



1991

The North Atlantic Treaty and European Security After the Cold War

Jane E. Stromseth

Georgetown University Law Center, stromset@law.georgetown.edu

This paper can be downloaded free of charge from:
<https://scholarship.law.georgetown.edu/facpub/1676>

24 Cornell Int'l L.J. 479

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author.
Follow this and additional works at: <https://scholarship.law.georgetown.edu/facpub>



Part of the [International Law Commons](#)

The North Atlantic Treaty and European Security after the Cold War

Introduction

The recent dramatic events in Europe, notably the reunification of Germany, the collapse of Communist rule in Eastern Europe and the Soviet Union, the start of Soviet troop withdrawals, and the demise of the Warsaw Pact, represent an historic political triumph for the countries of the North Atlantic Alliance. At the same time, these developments have called into question the Alliance's continued relevance in a radically new environment.

At a time of far-reaching change, it is imperative to ask fundamental questions about the nature of security in Europe, the threats to that security, and the institutions best suited both to protect and to promote security in the years ahead. In particular, does the North Atlantic Treaty Organization ("NATO") have any major role to play in fostering security and constructive change in Europe in the coming decade and beyond? If so, what changes in NATO's purposes and organizational structure should be considered?

As they grapple with these questions, the member states of the Alliance must address four basic issues: First, what political role could the Alliance usefully play in furthering security and stability in Europe and should this role differ in significant respects from the Alliance's political role in the past? Second, what military role, if any, could the Alliance usefully perform? Third, should the Alliance attempt to address security threats that arise outside the North Atlantic area? And, finally, what relationship should NATO have to other European institutions, such as the European Community ("EC"), the Western European Union ("WEU"), and the Conference on Security and Cooperation in Europe

* B.A., Swarthmore; D. Phil., Oxford; J.D., Yale. Associate Professor of Law, Georgetown University Law Center.

The author is grateful to Ivo Daalder for his comments and help with sources, to James Schear for his comments and encouragement, to Hans Steinhoffer for his able research assistance, and to her daughter Sarah for providing a new perspective on this and all things.

("CSCE")? Ultimately, the members of the Alliance must ask whether NATO should continue to exist as a central institution addressing European security in the decades ahead.

This Article will address these questions. It begins by briefly examining the original purposes of the North Atlantic Treaty and the subsequent evolution of the NATO organization to gain a sense of the history and possible flexibility of the Alliance in response to radically changed circumstances. Against this historical background, this Article will then assess the prospects and the merits of efforts to redefine NATO's purposes, organization, and forces in light of the new challenges to security in Europe that are currently evolving.

I. Original Threats, Original Purposes

The years immediately following World War II witnessed a breakdown of the wartime coalition as the Soviet Union rapidly expanded and consolidated its power in Eastern Europe. Faced with a daunting task of economic reconstruction, West Europeans feared a continued expansion of Soviet power and influence in a westward direction. They were also anxious about the future evolution of post-war Germany. In the Brussels Treaty of 1948, Britain, France, Belgium, the Netherlands, and Luxembourg formed a security alliance to protect against the possibility of a renewed threat from Germany.¹ At the same time, Britain led efforts to secure a treaty commitment from the United States to the defense of Western Europe.² The negotiations over a formal U.S. commitment culminated in the North Atlantic Treaty, which was signed in Washington, D.C., on April 4, 1949,³ a few months before the Soviet Union tested its first atomic bomb.⁴ The American security guarantee, backed by the U.S. strategic nuclear arsenal, was designed to deter Soviet intimidation or military aggression against Western Europe and to restore political confidence and stability as the European allies rebuilt

1. The parties to the Brussels Treaty agreed, *inter alia*, "to take such steps as may be held necessary in the event of renewal by Germany of a policy of aggression." Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defense, Mar. 17, 1948, 19 U.N.T.S. 51, 53. This text was subsequently deleted when the Treaty was modified by Protocol No. 1 of the 1954 Paris Agreements, and it was replaced with the phrase "to promote the unity and to encourage the progressive integration of Europe." Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany, Oct. 23, 1954, 6 U.S.T. 4117, T.I.A.S. No. 3428, 331 U.N.T.S. 253.

2. See Hendrickson, *The Creation of the North Atlantic Alliance*, in AMERICAN DEFENSE POLICY 298-99 (J. Reichart & S. Sturm eds., 5th ed. 1982). See generally N. HENDERSON, *THE BIRTH OF NATO* (1983).

