Trident submarine-launched missiles). Weapons for use by allied forces remain under U.S. command and control during peace time and are only made available to allies in time of war.

With the reduction of NATO's nuclear stockpile in Europe by well over ninety percent in the last decade and the effective relegation of these weapons to its strategy's margins, key NATO members (led by the United States) maintain that current nuclear policies are responsive to the existing, post-cold war security environment and therefore remain fully valid. Others disagree, arguing that there are good reasons for an examination and that an update of the Alliance's nuclear strategy is warranted. These reasons include the fact that NATO's existing nuclear policies were developed in the wake of the cold war, and many of its assumptions still reflect the fact that when these were adopted in November 1991, the Soviet Union still existed, its forces were still deployed in Central Europe, and its military was still in a high state of preparedness. Under these conditions, the three tenets of NATO's nuclear policies – deterrence, coupling, and risk-sharing – were arguably valid. Nearly a decade later, with the Soviet Union gone, its military in a state of total collapse, and former Warsaw Pact states joining the Atlantic Alliance, it is worthwhile to consider whether this is still the case.

Second, the greatest security threat to Europe no longer is the prospect of a massive military attack on the territory of one or more allied countries, but the consequences of a disintegrating Russian military establishment, one that possesses many thousands of nuclear weapons. Addressing this threat requires policies of cooperation and reassurance rather than deterrence. Under these conditions, it is legitimate to ask how NATO's nuclear policies can contribute to that end.

Third, with the disappearance of the Soviet military threat, increasing attention has focused on the dangers posed by WMD proliferation. Emanating from outside the traditional orbit of challenges to NATO, the WMD threat has long been viewed as something beyond the

scope of the Alliance's responsibilities, one that is best dealt with through international treaties and multilateral regimes. However, as Secretary Albright has repeatedly argued, "a ballistic missile attack using weapons of mass destruction from a rogue state is every bit as much an Article V threat to our borders now as a Warsaw Pact tank was two decades ago."³⁴ NATO's nuclear policies are relevant to dealing with this new threat – from the preventive to the retaliatory end of the response spectrum.

These considerations are sufficient reasons for NATO to begin a serious reexamination of its nuclear weapons policies. An agreement to this effect should be reached at the summit in Washington. This review should go beyond the doctrinal issues raised by the Canadian and German governments in recent months and include a serious consideration of altering NATO's nuclear posture. Although much of the recent discussion has focused on doctrine and, in particular, on whether or not the Alliance ought to adopt a nuclear no-first-use policy, the question whether nuclear forces should remain deployed in Europe is likely to be far more decisive in indicating how NATO plans to respond to its current security environment.

Options for NATO's nuclear doctrine

The Alliance has three options for reevaluation of its nuclear doctrine:

- **Affirm nuclear weapons are truly weapons of last resort :** This statement, first agreed by the allied leaders in July 1990 but never since repeated, leaves open the possibility of using nuclear weapons in response to aggression of any kind. The aim would be to maximize deterrence of a reconstituted Russian military threat or a WMD attack from a different part of the globe.
- **Adopt a No-First-Use-of-WMD Policy:** NATO could restrict the threat and use of nuclear weapons only to respond to an attack involving the use of weapons of mass destruction, thus for the first time explicitly disavowing the possible use of nuclear weapons in case of a conventional attack. Since all NATO members are signatories to treaties banning the possession and use of chemical or biological weapons (CBW), this policy amounts to a declaration that the Alliance would consider a nuclear response to not only of a nuclear attack but also a CBW attack.
- **Adopt a No-First-Use-of-Nuclear-Weapons Policy:** The Alliance could adopt the position that NATO would use nuclear weapons only in retaliation to a nuclear attack.

Recommendation

There is much to be said for NATO moving toward a nuclear no-first-use policy – one that explicitly reserves the use of nuclear weapons for responding to a nuclear attack. From a strictly military perspective, NATO's overwhelming conventional advantage over any conceivable combination of potential adversaries means that a nuclear response to a non-nuclear attack would be unnecessary. This conventional firepower also ought to suffice in delivering a devastating response to an attack on a NATO country with CBW. While some U.S. officials have argued that ambiguity about a possible nuclear response to a CBW attack is necessary for deterrence purposes,³⁵ no one contemplating using such weapons against the United States or its NATO allies could exclude a nuclear response no matter what the declaratory policy may be. That is the essence of existential deterrence – what is said about nuclear weapons use is far less important than the capacity to use them.

