The Elephant in the Room: 
Anticipatory Force and the North Atlantic Treaty Organization

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The contemporary international security environment has been shaped by significant geopolitical change since the end of the Cold War. The rise of global terrorist networks, technological advancements encouraging the horizontal proliferation of weapons of mass destruction (WMD), and threats posed by failed and fragile states have created new challenges for the international community. In particular, the terrorist attacks of September 11, 2001, demonstrated that non-state groups motivated by radical ideology, sheltered by weak state governance, and assisted by modern technology, have the ability to coordinate and execute devastating attacks from abroad. Because non-state groups are exceedingly difficult to target and retaliate against, these attacks have led many to question the adequacy of traditional military deterrence in addressing the threat of terrorism.

Within the context of the North Atlantic Treaty Association (NATO), the September 11 terrorist attacks prompted a reevaluation of NATO’s deterrence strategy and invoked debate on a wide array of policy options. As such, the concept of anticipatory force has gained considerable attention amongst NATO members since September 11, 2001. To be sure, debate concerning NATO’s use of anticipatory force is not entirely new; this issue was a source of contention following NATO’s humanitarian intervention in Bosnia and Kosovo in the 1990s. However, the interrelated threats of failed statehood, weapons of mass destruction and non-state terrorism have reshaped the debate by elevating anticipatory force to the realm of self-defence.

This paper will analyze the underlying notion of anticipatory force in NATO’s strategic doctrine and what this emergent theme could mean for the future of the Alliance. This topic will be approached by examining changes in the transatlantic political climate since the terrorist attacks of September 11, 2001 and the status of anticipatory self-defence under international law. The role that threat perception and other practical considerations will play in determining NATO’s future use of anticipatory force will then be explored. It will be concluded that despite the emergence of new security threats and subsequent developments in political and legal understandings of anticipatory force, this remains a pervasive yet obscure theme in NATO’s evolving strategic doctrine.

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Before the terrorist attacks of September 11, 2001, the United States shared with NATO the understanding that military deterrence was the most credible and cost-effective way of maintaining transatlantic defence.\(^2\) These events, however, precipitated a drastic rethinking of American foreign policy, the initial result of which being the 2002 National Security Strategy (NSS).\(^3\) Along with endorsing unilateral retaliation and emphasizing the importance of democracy promotion through regime change, the NSS also stressed the potential need for anticipatory military action to avert future terrorist attacks. Articulating this position, the 2002 NSS states “we will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country… (italics added).”\(^4\) This approach to denying terrorist organizations access to allies, territory and resources was elaborated upon in the 2006 National Security Strategy. While the language used in this later version changed from ‘preemption’ to ‘prevention’ – a subtle yet important legal distinction which will be discussed later – the message was the same.\(^5\)  

As stated in Chapter V of the 2006 NSS;

“If necessary…under long-standing principles of self-defence, we do not rule out the use of force before attacks occur, even if uncertainty remains as to the time and place of the enemy’s attack. When the consequences of an attack…are potentially devastating, we cannot afford to stand idly by as grave dangers materialize (italics added).”\(^6\)

The application of these principles through the American-led invasion of Iraq proved to be a highly divisive issue among NATO allies. While, for instance, the United Kingdom was quick to lend support, the unilateral nature of this endeavor and the questionable pretexts under which it was pursued generated criticism from allies such as Germany, France and Canada. A number of European governments argued that unilateral military action would undermine international law, embolden adversaries, and increase the likelihood of future conflict. As argued by Karl-Heinz Kamp, controversy surrounding the Iraq war had the effect of obscuring debate on the use of anticipatory force.\(^7\) While on one hand there was a great deal of skepticism and distrust in the transatlantic world regarding American foreign policy, the concept of anticipatory self-defence had already crept onto NATO’s agenda by the time Operation Iraqi Freedom was launched in March of 2003. Observing this trend, Tomas Valasek stated;

\(^4\) Guertner, “European View of Preemption,” 32.  
\(^5\) Ibid.  
“Behind the stormy front of the U.S.-European confrontation over Iraq, both sides have been quietly working out just what exactly those new realities are following 9/11, and how best to deal with them. They seem to be coming to conclusions that are not entirely dissimilar.”

