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NATO AND THE USE OF FORCE

DRAFT GENERAL REPORT

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* Until this document has been approved by the Political Committee, it represents only the views of the Rapporteur.

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I. INTRODUCTION

1. More than one year after the discord among Allies over Iraq, NATO has made relevant progress in reaching an agreement on important issues of Euro-Atlantic security. To advance its contribution to peace and stability NATO has, among others, decided to strengthen its presence in Afghanistan in order to assist the expansion of the central government's authority in the country and to provide support for the October elections. What is more, affirming that a stable Iraq is in the common interest of all member countries, NATO also offered to help train Iraqi security forces. Moreover, retaining its relevant presence in the Balkans, particularly in Kosovo, NATO has further deepened its co-operation with the European Union in this region. The Alliance has also decided to reach out to new regions of strategic importance, in particular the 'Broader Middle East'.

2. Progress notwithstanding, major questions have not been addressed by the Allies, such as the question of who authorises military force under which conditions. This remains a fundamental issue that requires the Allies' urgent attention unless they want to risk a growing gap in US and European thinking on legitimacy and the use of force. As former German State Secretary for Defence, Walter Stützle, told the Sub-Committee on Transatlantic Relations in early October, NATO appears to have at least temporarily lost what he called its 'C3 capability', i.e. its ability to agree on a common concept, achieve political consensus and act as a coalition.

3. While Allies have agreed on some issues, there has been no substantial political dialogue about the major direction of NATO. For example, while there is unanimity that NATO has a pivotal role for Euro-Atlantic security, there is no common ground on the *level of ambition* of the Alliance – which can pose a serious risk. In addition, promises and actual contributions diverge, as was vividly illustrated by Secretary Generals Robertson and de Hoop Scheffer long and arduous efforts to literally beg the Allies for troop contributions in Afghanistan. Stating that Afghanistan is a test case for NATO can work as a boomerang when success is not delivered. If we agree that terrorist groups, WMD proliferation and failed (and failing) states currently pose the most serious security menaces to the Allies, what should be the role of NATO in tackling them? Could NATO tackle these issues alone – your Rapporteur doubts that – or should it do this in co-operation with other international players? How could we further strengthen our co-operation with the EU (crucially important in the Balkans, the "Broader Middle East", and the Southern Caucasus, to name a few), with the UN (failing and failed states, terrorism, and "rogue states", among others) and with NATO Partners? In the case of the former, further development in our relationship with the EU is currently stalled over the unresolved issue of the format of the EU participation because of Cyprus. On the issue of co-operation with the UN, only initial contact has been made between Secretary General de Hoop Scheffer and Secretary General Kofi Annan.

4. Finding a NATO consensus is a prerequisite for dealing effectively with today's main security threats. To do this, we need a dialogue, but the current state of the transatlantic partnership is characterised by an *absence of debate* on the primary goals of the Alliance. No agreement exists on the best way to tackle terrorism and countries with WMD. Some nations believe that the way in which the current fight against terrorism is framed might actually lead to more terrorism. No agreement exists on the relevance of the concepts of containment and deterrence in case of new proliferators. Also, the Iraq crisis has illustrated the relevance of UN inspectors and the correct way in which UN weapons inspector Dr Hans Blix has confronted Iraq in the past. Except for Afghanistan, 'failing states' in Sudan and Central Africa do not receive similar attention from NATO in conjunction with the UN and the African Union (AU) whilst millions have already died in the region creating the basis for instability and the export of terror. In a world in which the demand for effective security policies is overstressing supply, NATO is faced with multiple challenges at a time of military resources and a lack of agreement on practical priorities. Agreement on basic principles is important to rebuild trust and confidence on NATO's agenda, its priorities and the specific mix of policy instruments to be employed. 'Coalitions of the willing' are sometimes necessary to deal with security issues, but a proliferation of this thinking would be

counterproductive to the Alliance's *raison d'être*. The NATO Council plays an insufficient role in fostering a real political dialogue on these pertinent issues and should as a priority be strengthening this.

5. Although NATO's capability for swift military action in a crisis has been considerably improved, its decision-making processes are not well suited to fast developing crises. Deployment of forces and possible pre-emptive measures require consensus among all member states of the Alliance. Therefore, a review of the political decision making process is necessary to allow rapid reaction forces, such as the NRF to perform the roles they were designed for. The creation of intervention forces, the NATO Reaction Force (NRF), the EU's European Rapid Reaction Forces (ERRF), and the 'Battle Groups' is welcome because they increase Allies' ability in conflict prevention and stability projection. But as nations assign forces to two or more international forces, they raise the question of (political) priorities in times of crisis: who decides that an NRF troop deployment in Afghanistan is more important than an ERRF intervention in the Balkans? This creates the image of unclarity and competition.

6. These and other questions need to be addressed by Allies and therefore by the Political Committee in the upcoming year. Your Rapporteur believes that a frank and open discussion on these issues can jump start a productive, and overdue, strategic debate. Therefore, in this report, your Rapporteur will briefly look at the existing international legal framework guiding the use of force, and propose basic principles that Allies may want to consider before using military force as a means of last resort. Looking at the political lessons of Iraq and discussing the present challenges in Afghanistan, your Rapporteur will emphasise the pivotal agreement on a realistic level of ambition as a prerequisite for a successful NATO.

II. INTERNATIONAL LAW AND USE OF FORCE

7. Since the end of the Cold War there appears to be renewed discussions on military actions without UN Security Council (UNSC) authorisation to stop state-sponsored atrocities or in self-defence. Discussions on a necessary transformation of the law on the use of force take place against the backdrop of a rise to prominence of ethical issues in global politics, and the changing nature of threats to international security. There is also a recognition that a nexus between WMD and terrorism may call for military responses that fall outside the existing international legal framework. It should be pointed out, however, that the debate on a broader interpretation of using force is primarily advanced among western nations, and several NATO allies in particular, and that the large majority of developing countries, but also nations such as Russia, China and India, remain critical of any possible change of the UN Charter.

