

# Oxford Public International Law



## Warsaw Treaty Organization

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## A. Historical Background and Establishment

**1** The Warsaw Treaty Organization was created by the signing of the Treaty of Friendship, Co-operation and Mutual Assistance ('Warsaw Pact') on 14 May 1955 in the Polish Capital, supplemented by a Resolution on the Establishment of a Joint Command of the Armed Forces of the Signatories to the Treaty of Friendship, Co-operation and Mutual Assistance. The Warsaw Pact was initiated by the USSR and signed by the USSR and its allies Albania, Bulgaria, Czechoslovakia, the German Democratic Republic ('GDR'), Hungary, Poland, and Romania. The Warsaw Pact, a multilateral treaty of alliance consisting of 11 articles was concluded in addition to the existing bilateral treaties of the USSR, with all but two signatories of the Warsaw Pact. The GDR and Albania had not been parties to the system of bilateral treaties, and hence the conclusion of the Warsaw Pact represented a significant extension of the Soviet system of → *alliances* at the time of its creation.

**2** The Warsaw Pact was concluded according to its Art. 11 for a limited time of 20 years, with the possibility of an extension for further 10 years. Such an extension occurred in 1975. After the expiry of this period, on 26 April 1985, a Protocol Extending the Period of Validity of the Treaty of Friendship, Co-operation and Mutual Assistance ('1985 Protocol') was concluded stipulating that the Warsaw Pact remains in force for further 20 years. This protocol also opened the possibility of an automatic extension of another 10 years.

## B. Main Purposes

**3** The immediate reason of the conclusion of the Warsaw Pact expressly reflected in its preamble was the accession of the Federal Republic of Germany to the → *North Atlantic Treaty Organization (NATO)* on 6 May 1955. At the same time, the formation of a legally defined, multilateral alliance reinforced the USSR's claim to be leader of the world socialist system. Against this background and in the circumstances of the → *Cold War (1947-91)*, references to the desire to create a system of → *collective security* in Europe based on the participation of all European States in the preamble and in Art. 11 Warsaw Pact did not reflect the realities of the time. Instead, the Warsaw Pact was rather focused on collective → *self-defence*, and served as a useful tool for the USSR to control its Eastern European allies. Further, the Warsaw Pact created a sound legal basis for the military presence of the USSR in Hungary and Romania, and provided the USSR an official counterweight to NATO in East-West diplomacy.

**4** Both the preamble and Art. 4 Warsaw Pact made it clear that the central purpose of the establishment of the organization was to ensure the exercise of the right of self-defence, both collective and individual in accordance with Art. 51 → *United Nations Charter* (145 BSP 805). Art. 4 Warsaw Pact provides:

In the event of an armed attack in Europe on one or more of the States Parties to the Treaty by any State or group of States, each State Party to the Treaty shall, in the exercise of the right of individual or collective self-defence, in accordance with Article 51 of the United Nations Charter, afford the State or States so attacked immediate assistance, individually and in agreement with the other States Parties to the Treaty, by all the means it considers necessary, including the use of armed force.

**5** This language does not create an automatic obligation on the members to actually use force in defence of the member attacked (see also → *Use of Force, Prohibition of*). Rather, it leaves room for each ally in their decision whether or not to protect the → *territorial integrity and political independence* of each other and on the manner and means of doing so. The only clear cut obligation arising from Art. 4 Warsaw Pact in case of an armed attack was that the States Parties to the Warsaw Pact had to consult together immediately concerning the joint measures necessary to restore and maintain international peace and

security. Art. 4 Warsaw Pact is carefully worded to follow the provisions of Art. 51 United Nations Charter. The scope of Art. 4 Warsaw Pact is, however, expressly limited to → *armed attack[s]* in Europe, even though the larger part of the territory of the USSR lay outside Europe. Art. 4 Warsaw Pact was never invoked throughout its 36-year history.