That said, there is some doubt that adopting a formal no-first-use policy will have the positive impact many of its proponents suggest it would.³⁶ For example, it is doubtful that a NATO no-first-use policy will have much of an impact on the decision by other countries on whether to acquire, threaten, or even use nuclear weapons. To the contrary, the available evidence suggests that decisions on these matters are profoundly influenced by the perceptions of the security predicament of the countries facing them. More generally, it is nuclear capability – the possession of deliverable nuclear weapons – rather than statements about their use that is most likely to influence the behavior of others. This implies that rather than evoking a major political debate within the Alliance about doctrinal matters, advocates of a change in NATO's nuclear policies would do far better to concentrate on NATO's nuclear posture than its doctrine.

Options for NATO's nuclear posture

At the end of the 1990s, less than 200 U.S. nuclear bombs remain deployed in secure storage sites in seven European countries for use by American forces, and the forces of six of its European allies. Given the size of this small residual force, further reductions would appear to be of little use. That really leaves two options for NATO's consideration:

- **Retain the Current Nuclear Posture:** The nuclear bombs in Europe would remain deployed in their present locations in order to fulfill the three key functions assigned to them in the 1991 strategic concept: deterrence, coupling, and risk-sharing.
- **Remove all U.S. Nuclear Weapons from Europe:** None of the functions assigned to nuclear weapons in NATO's current strategy require their deployment in Europe. In removing the weapons, the United States would join the other nuclear powers in not deploying nuclear weapons in peacetime outside of its national territory or on the high seas. The removal of the bombs would also have a positive impact on efforts to deal with the Russia's Soviet nuclear legacy and non-proliferation efforts.

Recommendation

It is increasingly clear that NATO's nuclear posture could be changed by removing U.S. weapons from Europe without undermining the key principles of deterrence, coupling, or risk-sharing. At the same time, the withdrawal of these weapons to U.S. soil offers an opportunity to have a positive impact on controlling the Russian nuclear arsenal and influencing non-proliferation efforts.

The critical issue facing NATO deterrence is not just the likelihood of a nuclear response (the possibility of which is, admittedly, "extremely remote"), but whether its credibility is significantly enhanced by the deployment of U.S. weapons in Europe. So long as the United States maintains a clear interest in the defense of its NATO allies, it is difficult to see how a potential aggressor would be deterred from attacking by the presence of a few U.S. nuclear bombs in Europe but not by the prospect of U.S. retaliation using weapons based at sea or on U.S. territory. Given the gravity of any decision to use nuclear weapons, it makes little sense to believe that an American president's decision to use them would be influenced strictly by the deployment location of the weapons. The removal of U.S. nuclear weapons from Europe should not affect NATO's deterrence capacity.

But advocates of NATO's existing posture might argue, American nuclear forces in Europe enhance the credibility of nuclear deterrence by coupling Europe and the United States. This argument, which proved decisive during the cold war, is difficult to sustain. Europe and the United States are coupled because each has a fundamental, indeed a vital, interest in the security, stability, and independence of the other. If the solidarity and strength of the transatlantic link depends foremost on the presence of a few nuclear weapons on European soil, then the nature of

that link is far more precarious than many of those who believe that the Atlantic community is based on shared political, economic, cultural, and military interests have long assumed. If the removal of a handful of nuclear weapons from Europe leads to a major fissure in the transatlantic link, then the Alliance is in very deep trouble indeed.

This leaves shared risk as a fundamental purpose for retaining nuclear weapons in Europe. Here, NATO confronts a twofold problem. First, there are six European NATO countries that do not deploy U.S. or other nuclear weapons on their territory (Iceland, Norway, Denmark, Luxembourg, Spain, and Portugal). Are these allies any less committed to Alliance solidarity? Surely that is not an argument the allies would wish to make. Second, what about the new NATO members, on whose territory NATO has stated it has “no intention, no plan and no reason to deploy nuclear weapons ... nor any need to change any aspect of NATO's nuclear posture or nuclear policy” now or in the future?³⁷ Surely, the Alliance has no interest in sending new and prospective NATO members the message that somehow they enjoy lesser status by not having U.S. nuclear weapons on their soil. More appropriate would be the opposite, which the removal of the remaining weapons from Europe would accomplish.

If the complete removal of U.S. nuclear weapons from Europe would not necessarily have a negative impact on deterrence or Alliance cohesion, there are at least two advantages to doing just that. First, it offers a distinct non-proliferation benefit. The withdrawal of these weapons would signal that the allies – and, in particular, its non-nuclear members – do not believe they require nuclear weapons as a central element in NATO strategy. Moreover, their removal would enable the United States to join the other nuclear weapons states in propounding a policy that restricts the peace-time deployment of nuclear weapons to national territory or the high seas. Finally, after these weapons were withdrawn, the six non-nuclear NATO members that today still prepare to conduct nuclear missions would openly declare that their national security does not require participation in nuclear operations at a time of war. Although not of the same non-proliferation significance as the decisions by South Africa, Brazil, and Argentina to abandon their national nuclear program (and by Belarus, Kazakhstan, and Ukraine to forego national capabilities), these declarations would reinforce a welcome trend of nuclear deproliferation that started with the end of the cold war.