8. The UN Charter contains a comprehensive, if somewhat outdated, statement of the law on the use of force. The main focus of the Charter is the settlement of disputes between sovereign states. It calls on UN members to refrain from the threat or use of force against the territorial integrity or political independence of other nations (article 2(4)). According to the Charter, the main responsibility for maintaining international security and taking collective measures against threats to peace rests on the UNSC. By signing the Charter, UN members "agree to accept and carry out the decisions of the Security Council".

9. When it was originally set up in 1945, the UNSC was designed by the US, the USSR and the UK as a de-facto "world policeman", an ultimate arbiter placed at the top of a hierarchical structure of international relations. Expectations were that its permanent members would be able to undertake collective military actions against states with aggressive agendas. The Council was given the ultimate right to determine "the existence of any threat to the peace or act of aggression" (article 39) and to authorise and enforce both non-military and military measures against the aggressor. The former measures feature, among others, economic sanctions and severance of

diplomatic relations (article 41). The latter include military intervention to "restore peace and security" (article 42). Articles 2 (4) and 51 of the Charter contain general prohibition on the use of force in international relations. The only two exceptions are collective measures authorised by the UNSC, and self-defence in response to an actual attack on one's territory. Indeed, the text of the Charter – which is seen as the most authoritative source of law on use of armed force – makes it quite clear that the founding members of the UN were in favour of a ban on use of force under any other pretext.

10. It is important to emphasise that the UNSC was not originally designed to deal with "soft security" threats and those posed by civil wars and non-state entities. Moreover, the UN Charter does not address new security threats, e.g., those posed by internationally active terrorist groups. When members of the Political Committee discussed these issues at the United Nations Headquarters this spring, there was a general consensus that the UN Charter, agreed upon in 1945, no longer accurately addresses the security issues of today. In addition, the concept of state sovereignty has undergone fundamental change since then.

III. HUMANITARIAN INTERVENTIONS

11. State-sponsored genocide committed in Cambodia, the former Yugoslavia, and Rwanda have given rise to an increased awareness of state responsibility. There is now a greater understanding that the international community has a right, if not a duty, to protect citizens if a state continues to seriously violate the human rights of its citizens. Failures in the 1990s have prompted efforts to address the shortcomings of the international community in dealing with humanitarian disasters caused by civil strife and state sponsored genocide. Responses to the challenges have essentially been two-fold: First, to try to generate international consensus under which conditions humanitarian interventions could be legal under international law. Second, to make UN peacekeeping operations more effective.

12. With regard to the legality of humanitarian intervention, the International Convention on Intervention and State Sovereignty (ICISS) recommended to the UNSC a set of six principles/set of guidelines, which could form a common, accepted frame of reference for addressing the issue of military intervention on humanitarian grounds¹, namely: "*Just Cause*" (whether the harm being experienced or threatened sufficiently clear and serious to justify going to war); "*Right Intention*" (whether the primary purpose of the proposed military action to halt or avert the external or internal threat); "*Last Resort*" (whether every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures will not succeed); "*Proportional Means*" (is the scale, duration and intensity of the planned military action the minimum necessary to secure the defined human protection objective); "*Reasonable Prospects*" (is there a reasonable chance of the military action being successful in meeting the external or internal threat, with the consequences of action not likely to be worse than the consequences of inaction); and "*Right Authority*" (is the military action lawful). Your Rapporteur believes that these principles can provide guidance for possible NATO military intervention on humanitarian grounds in case the UNSC is unable to authorise action. This can only be the case in highly exceptional cases under the 'emergency creates necessity' principle and if Security Council members are opposed to intervention for reasons that have nothing to do with the discussed situation in such a country. 'Constructive Abstention' as discussed in an EU context might be an option in this context.

13. To learn from past failures like in Rwanda and in Srebrenica (Bosnia and Herzegovina) and to devise strategies to increase the effectiveness of UN peacekeeping operations, the UN

¹ The Responsibility to Protect: Report of the International Convention on Intervention and State Sovereignty, 2001

Secretary General set up the 'Panel on United Nations Peace Operations'. The panel's conclusions, the so-called 'Brahimi report', made public in August 2000, called for more effective conflict prevention strategies; devising "robust rules of engagement to allow peacekeepers to defend themselves and their mandate; and developing better peace-building strategies. To that end, the 'Brahimi report' recommended, among other things, an extensive restructuring of the UN Department of Peacekeeping Operations (UNDPKO), a new information and strategic analysis unit to service all UN departments concerned with peace and security, an integrated task force at the UN Headquarters to plan and support each peacekeeping mission from its inception, and a more systematic use of information technology.

14. Since then, UN peacekeeping operations (PKOs) have become more 'robust'. However, as the UN has become more involved in crisis prevention and management, it suffers from an 'overload of operations', commented Sir Kieren Prendergast, UN Under-Secretary-General for Political Affairs, in meetings of the Political Committee at the UN Headquarters. Moreover, the UN is handicapped by the reluctance of developed countries to participate in PKOs. At present the MONUC operation in the DRC requires strengthening by Western forces.

15. The UN's limited ability in conflict prevention and peacekeeping, let alone peace enforcement, has given prominence to regional organisations. NATO, the EU, the Organisation of African States (OAS), African Union (AU), the Economic Community of West African States (ECOWAS), and the OSCE can muster the diplomatic credibility and the necessary assets unavailable to the UN to tackle a security challenge. For example, UN Secretary General Kofi Annan told the Committee this spring at the UN Headquarters that NATO might be employed in a 'peace enforcement' role, much as the EU deployed operation 'Artemis' in the Democratic Republic of Congo as a bridging force before the deployment of a UN operation.

16. NATO's 1999 operation in Kosovo prompted a new debate on the legality of humanitarian intervention. The legal basis for NATO intervention was the enforcement of Geneva conventions and provisions of international human rights law. Allies argued that stopping atrocities committed by Serbian troops and paramilitaries necessitated intervention to protect the civilian population in a civil war. NATO also considered that a humanitarian disaster in Kosovo presented a threat to peace and security.