**6** More practical relevance could be attached to the → *consultation* mechanism envisaged by Art. 3 Warsaw Pact, according to which the contracting parties would consult together on all important international questions involving their common interest, with a view to strengthening international peace and security. Further, if any one of the contracting parties considered that a threat of armed attack on one or more of the State Parties had arisen, Art. 3 Warsaw Pact foresaw an immediate consultation with a view to providing for their joint defence and maintaining peace and security.

**7** In spite of its primary focus on self-defence, the preamble of the Warsaw Pact referred to the desire to create a system of collective security based on the participation of all European States and the need to ensure peace in Europe. Although that language remained to be mere lip service throughout the existence of the organization, the members of the Warsaw Pact repeatedly took part in efforts aimed at reducing conventional armed forces in Europe. In 1973, the Mutual and Balanced Force Reduction Talks started in Vienna between the United States, the USSR, and other NATO and Warsaw Pact members with a view to reduce troops and armaments in Central Europe. The talks never reached an agreement, and were ultimately replaced in 1989 by → *negotiation[s]* within the framework of the Conference on Security and Co-operation in Europe (→ *Organization for Security and Co-operation in Europe [OSCE]*) between NATO and the Warsaw Pact members. In the changed circumstances, these negotiations were successful and led to the signing of the Treaty on Conventional Armed Forces in Europe on 19 November 1990 in Paris ((1991) 30 ILM 6). The → *Conventional Armed Forces in Europe (CFE) Regime* thus created survived the Warsaw Pact.

## **C. Structure**

### **1. Membership**

**8** As the original eight members of the Warsaw Pact were European, the organization can be regarded as a means of → *regional co-operation*. Membership in the Warsaw Pact was nevertheless not formally limited to European States. The preamble of the Warsaw Pact referred to the need that the peace-loving States of Europe take the necessary steps to safeguard their security and to promote the maintenance of peace in Europe. But Art. 9 Warsaw Pact allowed for the possibility of accession without geographical limitation.

**9** During the existence of the Warsaw Pact, membership remained relatively constant. Both the Warsaw Pact and the 1985 Protocol expressly provided for the possibility of unilateral termination on a notice of one year. Albania withdrew from the organization in 1968 in response to the armed intervention of the USSR and its allies in Czechoslovakia. Besides this no member made effective use of this opportunity until the collapse of communist rule in Eastern Europe. The GDR left the organization in the process of the reunification of Germany in September 1990 only a few months before the dissolution of the Warsaw Pact in February 1991. This was clearly a result of the fact that the Warsaw Pact operated as a means of maintaining the → *hegemony* of the USSR in Eastern Europe. An example of this was the fact that the intention of the Hungarian Government to withdraw from the Warsaw Pact in the course of the 1956 revolution declared in a telegram to diplomatic missions in Budapest on 1 November 1956 (reprinted in Mastny and Byrne 83) was responded to by a military intervention of the Soviet army. For similar reasons, no new member joined the Warsaw Pact in the course of its existence. Although Mongolia applied for membership on

15 July 1963 (reprinted in Mastny and Byrne 152), the application was not supported by the allies of the USSR nor by the Soviet government in the end either.

## 2. Organs

**10** The Warsaw Pact provided for the establishment of two organs: in Art. 5 Warsaw Pact a Unified Command; and in Art. 6 Warsaw Pact a Political Consultative Committee ('PCC'). Art. 6 Warsaw Pact also authorized the PCC to establish auxiliary organs as may prove to be necessary. The creation of these auxiliary organs by the PCC occurred via unpublished resolutions as did also the regulation of their powers and their relationship vis-à-vis other organs of the organization. Accordingly, parts of the institutional framework of the Warsaw Pact can be reconstructed from press communiqués following the meeting of the PCC.