In December of 2001, Alliance Defence Ministers gave NATO authorities the task of drafting a new approach to international terrorism. The result of this requisition was NATO’s Military Concept for Defence against Terrorism, endorsed by NATO Heads of State and Government on November 21, 2002. In light of the threats posed by global terrorist networks and the horizontal proliferation of weapons of mass destruction, this document calls for a more dynamic strategy and, in so doing, implicitly supports the concept of anticipatory force. For instance, in the section on ‘concept development’ it is stated that, “NATO’s actions should…work on the assumption that it is preferable to deter terrorist attacks or prevent their occurrence rather than deal with their consequences…”

Outlining the capabilities needed to implement this approach, it goes on to state that, “[o]nce it is known where the terrorists are and what they are about to do, military forces need the capability to deploy there. Due to the likelihood that warnings will be received only at a very short notice, forces need to be at a high state of readiness.”

Although the terms ‘anticipatory force’ and ‘preemption’ were not included in the final draft due to objections from France and Germany, NATO’s endorsement of this document was significant insofar as it acknowledged that deterrence, while still a cornerstone of NATO’s strategic doctrine, may not be enough to address contemporary security threats. It implied that to protect Alliance territory, citizens, infrastructure and military forces from terrorist attacks or the threat thereof, NATO must be prepared to conduct forward military operations both in anticipation and response to terrorist plots.

European leaders also expressed this understanding in the December 2003 European Union Strategy document titled ‘A Secure Europe in a Better World.’ Articulating the European Union’s view of the international security environment, this document states:

“In an era of globalization, distant threats may be as much a concern as those that are near at hand…The first line of defence will often be abroad. The new threats are dynamic. Left alone, they will become more dangerous…Conflict prevention and threat prevention cannot start too early.”

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10 Ibid.
12 Ibid.
In the years following 9/11, the concept of anticipatory force was also addressed in the defence policies of a number of European NATO states. For example, France’s *Programmation Militaire, 2003-2008* makes specific reference to the French military’s *capacite d’anticipation* and the option of preemptive force in response to the threat of non-state terrorism.  

Speaking in September of 2002, French Minister of Defense Michèle Alliot-Marie stated;

> “Outside our borders, within the framework of prevention and projection-action, we must be able to identify and prevent threats as soon as possible. Within this framework, possible preemptive action is not out of the question, where an explicit and confirmed threat has been recognized.”

As Tomas Valasek points out, once the events of 9/11 and similar terrorist attacks in Karachi and Bali began to sink in, policy makers in Germany, France and elsewhere in Europe began to change their tone towards non-state terrorism and the looming threats of WMDs and failed and fragile states.  

To be sure, the aforementioned developments did not constitute a transatlantic consensus as differences in opinion persisted on this subject. However the concept of anticipatory force had become a prominent, yet hazy theme in transatlantic security in the years immediately following September 11 2001.

At the Lisbon Summit in November 2010, NATO Heads of State and Government formally adopted the Alliance’s new strategic concept titled “Active Engagement, Modern Defence.”  

Serving as a guide for the next phase of NATO’s strategic evolution, this document reaffirms NATO’s *raison d’etre* of maintaining the common defence and security of the North Atlantic Region. In order to adapt to the contemporary security environment and confront a broad set of challenges posed by both state and non-state actors, the New Strategic Concept states that NATO must improve its collective defensive, crisis management and cooperative security capabilities.  

Though never specifically addressed, the theme of anticipatory action is found throughout this document. For instance, in defining NATO’s approach to ‘crisis management’ it is stated that, “[t]he best way to manage conflicts is to prevent them from happening. NATO will continually monitor and analyze the international environment to anticipate crises and, where appropriate, take active steps to prevent them from becoming larger conflicts.”  