17. While, some argue, the UNSC has been more willing to intervene, such a trend is tempered by the unwillingness of national actors to do so, as the Kosovo crisis had again demonstrated. Developing countries as well as several prominent members of the UN, namely Russia, China and India, have argued that the idea of humanitarian intervention undermines the international order. Moscow has repeatedly maintained that NATO or any other regional block or grouping of states, must not be allowed to replace the UN as the security arbiter. Commenting on NATO's 1999 Kosovo air campaign, Russian President Boris Yeltzin said, "Only the UNSC has the right to take the decision on what measures, including measures of force, should be undertaken to maintain or restore international peace and security". Russian opposition to the use of force without prior UNSC authorisation remains intact. India and Indonesia, too, have expressed concerns about humanitarian intervention. Jakarta in particular fears that humanitarian actions could bring about the collapse of Indonesian state along the lines of Yugoslavia scenario. China is wary of the prospect of US-led intervention on behalf of Taiwan.

18. The – according to Sir Kieren Prendergast – "lukewarm" responses by UN member states to the report titled "The Responsibility to Protect" indicate that there is only scant chance for reaching a broad international consensus on humanitarian interventions. The dilemma remains, as the UN official told the Sub-Committee, "if you want to protect, you have to accept greater intrusion". International experts, including David Malone, the President of the International Peace Academy (IPA), expressed scepticism whether UN Secretary General Annan's high-level panel on collective security – due to present its recommendations on UN reform this December - will be able to come

up with a comprehensive solution. It will be difficult for the UNSC panel to agree on priorities as many countries around the world consider poverty, disease and violence other than war much more important security issues than terrorism and WMD proliferation. Reform of the Security Council will be a crucial part of UN reform, but your Rapporteur is sceptical, whether giving Germany, Japan, Brazil and India a permanent seat on the UNSC would generate a consensus on humanitarian intervention. The directions described in the report above (constructive abstentions/ 'emergency breaks law') is promising. At the same time your Rapporteur urges the NATO Secretary General to deepen co-operation with the UN on the basis of the Brahimi Report.

IV. ANTICIPATORY DEFENCE AND PRE-EMPTION

19. A paradigm change in international security after the end of the Cold War increased recognition of the dangers posed by WMD proliferation. In this context, particularly the terror attacks in the US on 11 September 2001 have led a number of states to propose changes to the UN Charter.

20. The UN Charter does not bar regional institutions like NATO from applying armed force to counter threats to peace and security, provided that military action is undertaken in self-defence. Article 51 of the UN Charter recognises the "inherent right of individual or collective self-defence if an armed attack occurs". The text of the UN Charter makes it clear that although organisations such as NATO have a legitimate right to deal with international security threats (article 52), including undertaking enforcement actions "consistent with purposes of the UN", no such action can be taken without prior authorisation from the Security Council (article 53).

21. The Iraq case has clearly illustrated the fact that confidence in intelligence gathering and sharing has to be restored, the strengthening of UN inspection regimes fostered and post-intervention planning improved.

22. Reflecting the dramatic shift in the US's threat perception after the 9-11 terrorist attacks on its homeland, the September 2002 US National Security Strategy (NSS) has elevated the option of pre-emptive military action as a means of last resort to defend against an attack. Claiming that Iraq was producing chemical and biological weapons, which posed an "imminent danger", the US administration and the UK government decided to employ military action against the regime of Saddam Hussein. Critics of the US administration have argued that the war in Iraq was a "test case for a US doctrine of pre-emption". The Duelfer report in fact made it clear that Iraq had no WMD proliferation.

23. The NSS, however, foresees pre-emptive use of military force only as a means of last resort. Naturally, any act of self-defence, including the pre-emptive use of force, must comply with three criteria: necessity, proportionality and immediacy. Necessity requires that defensive force only be employed when no other reasonable options exist to frustrate an attack. This entails exhaustion of all viable diplomatic, political, economic, or other means available. The principle of proportionality entails limiting defensive action to those needed to defeat the attack. According to Professor Yoram Dinstein², immanency of the attack is not assessed against the time remaining before it is launched, but instead with regard to the viability of the defensive action at a particular point in time. In the context of a terrorist or WMD attack the last window of opportunity may well lie before the attack occurs. However, an international consensus is required on the definition of these instances under Article 51.

24. The European Security Strategy (ESS) appears to underline a similar threat perception as it also recognises WMD and attacks by terrorist groups willing to employ catastrophic terrorism as

² Yoram Dinstein, *War Aggression, and Self Defense* (Cambridge: 3rd ed. 2001)

key threats and accepts the idea that force may be necessary, as a means of last resort. However, there is an important difference, namely that the ESS would require UNSC authorisation before employing military force pre-emptively.

V. TACKLING THE THREATS

25. US Secretary of Defense Donald Rumsfeld has repeatedly referred to a "nexus between terrorist networks, terrorist states and WMD" as posing the gravest dangers to US security and that of its allies and friends. The NSS notes that "the gravest danger our nation faces lies at the crossroads of radicalism and technology. Our enemies have openly declared that they are seeking weapons of mass destruction, and evidence indicates that they are doing so with determination".

A. COMBATING TERRORISM

26. There is an emerging consensus among the Allies that NATO may have to use armed force in situations that do not involve territorial self-defence or PKOs. In the opinion of your Rapporteur, this should only be the case in a broader strategy of financial and political instruments and a comprehensive strategy regarding the sources of democracy building. No fighting of terrorism without also fighting its root causes. The most obvious and potent threat that may require military response is international terrorism. On 2 April 2004, the North Atlantic Council (NAC) once again re-affirmed NATO's determination to adopt a robust anti-terrorist posture. It admitted that "defence against terrorism may include activities by NATO's military force (...) to help deter, defend, disrupt and protect against terrorist attacks, or threat of attacks, directed from abroad, against populations, territory, infrastructure and forces of any member state, including by acting against these terrorists and those who harbour them". The NAC declaration says that any NATO action would conform with the provisions of the UN Charter. The Security Council has, however, been very reluctant to authorise preventive or retaliatory military actions.