**11** The Joint Command was established by the Resolution on the Establishment of a Joint Command of the Armed Forces of the Signatories to the Treaty of Friendship, Co-operation and Mutual Assistance on the day the Warsaw Pact was signed. The formation of the PCC was only announced on 20 January 1956 ([1956] 12 (1) Zbiór Dokumentów 91). On its first meeting, the PCC created as auxiliary organs a Permanent Commission for Foreign Policy Issues and a Joint Secretariat. Neither of these organs became visibly operational in the early years of the organization. On 17 March 1969, in a meeting of the PCC in Budapest, some structural reforms were decided ('Budapest Reforms'), involving the creation of the Committee of Defence Ministers, the Military Council, and the Technical Committee of the Joint Armed Forces (New Secret Statutes of the Warsaw Pact). In January 1972 the PCC announced that its activities were aided by a Secretary General to the PCC. A second round of institutional changes adopted on 26 November 1976 in Bucharest created as a political organ a Committee of Ministers of Foreign Affairs and recreated the Joint Secretariat ([1976] 32 Zbiór Dokumentów 1182).

**12** Within the institutional framework of the Warsaw Pact the PCC possessed a central role as the highest political body. Art. 6 Warsaw Pact stated that each State-participant of the Warsaw Pact would be represented in the PCC by a member of the government or another specially appointed representative. The first session of the PCC was attended by chairmen or first vice-chairmen of the councils of ministers, and the ministers of defence. Later it became practice that the delegations of the Member States were led by the first or general secretary of the communist party of the respective country. After 1961, the Commander-in-Chief of the Joint Armed Forces regularly took part in the meetings of the PCC, and from 1972 so did the Secretary General.

**13** The powers of the PCC are only vaguely defined by Art. 6 Warsaw Pact as 'carrying out the consultations provided for in the present Treaty between the States Parties' and 'consideration of matters arising in connexion with application of the present Treaty'. It remained unclear to what an extent the PCC independently issued general policy directions.

**14** The meetings of the foreign ministers had an important role in the operation of the alliance from 1959, and the creation of the Committee of Ministers of Foreign Affairs reinforced this role. Coordination of the foreign policy of the members effectively took place in the Committee of Ministers of Foreign Affairs, taking into account the PCC foreign policy resolutions and recommendations. Further, the Committee of Ministers of Foreign Affairs had the task of preparing the agendas and resolutions of the PCC and supervising the implementation of the foreign policy decisions by the individual Member States. Given the nature of the relationship between the USSR and its allies, such supervision was clearly unimaginable vis-à-vis the USSR.

**15** The Committee of Ministers of Defence—consisting of the defence ministers of the Member States and of the Chief of Staff of the Joined Armed Forces—was the highest military body of the Warsaw Pact, governed by the New Secret Statutes of the Warsaw Pact of 17 March 1969. This committee had the task of discussing questions on strengthening the defence capacity of the allies and of elaborating recommendations of the PCC.

**16** Actual military leadership was to be exercised in the Warsaw Pact by the Joint Command of the Joint Armed forces, headed by a Commander-in-Chief and having its headquarters in Moscow. Neither the Warsaw Pact nor the Resolution on the Establishment of a Joint Command regulated the manner in which the Commander-in-Chief was to be appointed. Throughout the history of the Warsaw Pact it has not become clear who had the capacity to appoint the Commander-in-Chief. The times of the appointment of the different Commanders-in-Chief—all Soviet nationals—did not correlate with the meetings of the PCC. It was even unclear, whether this position was a full-time occupation. Only after the collapse of the USSR has a resolution of the Central Committee of the Communist Party of the USSR become public, and according to this the Commander-in-Chief of the Joint Armed forces should have been identical to the Commander-in-Chief of the Armed Forces of the USSR. The Commander-in-Chief was assisted by deputies, these were initially defence ministers of the allies, and after the Budapest Reforms in 1969 the deputies were the defence ministers' deputies.