3. North Atlantic Treaty, April 4, 1949, 4 Bevans 828, 63 Stat. 2241, T.I.A.S. No. 1964, 34 U.N.T.S. 243 [hereinafter North Atlantic Treaty]. The original signatories to the North Atlantic Treaty included Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Great Britain, and the United States.

4. M. BUNDY, *DANGER AND SURVIVAL* 197 (1988).

their devastated economies.⁵ The American guarantee also served to reassure Germany's neighbors, particularly France, against any possible future threat from Germany.⁶

The heart of the Treaty is Article 5, in which the parties agree that "an armed attack against one or more of them in Europe or North America shall be considered an attack against them all" and that in the event of such an attack, each of them, exercising the right of self-defense, will take forthwith "individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area."⁷ The parties also pledge, in Article 3, to develop their "individual and collective capacity to resist armed attack" by means of "continuous and effective self-help and mutual aid."⁸ Article 5's collective defense commitment is limited by Article 6 to attacks on allied territory, vessels or aircraft within a defined North Atlantic area.⁹

At the same time, the Treaty provides for political consultation on security concerns that are not limited in geographical scope. Thus, Article 4 states that "[t]he Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened."¹⁰ More broadly, Article 2 provides that "[t]he Parties will contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions, by bringing about a better understanding of the principles upon which these institutions are founded, and by promoting conditions of stability and well-being."¹¹

The Treaty is flexible with respect to the development of implementing institutions. Article 9 established a Council, on which each party would be represented, to consider implementation of the Treaty. The Council was given the flexibility to "set up such subsidiary bodies as may be necessary."¹² The only specific task imposed on the Council by the Treaty was to establish immediately a defense committee to recommend measures to implement Articles 3 and 5.¹³

The Treaty is flexible in another respect: it provides that the parties can, by unanimous agreement, "invite any other European state in a position to further the principles of this Treaty and to contribute to the

5. See R. OSGOOD, *NATO: THE ENTANGLING ALLIANCE* 30-32 (1961).

6. See T. IRELAND, *CREATING THE ENTANGLING ALLIANCE* 4-5 (1981).

7. North Atlantic Treaty, *supra* note 3, 4 Bevens, at 829.

8. *Id.*

9. *Id.* Article 6 was revised somewhat by Article 2 of the Protocol to the North Atlantic Treaty on the Accession of Greece and Turkey, Oct. 17, 1951, 3 U.S.T. 43, T.I.A.S. 2390, 126 U.N.T.S. 350, which entered into force on Feb. 15, 1952 [hereinafter Protocol].

10. North Atlantic Treaty, *supra* note 3, 4 Bevens, at 829.

11. *Id.*

12. *Id.* at 830.

13. *Id.*

security of the North Atlantic area to accede to this Treaty.”¹⁴ Greece and Turkey joined the Alliance in 1952,¹⁵ as did the Federal Republic of Germany in 1955,¹⁶ and post-Franco Spain in 1982.¹⁷ The Treaty also recognizes the need for reassessment in light of changing circumstances. While parties could withdraw after the Treaty had been in force for twenty years,¹⁸ any party could request after ten years that the allies “consult together for the purpose of reviewing the Treaty, having regard for the factors then affecting peace and security in the North Atlantic area, including the development of universal as well as regional arrangements under the Charter of the United Nations for the maintenance of international peace and security.”¹⁹

The relationship of the Alliance to the United Nations was an issue of concern to the drafters of the North Atlantic Treaty. The allies initially took differing views on whether the Alliance constituted a regional arrangement under Chapter VIII of the UN Charter.²⁰ This issue was significant because regional arrangements are obliged under Article 53 of the UN Charter to obtain Security Council authorization before engaging in “enforcement actions.”²¹ The French took the view that the Alliance was both a regional arrangement under Chapter VIII and a collective defense system under Article 51 of the UN Charter.²² The British, in contrast, distinguished between a collective defense arrangement based on Article 51 directed against attacks from *outside* the membership of the Alliance, on the one hand, and regional arrangements designed to perform regional functions, such as the settling of disputes *between* members, on the other.²³ Ultimately, the allies decided to omit any reference to Chapter VIII in the Treaty and agreed that they would stress the relationship of the Alliance to Article 51 in their public statements.

The Senate Foreign Relations Committee, in its report recommending ratification of the North Atlantic Treaty, voiced concern about

14. *Id.*

15. See Protocol, *supra* note 9, which entered into force on February 15, 1952.

16. Protocol to the North Atlantic Treaty on the Accession of the Federal Republic of Germany, Oct. 23, 1954, 6 U.S.T. 5707, T.I.A.S. No. 3428, which entered into force on May 5, 1955 [hereinafter Protocol on Accession of Fed. Rep. Germany].