27. As regards to the collective use of force to counter terrorism, the main point of reference for the Allies is NATO's Military Concept for defence against terrorism approved at the Prague Summit in 2002. The Concept is based on NATO's Threat Assessment on Terrorism, which concluded that religious extremism is likely to be the most immediate source of terrorist threats in the short to medium term. The Assessment also highlighted the threat posed by terrorist groups' likely attempts to acquire WMD capabilities. The Military Concept identifies four roles NATO forces could assume in their fight against terrorism:

- Anti-terrorist defensive measures to protect NATO territory and deployed forces;
- Disaster relief operations, including chemical, biological, radiological and nuclear defence;
- Fostering co-operation between the military and civilian agencies to prevent terrorist attacks;
- Counter-terrorist military actions aimed at reducing capabilities of terrorist groups and, possibly, state sponsors of terrorism.

28. Apart from the capabilities issue, there is a broader problem of reaching a political consensus on the modalities of use of force in defence against terrorism. For example, whether the NAC would have the political will to authorise a counter-terrorist operation similar to the one undertaken by the US-led coalition in Afghanistan remains an open question. A prepared debate fostered not only by ministers of Defence, but also by ministers of Foreign Affairs on this side is urgently called for.

B. WMD PROLIFERATION

29. Although the Strategic Concept identifies WMD proliferation as a serious security problem, NATO's responsibility in this area is rather limited. Progress has been made in developing appropriate concepts and doctrines, and the Alliance has acquired robust disaster response capabilities. There are, however, shortfalls in the areas of intelligence sharing, threat assessment and rapid reaction capabilities. To address the first two issues, the Allies have recently established the Terrorist Threat Intelligence Unit, which should become fully operational by mid-2004. NATO has provided aerial surveillance, intelligence, and civil emergency support to Greece before and during the 2004 Olympic Games in Athens and the European Soccer Championship in Portugal. NATO will also examine the possibility of linking up its anti-terrorist naval Operation Active Endeavour in the Mediterranean with the Proliferation Security Initiative (PSI). The NAC has also been asked to step up its counter-terrorism dialogue with partner states including Russia, and the EU.

30. In the area of non-proliferation, the US administration has been generally more sceptical about the role of international agreements and their effectiveness than its allies. Here, too, the US appears to put a stronger emphasis on the necessity to employ military tools, thus highlighting counter-proliferation (as compared to non-proliferation, which emphasises non-military tools as diplomacy).

31. It is, however, urgent to strengthen international arms control regimes and to intensify verification mechanisms and on-site inspections, when necessary, backed by military force. Many countries see the non-proliferation regimes as inherently discriminatory. Therefore, vertical and horizontal non-proliferation measures as well as export controls have to be strengthened.

32. Counter-proliferation is another area in which NATO may have to take difficult political decisions. Although the Alliance's 1999 Strategic Concept is flexible enough to accommodate pre-emptive measures against WMD proliferators, a further discussion is needed to determine circumstances under which use of such measures would be politically and legally justified.

33. The focus is on intelligence sharing and threat assessment activities, mainly within the framework of its WMD Centre, which draws on expertise from the International Staff, International Military Staff and national agencies. However, with only 14 experts at hand and restricted access to the NAC, the Centre's resources and capabilities are limited. Likewise, according to NATO international staff, intelligence-sharing arrangements with national governments are far from perfect.

34. The PSI, announced by President George Bush on May 31 2003, calls for a maritime 'coalition of the willing' to selectively interdict ships and aircraft bound to and from 'rogue states'. This applies to vessels carrying nuclear, chemical and biological weapons, as well as explosives. Most Allies have meanwhile joined the initiative. Moreover, NATO voiced strong support for the PSI and the PSI's Statement of Interdiction Principles, as offering a more coordinated and effective basis to prevent or seize WMD shipments, their delivery systems and related materials to and from states and non-state actors of proliferation concern. The Allies also urged PfP partner countries to support and implement the PSI's objectives. But PSI raises at least two legal problems. First, it is not illegal under international law for non-signatories of the Nuclear Non-Proliferation Treaty (NPT) to sell nuclear materials and technology to each other. Second, the 1982 UN Convention on the Law of the Sea (UNCLOS) accords immunity to state-owned vessels used for non-commercial purposes. Therefore, your Rapporteur would welcome if the UN Security Council adopted a resolution which would considerably strengthen the legal basis of PSI.

VI. OPTIONS FOR USING MILITARY FORCE WITHOUT PRIOR UNSC AUTHORISATION

35. Questions about the UNSC's ability to effectively deal with today's security threats have given momentum to discussions among some experts and countries over military action without UNSC authorisation. Apart from the issue of the Iraq war, a growing number of countries have accepted the argument for pre-emptive strikes in extreme situations. For example, the French '*Programmation Militaire*' explicitly mentions the '*capacité d'anticipation*' and the necessity of the option of a pre-emptive strike in certain situations. Russia, too, reserves the right to pre-emptively act in the case of a vital threat.

36. NATO's concept for the fight against terrorism, adopted at the 2002 Prague Summit, does not categorically rule out pre-emptive strikes against terrorist threats. These would have to address the three criteria for self-defence as mentioned before: necessity, proportionality and immediacy. In addition, NATO members would have to consider the anticipated cost of action versus inaction before deciding on pre-emptive action.

37. Some experts suggest that Kosovo, the Alliance's first ever use of force, which was considered illegal under a narrow interpretation of the UN Charter, may provide guidance for the future. Following the air campaign, UNSC resolution 1244, which authorised "member states and relevant international organisations to establish the international security presence in Kosovo", was widely regarded as a legitimisation of NATO's action. The mission had a post-legitimation under KFOR.