A second benefit of removing American nuclear forces from Europe would be to provide added incentive to Russia to continue dismantling its own, much larger tactical nuclear inventory. During their Helsinki summit meeting in March 1997, the presidents of the United States and Russia agreed to explore, within the context of START III negotiations (which would commence upon Russia's ratification of START II), possible measures relating to tactical nuclear weapons.³⁸ By removing American nuclear weapons from Europe and pledging to include them as part of a Russian-U.S. negotiations regarding tactical nuclear weapons, NATO could enhance the prospect of a possible agreement that would increase effective control over and secure the dismantling of the large Russian tactical nuclear stockpile.

NOTES

¹ For an overview of the origins of the strategic concept, See Rob de Wijk, *NATO on the Brink of the New Millennium: The Battle for Consensus* (London: Brassey's, 1997), pp. 13-46.

² "The Alliance's Strategic Concept," Agreed by the Heads of State and Government Participating in the meeting of the North Atlantic Council in Rome on 7-8 November 1991, paragraphs 16, 25.

³ "The Alliance's Strategic Concept," paragraph 21.

⁴ "The Alliance's Strategic Concept," paragraph 14.

⁵ "The Alliance's Strategic Concept," paragraph 35.

⁶ "Madrid Declaration on Euro-Atlantic Security and Cooperation," Issued by the Heads of State and Government, Meeting of the North Atlantic Council, Madrid, Spain, July 8, 1997, paragraph 19.

⁷ "Terms of Reference for an Examination and Updating as Necessary of the Strategic Concept," approved by NATO Foreign Ministers on December 16, 1997, reprinted in *Basic Reports*, no. 63 (April 21, 1998), p. 3.

⁸ Although Article 5 is often viewed as requiring an automatic commitment to come to the defense of an ally in case of direct attack, the wording leaves the nature and extent of assistance open to each member. The article requires each member to assist the country confronting an armed attack "by taking forthwith, individually or in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area."

⁹ See Karl Kaiser and Klaus Becher, "Germany and the Iraq Conflict," in Nicole Gnesotto and John Roper, eds., *Western Europe and the Gulf* (Paris: Institute for Security Studies of Western European Union, 1992), pp. 39-69, here pp. 49-50.

¹⁰ Madeleine K. Albright, Press Conference at NATO Headquarters, Brussels, Belgium, December 8, 1998, p. 4.

¹¹ This is true even in the United States, where there was not inconsiderable discussion of this issue during the enlargement ratification debate. See Ashcroft (and others) Executive Amendment No. 2318, *Congressional Record*, April 29, 1998, p. S3793.

¹² Cited in William Drozdiak, "Albright Urges NATO to Take Broader Role," *Washington Post*, December 9, 1998, p. A01; and Craig R. Whitney, "Europe Looks at U.S. NATO Plan Quizzically," *New York Times*, December 9, 1998, p. A10. German Defense Minister Rudolf Scharping similarly argued, "I exclude the possibility of acting as the intervening power in regions far from Europe." Cited in Ulrich Deupmann, "Scharping lehnt Nato-Einsätze außerhalb Europas strikt ab," *Berliner Zeitung*, December 14, 1998.

¹³ The White House, Office of the Press Secretary, Remarks by the President to the People of Germany, Schauspielhaus, Berlin, Germany, May 13, 1998. For Britain's view, see Tom Buerkle and Walter Wells, "Blair Seconds U.S. Call for a New NATO Mission," *International Herald Tribune*, December 11, 1998, p. 1.

¹⁴ See De Wijk, *NATO on the Brink of a New Millennium*, esp. pp. 101-9.

¹⁵ See, for example, International Institute for Strategic Studies, "NATO's New Command Structure," *Strategic Survey 1997/98* (London: Oxford University Press, 1997), pp. 37-45; Charles Berry, "NATO's Combined Joint Task Forces in Theory and Practice," *Survival* (Spring 1996), pp. 81-97; and General Klaus Naumann, "NATO's New Military Command Structure," *NATO Review*, Web Edition, vol. 46, no. 1 (Spring 1998), pp. 10-14.

¹⁶ See Warren Christopher and William J. Perry, "NATO's True Mission," *New York Times*, October 21, 1997, p. A27.

¹⁷ See "Statement to the Press by the Secretary General Following Decision on the ACTORD," NATO Headquarters, October 13, 1998.

¹⁸ "Statement by the North Atlantic Council on Kosovo," *NATO Press Release 99(12)*, January 30, 1999.