### **3. Decision-Making Process**

**17** The Warsaw Pact itself did not contain a general provision on the way decisions were to be made within the organization. Certain questions are referred to consultation of the parties (ie when a threat of armed attack arises under Art. 3 Warsaw Pact, or an actual armed attack occurs under Art. 4 Warsaw Pact), and Art. 5 Warsaw Pact refers to further agreement on the Joint Command. The latter certainly presupposes unanimity, but the absence of the regulation of the decision-making process and the formally equal sovereignty of the members (→ *States, Sovereign Equality*) imply that all decisions were to be made by → *consensus*. Beyond this legal presumption, however, historical analysis indicates that major decisions were made by the headquarters of the armed forces of the USSR.

### **4. Finances**

**18** No actual records are available on the finances of the Warsaw Treaty Organization. Scholarly treatises are also silent on this matter. This is certainly a result of the secrecy surrounding the organization, but it can also be explained by the relatively low intensity of the formalized activities of the alliance. Based on the fact that all important organs of the Warsaw Pact were located in Moscow it is assumed by some commentators that the operational costs of the pact were born by the USSR.

## **D. Dissolution of the Warsaw Pact**

**19** The collapse of Soviet rule in Eastern Europe made the dissolution of the Pact inevitable. As a first step, a Protocol was signed on 25 February 1991 in Budapest by the remaining six members that dissolved all military organs and structures of the organization as of 31 March 1991. Shortly thereafter, on 1 July 1991 in Prague a new Protocol was signed that declared that upon the entry into force of the Protocol the Warsaw Pact would cease to exist and that the signatories to the Protocol would have no pecuniary claims against each other based on the Warsaw Pact.

## E. Special Legal Problems

**20** Special legal problems could have arisen from the relationship between the Warsaw Pact and the bilateral treaties of alliance between the members of the Warsaw Pact. The bilateral treaties existing at the time of the conclusion of the treaty were later replaced, and the new treaties also became subject to amendments. These treaties also provided for a mutual obligation of assistance in the case of an armed attack, yet the scope of the respective provisions was not limited to Europe. Further, the language of these provisions was often slightly different from each other and from the Warsaw Pact itself.

**21** A differing language could also have posed a—at least—theoretical problem with regard to the GDR. The German language version of Art. 4 Warsaw Pact provided for the obligation to afford assistance to the Member State attacked ‘individually and in agreement with the other States Parties to the Treaty, by all the means *they* consider necessary’ (translation by the author; emphasis added). In contrast, other language versions of the Warsaw Pact required assistance from the members ‘by all the means *it* considers necessary’ (emphasis added). From this it could be inferred that the GDR could not decide about the means necessary to provide assistance on its own. In practice, this interpretational question remained unsettled; in any case, in light of the decisive role of the Joint Command of the Armed Forces practically exercised by the headquarters of the Soviet army, it can be qualified as an academic one.

## F. Evaluation

**22** Records of the meetings of the different organs of the Warsaw Pact indicate that the formalized activity of the organization was never really intensive. Between 1955 and 1991 the PCC did not convene more than 25 times. In general, the whole functioning of the organization was not characterized by formal procedures and decision-making. This was a logical consequence of the predominant role of the USSR within the Warsaw Pact and the general lack of the → *rule of law* in the States of the Soviet influence zone.

**23** It would be an overstatement to describe the Warsaw Treaty Organization as the legal means of maintaining Soviet hegemony in Central and Eastern Europe. The Warsaw Pact itself did not refer to the necessity of protecting the socialist political and economic system in the Member States, as opposed to many bilateral treaties concluded or amended from 1970 onwards between different members of the Warsaw Pact. Nor did it authorize any sort of intervention in case a member decided to leave the alliance. Accordingly, the military intervention in Hungary and in Czechoslovakia did not formally occur under the auspices of the Warsaw Pact. Yet the Warsaw Pact existed because of the political and military division of Europe and was certainly the symbolic expression of the Soviet rule that lasted more than 40 years in the region.

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