38. For (pre-emptive) military action to be considered legitimate, Karl-Heinz Kamp³ has identified the following criteria:

Urgency of the threat

39. The threat must be immediate and not possible to postpone. The application of military force is the means of last resort after all political and diplomatic attempts have failed. It does not have to be the last measure temporally speaking, however, it is conceivable that preemptive deployment of force can prevent greater damage.

Plausibility of the danger

40. The state using military force must be able to convey the threat conclusively and convincingly. For example, after Israel bombed the Iraq OSIRAK reactor it stated in great detail the threat it posed using scientific analyses to make the case. However, such methods of proof have only a limited ability to convince. In 1967 as Israel took military action against Egypt, the French President Charles de Gaulle saw this as a naked aggression, whereas the majority of international law scholars regarded the stationing of Egyptian troops on the Israeli border as a plausible threat for Israeli security.

Proportionality of the means

41. The dimension of (pre-emptive) military action must be commensurate to the degree of threat and the actions may only include those that are necessary for the sustained removal of the threat.

42. Moreover, as an Alliance of member countries sharing the same values, any possible NATO military action outside the UN must refer to or be built on a legal basis for intervention (for example, previous UNSC resolutions). However, not one of the above mentioned criteria is

³

Karl-Heinz Kamp, "Pre-emptive Strikes. A New security policy reality?" Konrad Adenauer Foundation Working Paper No. 120/2004, Berlin, February 2004.

precisely measurable or enforceable nor is the list complete. But it is essential, in the view of your Rapporteur, that NATO member countries engage in a serious discussion on this paramount issue. More specifically, it should conduct a debate about pre-emption and its possible role as an operational option, especially for the NATO Response Force (NRF). In this context, the Alliance should establish commonly understood and accepted risk criteria for planning purposes. Moreover, 'when' and 'where' pre-emption criteria should be developed for non-state actors as well as for nation states. In addition to explore common ground on using military force against new threats, the Allies need a debate on humanitarian intervention.

VII. MEETING THE CHALLENGES

43. Immediately before the Iraq war Anne-Marie Slaughter, the dean of the Woodrow Wilson School, set three criteria for determining its ultimate legitimacy: whether the coalition forces would find WMD, whether coalition forces were welcomed by the Iraqi population, and whether the coalition turned to the UN as quickly as possible after the end of the hostilities. More than one year after military action, none of these criteria have been sufficiently fulfilled. Therefore, the decision to use force without a second UNSC resolution was not a 'blueprint for pre-emptive' military strikes and cannot stand as a precedent for future action. On the contrary, the Iraq situation makes a strong case for prevention and 'effective multilateralism'. If NATO member countries want to successfully tackle the security threats posed by terrorist groups and WMD proliferation, the broadest possible international co-operation is necessary. Naturally, military force is an important element in tackling with today's security threats. But it is only one element among others, and cannot substitute diplomatic, economic, financial, and other tools that define a comprehensive set of security policy instruments.

A. IRAQ

44. With regard to Iraq, the war has shown that no single nation or group of nations can win the peace, nor tackle root causes for future conflicts, alone. More particularly, Iraq and Afghanistan have clearly demonstrated that it is crucial that any consideration of using force includes planning for the post-war period. Anthony Cordesman of the Center for Strategic and International Studies maintains that the US administration "failed dismally to prepare for the security and nation-building missions in Iraq". As a result, the security situation has grown so dire that many of the few remaining non-governmental aid organisations left in Iraq consider withdrawing from the country. In July, several US newspapers reported that a classified US National Intelligence Estimate on Iraq estimated that the country could be expected, in the best-case scenario, to achieve a 'tenuous stability' over the next 18 months and, in the worst case, to dissolve into civil war. Similarly, a report by the British Royal Institute of International Affairs⁴ (Chatham House) issued in early September concluded that a major civil war which would destabilise the entire Middle East region is the mostly likely outcome for Iraq if current conditions continue.

45. Despite its shortcomings, the UN has considerable expertise in nation building. It is the only institution, which can confer immediate global legitimacy on the goal of bringing a representative government to Iraq. However, more than one year after President Bush has called the end of major hostilities, the UN finds itself in a very violent and volatile situation. According to a Gallup poll conducted among Iraqis shortly before the outbreaks of violence in April, an overwhelming majority of Iraqis sees the US-led coalition as an occupying force and not as liberators. US troops are seen by most Iraqis as "uncaring, dangerous and lacking in respect for the country's people, religion and traditions." Reports of the mistreatment of Iraqi prisoners by US and British soldiers has further compromised the credibility and authority of the US-led coalition in the eyes of many Iraqis. Since the end of the war the UN's Iraq mandate has been progressively extended: UNSC

⁴ Iraq in Transition: Vortex or Catalyst, Chatham House September 2004

Resolution 1483 set the first guidelines for a UN role in the reconstruction of Iraq, named a Special Representative of the UN Secretary General, and acknowledged the CPA and the Iraqi interim administration. UNSC Resolution 1500 established the United Nations Assistance Mission for Iraq (UNAMI- whose mandate was renewed for another year by UNSC resolution 1557 on 12 August 2004) to assist the SRSG in his mission of coordinating and implementing the UN's mandate in Iraq. At present, however, following the attacks on the UN last summer, only about 30 UN staff are based Iraq and the UN's presence is unlikely to increase unless the security situation significantly improves.