¹⁹ "Declaration of the Heads of State and Government Participating in the Meeting of the North Atlantic Council," Brussels, Belgium, January 10-11, 1994, paragraph 7.

²⁰ Quoted in Martin Butcher, "NATO Formulating New Strategic Concept," *Basic Reports*, no. 66 (October 23, 1998), p. 1.

²¹ Quoted in Butcher, "NATO Formulating New Strategic Concept," p. 1.

²² Roger Cohen, "NATO Shatters Old Limits in the Name of Preventing Evil," *New York Times*, October 17, 1989, sec. IV, p. 3.

²³ The January 30, 1999, decision was difficult, in that it was taken to bolster a last minute effort to find a diplomatic settlement on the basis of an ultimatum issued by the Contact Group on the previous day. While there was agreement among the allies on threatening military action against Serbia for this essentially diplomatic purpose, there was no agreement on actually implementing the threat if Belgrade failed to heed the Contact Group's demands. In a sense, then, the NAC acted on the belief that it was authorizing a threat rather than actually authorizing air strikes, accompanied by an understanding that the threat's credibility required the NAC to delegate the decision to authorize air strikes to the secretary general.

²⁴ Quoted in Alexander Nicoll, "Cracks Still Appear in NATO's Collective Will for Air Strikes," *Financial Times*, October 9, 1998, p. 2.

²⁵ See Roger Cohen, "A Policy Struggle Stirs Within NATO," *New York Times*, November 28, 1998, p. A4.

²⁶ Articles 1(1) and 1(3) of the UN Charter state that the purposes of the UN are, first, to "maintain international peace and security, and to that end to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;" and, second, to "achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging

respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

²⁷ See also the discussion of this point in Javier Solana, “NATO: A Strategy for the 21st Century,” Lecture in honor of Raoul Wallenberg, Aspen Institute, Berlin, February 1, 1999, p. 4.

²⁸ This discussion draws on Ivo H. Daalder, “NATO and Nuclear Weapons: Towards a Re-examination,” in Susan Eisenhower, ed., *NATO at Fifty: Perspectives on the Future of the Atlantic Alliance* (Washington, D.C.: Center for Political and Strategic Studies, 1999).

²⁹ See Statement before the North Atlantic Council by Canadian Foreign Minister, Lloyd Axworthy, December 8, 1998; and “Coalition Agreement between the SPD and Alliance 90/The Greens,” Bonn, October 20, 1999. See also William Drozdiak, “Bonn Proposes that NATO Pledge No-First-Use of Nuclear Weapons,” *Washington Post*, November 23, 1998, p. A16; Roger Cohen, “Germany Irks US. on NATO Atom Policy,” *New York Times*, November 24, 1998, p. 12. Allan Thompson, “Chretien Urges Debate on Nuclear First-Strike,” *Toronto Star*, January 27, 1999, p. A13.

³⁰ “London Declaration on A Transformed North Atlantic Alliance,” Statement by the Heads of State and Government participating in the meeting of the North Atlantic Council, London, July 5-6, 1990.

³¹ See de Wijk, *NATO on the Brink of the New Millennium*, pp. 38-9.

³² “The Alliance’s Strategic Concept,” paragraphs 55-57.

³³ Martin Butcher, Otfried Nassauer, and Stephen Young, “Nuclear Futures: Western European Options for Nuclear Risk Reduction,” *Basic Research Report 98.5* (Washington, D.C.: British American Security Information Council, 1998), pp. 30-33.

³⁴ Albright, Press Conference at NATO Headquarters, Brussels, Belgium, December 8, 1998, p. 4.

³⁵ In rejecting the German call for a nuclear no-first-use policy Secretary of Defense William Cohen argued that “the ambiguity involved in the issue for the use of nuclear weapons contributes to our own security, keeping any potential adversary who might use either chemical or biological [weapons] unsure of what our response would be.” Quoted in Dana Priest and Walter Pincus, “U.S. Rejects ‘No First Use’ Atomic Policy; NATO Needs Strategic Option, Germany Told,” *Washington Post*, November 24, 1998, p. A24.

³⁶ Cf. Letters from Ambassador Thomas Graham and General Le Butler to NATO Heads of Government, reprinted in Julianne Smith and Martin Butcher, eds., *A Risk Reduction Strategy for NATO: Preparing for the Next 50 Years*. BASIC Research Report 99.1 (Washington, DC: British American Security Information Council, 1999), pp. 6062.

³⁷ “NATO Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation,” Paris, May 27, 1997.

³⁸ The White House, Office of the Press Secretary, “Fact Sheet: Joint Statement Concerning the Anti-Ballistic Missile Treaty,” Helsinki, Finland, March 21, 1997.