17. Protocol of Accession of Spain to the North Atlantic Treaty, Dec. 10-11, 1981, 34 U.S.T. 3508, T.I.A.S. No. 10564, which entered into force on May 30, 1982.

18. North Atlantic Treaty, *supra* note 3, 4 Bevens, at 831 (art. XIII).

19. *Id.* (art. XII).

20. See N. HENDERSON, *supra* note 2, at 101-03.

21. Article 53 of the UN Charter provides that, with one exception, “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.” U.N. CHARTER art. 53.

22. N. HENDERSON, *supra* note 2, at 101. Article 51 of the UN Charter provides: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.” U.N. CHARTER art. 51. On collective defense, see Y. DINSTEIN, WAR, AGGRESSION, AND SELF-DEFENSE 230-53 (1988).

23. N. HENDERSON, *supra* note 2, at 102.

the Treaty's relationship to the United Nations in another respect. The Committee expressed the view that political consultation under Article 4 of the Treaty (on threats to the territorial integrity, political independence, or security of the parties) "should not be held under the treaty unless the United Nations is for some reason prevented from dealing with the particular situation which has arisen."²⁴ On the question whether the Treaty established a regional arrangement under Chapter VIII of the UN Charter, however, the Committee was agnostic: while the Treaty was designed primarily to establish a collective defense organization, it was "not necessary to define the organization . . . as exclusively one or the other" and it could be "utilized as a regional arrangement under chapter VIII or in any way" that would help accomplish the purposes of the UN Charter.²⁵

II. From Treaty to Integrated Military Organization

The Congressional hearings on the North Atlantic Treaty indicate the fundamental importance placed on the economic recovery of Western Europe by executive branch officials and members of Congress alike.²⁶ The security guarantee provided by the Treaty together with U.S. military assistance were seen as central to restoring the confidence and economic health so vital to the security of Western Europe. The hearings also reveal that it was generally understood in 1949 that U.S. military assistance to Europe would take the form of equipment and supplies, not ground troops.²⁷ Executive branch witnesses downplayed the prospect that U.S. ground forces would be deployed in Europe pursuant to Article 3. When asked by Senator Hickenlooper, for example, whether Americans were "going to be expected to send substantial numbers of troops over there as a more or less permanent contribution to the development of these countries' capacity to resist," Secretary of State Dean Acheson replied, "The answer to that question, Senator, is a clear and absolute 'No.'"²⁸

As is well known, the invasion of South Korea in June 1950 galvanized the transformation of the Alliance from a guarantee pact to an integrated military organization.²⁹ Allied concerns about Soviet military intentions led to the deployment of U.S. ground forces in Western

24. SENATE COMMITTEE ON FOREIGN RELATIONS, NORTH ATLANTIC TREATY, S. REP. NO. 48, 81st Cong., 1st Sess. 21 (1949) [hereinafter SENATE REPORT].

25. *Id.* at 22.

26. *See, e.g., North Atlantic Treaty, Hearings Before the Senate Committee on Foreign Relations*, 81st Cong., 1st Sess. 37, 57 (1949) (testimony of Secretary of State Acheson) [hereinafter *Hearings*]; *id.* at 131-132 (testimony of Warren R. Austin); *id.* at 145 (testimony of Secretary of Defense Louis Johnson).

27. *See, e.g., Hearings, supra* note 26, at 40, 47 (testimony of Sec. of State Acheson); *id.* at 191, 195, 213, 217 (testimony of W. Averell Harriman); *id.* at 265 (testimony of Robert A. Lovett); *id.* at 289, 291, 333 (testimony of General Omar N. Bradley).

28. *Id.* at 47 (testimony of Sec. of State Acheson).

29. *See* R. OSGOOD, *supra* note 5, at 74.

Europe and the development of an integrated military command under U.S. leadership. The Alliance adopted the Lisbon force goals in February 1952 which called for 96 NATO divisions by 1954.³⁰ Such a build-up was dependent upon a contribution from the Federal Republic of Germany, which joined NATO in 1955.³¹ The ambitious Lisbon goals were soon scaled back, however, as NATO followed the lead of the Eisenhower Administration and adopted a "New Look" strategy which was based on early use of nuclear weapons in response to a Soviet attack.³² This nuclear strategy was based both on the belief that NATO could not match the conventional strength of the Warsaw Pact and on the assumption that the tactical use of nuclear weapons could offset any NATO conventional inferiorities in a conflict.