46. NATO's presence in Iraq is limited. In accordance with UNSCR 1546 and responding to a request from the interim government, NATO Heads of State agreed at the Istanbul Summit this June to assist Iraq in training its new security forces. On September 22, NATO ambassadors agreed to increase the number of trainers from 40 to approximately 300 and create a military training academy outside Baghdad. In October this year, the NAC agreed on a Concept of Operations (CONOPS) for substantially enhancing NATO's assistance to the Iraqi Interim Government with the training of its security forces, as well as the coordination of offers of training and equipment. This is a welcome, and in the view of your Rapporteur, overdue development – even if it falls short of the necessary assistance to the Iraqi Interim government. But Allies could not agree on a formal NATO role inside the country as some Member countries are concerned that a more visible presence there would damage NATO's reputation in the Arab world. Nonetheless, your Rapporteur suggests that NATO should, together with regional players, consider how to further increase its assistance in order to establish security in the country. Any further NATO commitment must be based on a realistic assessment of available resources and it is crucially important to avoid over-commitment. Moreover, any NATO action beyond its current spectrum should be based on Iraqi demands as well as on a UNSC resolution mandating a longer-term, international stabilisation force there. Winning the hearts and minds of the Iraqi people and establishing an Iraqi government that is seen as representative and legitimate is absolutely essential to establish a secure state. Your Rapporteur only sees a viable role for NATO if the Iraqi and US governments are sincerely willing to share decisions on key transition questions with the UN and other NATO allies as regional players. This is a *sine qua non*.

B. FAILED STATES

47. Failed, and failing, states not only destabilise their neighbours and regions, but they pose serious security risks for the international community, including NATO member states. Afghanistan is a case in point: Indifference to the country in the decade following the withdrawal of Soviet troops has been a catastrophic mistake. Military action has freed Afghanistan from the Taliban regime and al-Qaeda, but the situation is far from stable. Because attention has been so quickly diverted to Iraq, many acute problems remain in Afghanistan. While the country continues to receive support by the Allies and the international community there is still a significant gap between necessary assistance and the needs for Afghanistan. Although security has generally increased, it remains fragile, especially in the South-East of the country which continues to experience Taliban incursions. In the run up to the October 9 elections, Taliban and terrorist groups have been increasingly targeting civilians and government officials. A worrisome trend is the targeting of international aid organisations by terrorist groups some of which, such as 'medecins sans frontières', have decided to quit the country. Nevertheless, the presidential elections were a major step forward.

48. Rebuilding security throughout the country is the basis for further progress in stabilising the country. However, the international community has thus far failed to extend a strong security umbrella beyond the capital. Nonetheless, the presence of Allied troops across the country has contributed to greater stability. NATO has strengthened the International Security Assistance Force (ISAF) in Kabul by approximately 3,000 soldiers for the elections on 9 October and expanded its activities in the North and then in the West of the country via an increasing number of

so-called Provincial Reconstruction Teams (PRTs). With some 9,000 soldiers currently led by Eurocorps, NATO now has troops in all five northern provinces in addition to the main deployment in Kabul, under ISAF. The fifth ISAF PRT reached the northern province of Baghlan on 1 October, bringing to an end the first phase of ISAF's expansion. Some Allies have also suggested creating a joint command for ISAF and the forces operating under "Enduring Freedom". But the Alliance still lacks troop commitments from member states. Allied forces are already stretched thin and the present force level is insufficient to provide for the necessary expansion of the security zone.

49. Establishing the rule of law and accelerating the build-up and implementation of the new key organisations for security, such as the new Afghan National Army and the National Police Force, including Border Police and Counter-Narcotics units, require an enormous amount of effort by the international community. New institutions must operate effectively to eliminate the two key threats to the country's stability, warlordism and narcotics. Your Rapporteur agrees with the repeated statements by senior NATO officials that the extension of NATO's role in Afghanistan should be the Alliance's first priority. Moreover, the Allies need a genuine discussion about the proposal to establish a common command for the 9,000 strong NATO-led ISAF mission in the centre and the north of the country and the 18,000 US-led troops under "Active Endeavour". Combining ISAF and "Active Endeavour" under one command should, in the opinion of your Rapporteur, not be merely perceived as freeing Allied troops for operations in Iraq. On the contrary, it requires Allies to agree on how to deal with warlordism and implement any agreement with sustained, and if necessary robust, action. The issue must be addressed in a consensual manner among contributing member states, and should be the basis for a strengthened unified commitment to Afghan democracy.

C. WMD PROLIFERATION

50. UNSC measures to eliminate WMD and prevent their further development and production in Iraq were, in hindsight, remarkably successful. The system of multilateral treaties has prevented widespread proliferation of WMD, but non-compliance and illegal trade require action by the international community.

51. At the Istanbul Summit, the Allies underlined the importance of arms control, disarmament and non-proliferation for Euro-Atlantic and global security and urged NATO members to join all applicable non-proliferation regimes. The alliance "strongly supported" UN Security Council Resolution 1540, which calls for effective national export controls to end illicit trafficking in WMD, and the criminalisation of nuclear proliferation.

52. Your Rapporteur welcomes continued NATO support for international arms control agreements, in particular the NPT, the Biological and Toxin Weapons Convention (BWC), the Chemical Weapons Convention (CWC), and the Hague Code of Conduct against the Proliferation of Ballistic Missiles as stressed in Istanbul this year. However, your Rapporteur is concerned that the NPT, which officially recognises only five countries (the US, Russia, France, the UK and China) as possessing nuclear weapons, is in great danger of dying a slow death. As we are approaching the 2005 NPT Review conference, there is a lack of consensus among Allies and NPT signatory countries on a number of issues, including how to tackle non-State actors. Several developments cloud the chances to reach agreement at the review conference, particularly a trend to develop new strategic and tactical doctrines and the development of new, smaller nuclear weapons ('bunker busters'). This development runs counter to the NPT's Article 6 which commits nuclear-weapon states to aim for full nuclear disarmament in the future. A significant number of non-nuclear weapons states have become dissatisfied with the lack of progress that the NWS are making towards fulfilling their nuclear disarmament obligations. More generally, the trend to build groups of "like-minded nations" ("coalitions of the willing") rather than to address problems through existing legal frameworks poses serious concerns for the validity of important international agreements.