It goes on to state that NATO will actively employ a mix of political and military tools to address the full spectrum of crises; before, during and after they occur. To this end, the New Strategic Concept calls for enhanced information sharing amongst allies to “better predict when crises might occur, and how they can be prevented and to further develop

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16 Ibid. 17-18.
18 Ibid.
19 Ibid.
doctrine and military capabilities for expeditionary operations.” It should be noted that the New Strategic Concept in no way endorses the unbridled use of anticipatory force. In contrast, this document affirms that anticipatory military action ought to be pursued in combination with civilian and political efforts. Furthermore, the New Strategic Concept – as is the case with all other NATO policies – is framed within the bounds of international law. This means that the sort of anticipatory action that is referenced here and in other NATO documents is subject to the United Nations and the rules embodied therein. However, just as the international political climate has evolved since September 11 2001, so too has the status of anticipatory self-defence under international law.

Rooted in the just war tradition, the use of force in international relations is governed by a thick web of international treaties and conventions, the keystone of which being the Charter of the United Nations. Designed to uphold the norm on non-intervention, Article 2 Paragraph 4 of the Charter states that all members of the United Nations “shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.” The Charter goes on to outline two exceptions to the general prohibition on the use of force: force in the name of individual or collective self defense outlined in Article 51, and force authorized by the Security Council as per Article 42. While the restrictionist school of thought attests that the Charter’s general prohibition on the use of force trumps all pre-1945 conventions, the general consensus is that responding to armed attacks is not only an inherent right, but also an obligation of any sovereign power. The right to anticipatory self-defence is, however, not as clear-cut.

The legitimate use of anticipatory force has traditionally rested on the distinction between acts of prevention and those of preemption. The difference here is based on the existence of a sufficient threat: whereas preventative measures are those which respond to an immediate and pressing threat of aggression, acts of preemption attempt to stop a potential threat before it materializes. Unlike preventative force which is grounded in the right to self-defence, preemptive force is strictly forbidden in international law due to its speculative nature. This division can be traced back to the Caroline Case of 1838 which, through a series of communications between American Secretary of State Daniel Webster and his British counterpart, outlined the conditions under which the right to self-defence could be invoked. This communiqué established that in order to justify an act of anticipatory self-defence, a state must demonstrate the ‘imminence’ of an attack, the ‘necessity’ of prevention and the ‘proportionality’ of this response. These principles have long served as the basis of international law governing interstate conflict. Following the terrorist attacks of September 11 2001, however, it was widely accepted that the idea

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20 Ibid.
21 Alex Bellamy, Just War: From Cicero to Iraq, (Cambridge: Polity, 2006), 158-159.
25 Ibid. 162-163.
of anticipatory self-defence had to be rethought. In particular, the limitations imposed on states through the condition of imminence became a source of contention.

Generally speaking, conventional state-to-state wars can be forecast through observable trends. Aggression by one state against another would, for instance, be preceded by the use of propaganda, buildup of arms, mobilization of troops, and massing of military forces along state borders. Rather than waiting for an attack to take place, it is commonly accepted that in light of such observations, a threatened state is justified in exercising preventative force. Illustrating this point, the UN accepted Israel’s preventive response to Egyptian aggression in 1967 but condemned Israel’s bombing of an Iraqi nuclear reactor in 1981 because there was no imminent threat of attack at that time.\(^{26}\) Due to their clandestine nature and unconventional tactics, non-state terrorist groups are, however, capable of inflicting large scale destruction without producing the same warning signs. In the aftermath of 9/11, this realization created a dilemma, as the expectation that a threat be ‘imminent’ before an act of anticipatory self-defence could be justified seemed to place an imprudent burden on the state.\(^{27}\) Because it is nearly impossible to defend against terrorism at all times and from all places, the Bush Administration argued that strict adherence to this principle would benefit terrorist organizations by conceding the advantage of first strike.\(^{28}\) Given the potentially devastating effects of terrorism, it was held that the condition of imminence amounted to a suicide pact.\(^{29}\) The threat of non-state terrorism thus blurred the traditional distinction between legitimate and illegitimate anticipatory force.