53. The Democratic People's Republic of Korea (North Korea – DPRK) and Iran pose serious compliance challenges. The DPRK is potentially more dangerous than Iraq ever was. It probably has at least one to three nuclear weapons already and is producing both plutonium and uranium, and appears to be on track to have close to ten nuclear weapons by the end of this year. Iran's full compliance with international inspections of its nuclear sites is still pending. In fact, there are mounting suspicions in Europe and the United States that Iran is determined to develop nuclear weapons and has violated the spirit of the agreement with France, Germany and Britain of last October to allow stricter inspections of nuclear sites and to suspend production of enriched uranium. It is crucial that NATO allies discuss these matters in the NATO Council. A committed policy of engagement, and strengthened arms control regimes combined with a UN approach to possible crises will determine the outcome.

54. A comprehensive non-proliferation strategy must also address the trade routes and entities engaged in supplying proliferant countries. To cope with the "nuclear black market" that came to light after Libya gave up its WMD programmes, Mohamed El Baradei, head of the International Atomic Energy Agency (IAEA), has set out a bold proposal to put all weapons-grade nuclear material under international control to fight the threat of proliferation. A supporting measure could be 'universalisation' of export control legislations, Gustavo Zlauvinen, the IAEA's representative at the UN Headquarters, informed Committee members. Securing nuclear materials should be much higher on the agenda, because "dirty bombs" could be assembled easily if a terrorist group had access to highly enriched uranium, as William Potter of the Center for Non-Proliferation Studies (CNS) told members.

55. A permanent UN body of experts on WMD and missiles, readily available to the UNSC for technical advice and rapid action at its discretion, would enhance the Council's policy options and its ability to manoeuvre. Together with political pressure, the existence and reputation alone of such a body would have a deterrent effect on proliferation. Beyond the treaties that outlaw WMD, we urgently need additional measures that can be effective in the current international climate, in which adaptability and multilateral backing are essential.

56. Naturally, any decision to employ military action must be based on reliable intelligence information. This includes not only information about the capabilities, but also about the intent and the "strategic culture" of the opponent. The Iraq war has raised serious doubts about the reliability of intelligence. Very strong preconceptions, the lack of information after the expulsion of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) in 1998, and the fact that Saddam Hussein was good at "trying to convince the US and the world that he did have what he didn't have", according to Greg Trevorton at RAND, led to misjudgements about Iraq. But "if you cannot rely on good, accurate intelligence (...) you certainly can't have a policy of pre-emption", according to the Christian Science Monitor quoting former chief US weapons inspector David Kay. Establishing a permanent UN body of experts on WMD as outlined above would help monitor international proliferation and build common ground on threat assessments among Member nations. NATO should also build a body of experts to mirror such an initiative. WMD expertise has to be strengthened further.

D. COMBATING INTERNATIONALLY ACTIVE TERRORIST GROUPS

57. In his book, "Against All Enemies", Richard Clarke, counter-terrorism co-ordinator under Presidents Clinton and Bush, called the Iraq war "a strategic error in the war on terrorism" and maintained that Iraq "delivered to al-Qaeda the greatest recruitment propaganda imaginable". When the Sub-Committee on Transatlantic Relations visited Germany in October, the President of the German Federal Intelligence Service, August Hanning, raised concern about stray scientist in Iraq who might proliferate know-how to terrorist groups. The IAEA reported to the UNSC in October of "widespread and apparently systematic dismantlement" of buildings in Iraq that once housed key dual-use items. Hanning was also concerned about increased links between

internationally active terrorist groups and organised crime. For example, members of al-Qaeda worked together with passport forgers and professional smugglers and profited from the routes of international drug trafficking, according to Hanning.

58. The tragic attacks of 3-11 in Madrid made it clear that groups like al-Qaeda remain a serious challenge to all our societies. The military, including pre-emptive military action (primarily conceivable against terrorist groups, much less against nation states) as a means of last resort, can contribute to tackling the spectre of terrorism. However, combating terrorism is primarily done by diplomacy, law enforcement and intelligence agencies. Fighting terrorists effectively requires the fullest possible international co-operation, especially in sharing intelligence, law enforcement, border security and the tracking of terrorist finances. In many areas co-operation among NATO Allies has greatly improved. This includes, for example, better collaboration among national prosecuting authorities, co-operation on data sharing, new extradition procedures, curbing financial assets of terrorist groups. Progress notwithstanding, we need to further improve our co-operation and make sure that they are fully compatible with our human rights standards.

59. Improvements are needed, for example, in the co-ordination between law enforcement and intelligence agencies and in the Allies' ability to track terrorism financing. In addition, continue to improve the control of our borders, both with respect to the movement of persons and to potentially dangerous items, especially those possibly related to WMD.

60. The fullest possible international co-operation in fighting terrorist groups is impossible without the UN. It is indispensable in providing the legal and organisational framework within which the international campaign against terrorism can unfold. For example, the UN's Counter Terrorism Committee (CTC) is an important instrument in this endeavour. But not all UN member countries have met the CTC requirements, therefore combined efforts by NATO member countries will be necessary to make UN countries adhere to their promises.

61. Co-operative threat reduction programmes like the so-called Nunn-Lugar programme are designed to prevent the most dangerous weapons and materials from falling into the wrong hands and are crucially important for any effective non-proliferation strategy. While funding has increased on the international level, such programmes receive much less attention and financing than missile defences. Your Rapporteur wants to stress that non-proliferation programmes need to be further expanded and obtain additional financing. Existing programmes like the Nunn-Lugar initiative on cleaning up nuclear materials in Russia and urgent action on nuclear materials in Iraq!

VIII. CONCLUSIONS

62. The need for a reinvigorated Atlantic Council: More than one year after the discord among Allies over Iraq, NATO has made relevant progress in reaching an agreement on important issues of Euro-Atlantic security. Progress notwithstanding, major questions have not been addressed by the Allies, such as the question of who authorises military force under which conditions is a fundamental one that requires the Allies' urgent attention unless they want to risk a growing gap in US and European thinking on legitimacy and the use of force. While Allies have agreed on some issues, there has been insufficient political dialogue about the major direction of NATO. The difficult situations Secretary General de Hoop Scheffer found himself in begging the Allies for troop contributions in Afghanistan is proof of this. Promises and actual contributions diverge. No real and effective agreement exists on the ambitious level of NATO, which is risky. Stating that Afghanistan is a test case for NATO can work as a boomerang when success is not delivered.

63. Finding a NATO consensus is a prerequisite for dealing effectively with today's main security threats. An intensive dialogue on a realistic ambition level is called for. No operational agreement exists on the best way to tackle terrorism and countries with WMD. Some nations believe that the

way in which the current fight against terrorism is framed might actually lead to more terrorism. NATO decisions on this issue have to be operationalised. No agreement exists on the relevance of the concepts of containment and deterrence in case of new proliferators. Also, the Iraq crisis has illustrated the relevance of UN inspectors and the correct way in which UN weapons inspector Dr Hans Blix has confronted Iraq in the past.

63. In a world in which the demand for effective security policies is overstressing supply, NATO is faced with multiple challenges at a time when there is a lack of military resources and agreement on practical priorities. Agreement on basic principles is important to rebuild trust and confidence on NATO's agenda, its priorities and the specific mix of policy instruments to be employed. "Coalitions of the willing" are sometimes necessary to deal with security issues, but a proliferation of this thinking would be counterproductive to the Alliance's *raison d'être*. The NATO Council plays an insufficient role in fostering a real political dialogue on these pertinent issues and as a priority should be strengthening this. Ministers of Foreign Affairs should play a more permanent and direct role in this.

64. Improved co-operation on UN issues: The UN Charter contains a comprehensive, if somewhat outdated, statement of the law on the use of force. The main focus of the Charter is the settlement of disputes between sovereign states. It calls on UN members to refrain from the threat or use of force against the territorial integrity or political independence of other nations (article 2(4)).

65. Moreover, the UN is handicapped by the reluctance of developed countries to participate in PKOs. At present the MONUC operation in the DRC, for instance, requires strengthening by Western forces. The directions described in the report above are promising. At the same time your Rapporteur urges the NATO Secretary General to deepen co-operation with the UN on the basis of the Brahimi Report.

66. The Iraq case has clearly illustrated the fact that confidence in intelligence gathering and sharing has to be restored, the strengthening of UN inspection regimes fostered and post-intervention planning improved. There is an emerging consensus among the Allies that NATO may have to use armed force in situations that do not involve territorial self-defence or PKOs. A prepared debate fostered not only by ministers of Defence, but also by ministers of Foreign Affairs on this side is urgently called for.

67. The need for more operational agreement on the fight against terrorism and WMD: The PSI calls for a maritime 'coalition of the willing' to selectively interdict ships and aircraft bound to and from 'rogue states'. Most Allies have meanwhile joined the initiative. Moreover, NATO voiced strong support for the PSI and the PSI's Statement of Interdiction Principles, as offering a more coordinated and effective basis to prevent or seize WMD shipments, their delivery systems and related materials to and from states and non-state actors of proliferation concern. But PSI needs a stronger legal basis and your Rapporteur would welcome if the UN Security Council adopted a resolution supporting the goal and the means of the initiative.

68. NATO's presence in Iraq is limited. In accordance with UNSCR 1546 and responding to a request from the interim government, NATO Heads of State agreed at the Istanbul Summit this June to assist Iraq in training its new security forces. But Allies could not agree on a formal NATO role inside the country as some Member countries are concerned that a more visible presence there would damage NATO's reputation in the Arab world. Nonetheless, your Rapporteur suggests that NATO should, together with regional players, consider how to further increase its assistance in order to establish security in the country. Any further NATO commitment must be based on a realistic assessment of available resources and it is crucially important to avoid over-commitment. Moreover, any NATO action beyond its current spectrum should be based on Iraqi demands as well as on a UNSC resolution mandating a longer-term, international stabilisation

force there. Winning the hearts and minds of the Iraqi people and establishing an Iraqi government that is seen as representative and legitimate is absolutely essential to establish a secure state. Your Rapporteur only sees a viable role for NATO if the Iraqi and US governments are sincerely willing to share decisions on key transition questions with the UN and other NATO allies as regional players. This is a *sine qua non*.

69. A consensual discussion is needed on the role of NATO vis-à-vis ISAF, Operation Enduring Freedom. Moreover, the Allies need a genuine discussion about the proposal to establish a common command for the 9,000 strong NATO-led ISAF mission in the centre and the north of the country and the 18,000 US-led troops under "Active Endeavour". This move should not be seen primarily as required by a relief of western troops and it requires a real agreement on the way the issue of warlordism is handled. The issue should not be solved by alienating contributing member states, but in fact should be the basis for a strengthened unified commitment to Afghan democracy.

70. A Multi-lateral Arms Control Regime 'with teeth': As we are approaching the 2005 NPT Review conference, there is a lack of consensus among Allies and NPT signatory countries on a number of issues, including how to tackle non-State actors. Several developments cloud the chances to reach agreement at the review conference, particularly a trend to develop new strategic and tactical doctrines and the development of new, smaller nuclear weapons ("bunker busters"). This development runs counter to the NPT's Article 6 which commits nuclear-weapon states to aim for full nuclear disarmament in the future. A significant number of non-nuclear weapons states have become dissatisfied with the lack of progress that the NWS are making towards fulfilling their nuclear disarmament obligations. More generally, the trend to build groups of "like-minded nations" ("coalitions of the willing") rather than to address problems through existing legal frameworks poses serious concerns for the validity of important international agreements.

71. The need for a better co-ordinated co-ordination and planning of national contributions to the NRF, the Headline Goals, the Battle Groups and existing PKOs is called for. While your Rapporteur welcomes building additional capabilities, the creation of intervention forces requires close co-operation and co-ordination of priorities with regard to contingency planning of NATO, but also between NATO, the EU and, possibly, the UN. This is particularly relevant as nations assign forces to two or more international forces.