It would be incorrect to claim that the Bush Administration’s response to the terrorist attacks of September 11, 2001, established a new norm of self-defence.\(^{30}\) However it can be said that the emphasis previously placed on temporal imminence has given way to a more flexible interpretation of this particular standard. The International Court of Justice recognized as early as 1997 that a threat could be temporally distant yet nevertheless imminent depending on the likelihood of the attack and the gravity of the threat.\(^{31}\) The international community’s reaction to the terrorist attacks of September 11, 2001, reinforced this position.

By implicating the Taliban in the September 11 terrorist attacks via its sponsorship of the al Qaeda terrorist network, the United States took military action against Afghanistan for the explicit purpose of forestalling future attacks. This justification was widely supported by the international community: NATO exercised Article 5 of the Washington Treaty in response to 9/11 and later took on leadership of the International Security Assistance Force (ISAF); the UN Security Council acknowledged these attacks as a Chapter 7 violation of international peace and security and


\(^{27}\) Bellamy, *Just War: From Cicero to Iraq*, 163-164.

\(^{28}\) Ibid.


\(^{31}\) Bellamy, *Just War: From Cicero to Iraq*, 168
subsequently authorized NATO’s military response through resolution 1368; countless other governments condemned al Qaeda and offered support to both American and International Security Assistance Force (ISAF) operations in Afghanistan. According to Alex Bellamy, this wide-spread international support confirmed that “[i]n situations where a state can demonstrate that an actor has the intention and means to launch terrorist attacks against it or its allies, it is reasonable to suggest that the ‘imminence’ test is satisfied even if it is unsure of the precise time and target of the anticipated attack.”

Consistent with this position, international lawyers have adopted a qualitative understanding of imminence whereby anticipatory force is justified when any further delay in countering the intended attack would result in the inability of the threatened state to effectively defend itself. While a state must still demonstrate evidence of a threat in order to justify an act of anticipatory self-defence, it is generally agreed that the condition of temporal imminence should not outweigh the state’s responsibility to protect its population from non-state terrorism. The right to use anticipatory force seems to have been expanded to include, in some instances, acts that would have traditionally been defined as preemptive and thus unjust in nature. Today, debate concerning preemptive self-defence against non-state actors no longer centers on if this right exists, but on when such an action ought to be used.

The trends that have been identified thus far are significant in that they suggest that NATO’s use of anticipatory force is more probable than it was in the years before September 11, 2001. The post 9/11 security environment has seen NATO and its member states acknowledge anticipatory force as a potential means of defence against terrorism and other byproducts of instability abroad. Consistent with this shift, the legal status of anticipatory self-defence has been modified in a subtle yet significant way. Ostensibly, these developments indicate that NATO states are more willing to engage in acts of anticipatory force and that the legal grounds for such action have been expanded in response to non-state terrorism. For some, these trends are worrisome as the use of anticipatory force could have dangerous implications for international peace and security. As Benjamin Barber has stated, “shooting first and asking questions later…opens the way to tragic miscalculation…[and] sets a disastrous example for other nations claiming their own exceptionalist logic.”

While the trends analyzed thus far highlight NATO’s continued shift away from a reactive defence policy, it should not be concluded that NATO is bound to pursue a more aggressive or antagonistic approach to transatlantic security. Rather, it should be noted that National Security Papers and other policies are subject to interpretation and revision. Furthermore, legalities related to military action are not the only factors that limit policy options. In democratic states, the decision to go to war is subject to the will of the people insofar as constituents hold governments accountable for their actions. In addition to policy statements and legal standards,
decision makers must also make a number of practical considerations based on, for example, national interests, capabilities, and available resources.

Despite the fact that NATO has recognized the potential need for anticipatory action, disagreement remains on what such a response would actually look like. As Karl Heinz-Kamp points out, anticipatory action encapsulates a full spectrum of policy options ranging from ‘military’ to ‘semi-military’ in nature. In addition to military recourse involving intervention and regime change, ‘semi-military’ options include interruption of information systems, intercepting ships and aircraft, comprehensive blockades, acts of sabotage, and surgical strikes by special forces personnel. Generally speaking, these ‘semi-military’ alternatives are more likely to gain public support in the transatlantic world than larger military commitments. This is especially true at present date, as NATO’s lengthy engagement in Afghanistan has diminished public support for major expeditionary operations. Compounding this trend, many NATO states are actively reducing their military budgets as part of larger austerity measures making long-term military commitment less feasible. Given the lessons learned from NATO’s mission in Afghanistan and the American led intervention in Iraq, NATO members are also cognizant of the fact that anticipatory force is not a panacea, but a damage-reducing measure that must be followed up with a commitment to reconstruction and development.

With these considerations in mind, the dimensions of NATO’s use of anticipatory force will ultimately depend on how a given threat is perceived by its member states. While there is agreement within the Alliance that terrorism, failed and fragile states, and weapons of mass destruction pose some kind of threat to the North Atlantic region, consensus breaks down over the gravity of these threats and, more specifically, whether such threats are national or international in scope. According to Kristen Rafferty, these differences “reflect fundamental, long-standing disagreements over NATO’s strategic doctrine, and more particularly, beliefs concerning the definition of vital interests, and the most appropriate strategies and instruments for preserving those interests.”

In regards to the threat of terrorism, the ‘Old European’ powers of France, Germany and the United Kingdom tend to see this issue in both national and international terms. On the other hand, some smaller NATO states such as Belgium, Denmark and Poland view terrorism as more of an international security concern. Different still, many Eastern European states such as the Czech Republic, Hungary, Greece and Turkey have recognized the threat of international terrorism but are inclined to rank regional security issues higher on their defence agendas. In contrast, having been the target of the 9/11 terrorist attacks, the United States is arguably the most threatened by international terrorism and thus more likely to support future anticipatory force in response to a similar

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38 Ibid. 77-78.
39 Ibid.
40 Yost, “NATO and the Anticipatory Use of Force,” 65.
42 Ibid. 173.
43 Ibid. 176.
threat. These differences in perception will inform each state’s understanding of the magnitude and urgency of a given threat, and how best to defend against it.\textsuperscript{44} In this sense, NATO’s future use of anticipatory force will most certainly be context specific, as each member state’s position will be affected by a series of complex and varied strategic considerations.

Unlike the days of the Cold War when similar strategic differences were overcome in light of the common Soviet threat, NATO currently lacks an adversary with such unifying force. Given NATO’s adherence to consensus based decision making, it is unlikely that anticipatory force beyond semi military operations would be agreed upon unless an overwhelming threat were to materialize. As such, the future role of anticipatory force in NATO’s strategic doctrine remains murky. Despite NATO’s implicit support for anticipatory action in the face of contemporary security challenges and an expanded legal basis for operations of this nature, it is unclear as to how the Alliance will utilize this method moving forward. NATO members agree that the Alliance should be prepared to use anticipatory force under \textit{certain} circumstances. However, what those circumstances are and how this strategy would be implemented remains a subject of speculation.

Many would agree that NATO’s rather ambiguous position on anticipatory force is purposeful as it allows for a degree of flexibility and functionality in an alliance with varying interests and perceptions. On the other hand, others have proposed that this issue could prove to be polarizing and thus contribute to a decline in Alliance solidarity.\textsuperscript{45} NATO’s demise has been forecasted countless times before and, in any case, the long-term implications of this policy issue are difficult to gauge with any accuracy. Still, the issue of anticipatory force ought to be the subject of further discussion within the Alliance as it directly relates to NATO’s expanded ambit of operations, future expeditionary engagements, and transition towards a more proactive military alliance. For the time being, the implications of the trends identified in this analysis are unclear and anticipatory force remains a curious theme in NATO’s evolving strategic doctrine.

\textsuperscript{44} Yost, “NATO and the Anticipatory Use of Force,” 65.
\textsuperscript{45} Kristen Rafferty provides an analysis of how the issue of anticipatory force could become an issue of contention and, under certain circumstances, have detrimental effects on Alliance functionality. See; Rafferty, “From Missile Defence to Preemption,” 173-195.
Bibliography