By the late 1950s and early 1960s, criticism of NATO's overreliance on nuclear weapons was growing. The Kennedy and Johnson Administrations led NATO's transition to a stronger conventional force posture and a strategy of "flexible response." Formally adopted in 1967, flexible response provided for an initial conventional defense to a conventional aggression with the option of a deliberate escalation to nuclear weapons if NATO's conventional forces could not contain an attack.³³ Flexible response remained NATO's declaratory strategy until the London Summit of July 1990, when Alliance leaders announced their intention to adopt "a new NATO strategy making nuclear weapons truly weapons of last resort."³⁴

What can we learn from this historical experience? First, the North Atlantic Treaty is flexible both with respect to the means of self-defense and the development of supporting institutions. The integrated military organization we know today as NATO was by no means preordained by the terms of the North Atlantic Treaty. Second, while the Treaty did not preclude joint action in response to conflicts outside the NATO area, it did not specifically provide for anything beyond consultation. The Treaty's limitation on defense obligations to cases of armed attack against allied territory within a defined North Atlantic area was a recognition of the controversial nature of any efforts to reach agreement on collective action on a broader geographical scale. Third, the relationship of NATO to other global and regional institutions was never fully joined: issues of competing responsibilities were not directly faced in large part because the United Nations was a fledgling organization (and limited in effectiveness by superpower disagreement) and other institu-

30. *Id.* at 87.

31. See Protocol on Accession of Fed. Rep. Germany, *supra* note 16. See also R. OSGOOD, *supra* note 5, at 91-98.

32. See R. OSGOOD, *supra* note 5, at 102-46.

33. See J. STROMSETH, *THE ORIGINS OF FLEXIBLE RESPONSE* 1, 175 (1988).

34. The London Declaration on a Transformed North Atlantic Alliance, reprinted in U.S. Department of State, Selected Document No. 38 (July 1990) [hereinafter London Declaration], at 3. Whether making nuclear arms "weapons of last resort" constitutes a real change in NATO strategy is subject to debate. See, e.g., Gordon, *Nuclear Strategy Shift?*, N.Y. Times, July 3, 1990, at A1.

tions in Europe were not fully developed. In 1954, the original parties to the Brussels Treaty of 1948 modified the treaty and formed the Western European Union and invited West Germany and Italy to join.³⁵ But in the face of massive Soviet conventional forces in Eastern Europe and considerable Soviet nuclear capabilities, NATO remained the focal point of West European defense.³⁶

III. New Threats, New Structures?

The dramatic changes in Eastern Europe and the Soviet Union that have occurred during the Gorbachev era have fundamentally altered the nature of the threats to security in Europe. NATO's traditional worry about Soviet capabilities for a massive short-warning conventional attack on Western Europe is no longer a realistic concern as a result of the Conventional Armed Forces in Europe ("CFE") Treaty and other Soviet treaty commitments to withdraw Soviet forces from Eastern Europe.³⁷ As the communique from the December 1990 ministerial meeting of the North Atlantic Council stated, "[T]he risks that Allies now face in Europe arise less from a likelihood of deliberate aggression against Allied territory by former adversaries, than from the unforeseeable strategic consequences of instabilities that might emerge in a period of rapid and widespread political and economic transformation."³⁸

In the decade ahead, the main threats and challenges to security in Europe are likely to be fourfold. First, instabilities in the Soviet Union, including the real possibility of violence within or between the republics,

35. P. BORCIER, *THE ASSEMBLY OF WESTERN EUROPEAN UNION 14-17 (1975)*. The Paris Agreements of 1954 are reprinted in *NATO INFORMATION SERVICE, NATO FACTS AND FIGURES 306-34 (1971)*.

36. In 1950, the military command structures of the Brussels Treaty Organization were effectively folded into NATO organizational structures. See P. BORCIER, *supra* note 35, at 13-14.

37. The CFE Treaty was signed by the 22 member states of NATO and the Warsaw Pact on November 19, 1990. See Fact Sheet: The CFE Treaty, U.S. Department of State Dispatch, Vol. 1, No. 13 (Nov. 26, 1990). In early 1991, disputes over Soviet claims that certain combat equipment was exempt from the Treaty limits delayed the Treaty's submission for Senate approval and deferred negotiations over a follow-on treaty. See Gordon, *Outlook is Cloudy for an Arms Deal by U.S. and Soviets*, N.Y. Times, Feb. 6, 1991, at A1. These disputes subsequently were resolved. See Friedman, *NATO-Warsaw Pact Arms Dispute Ends*, N.Y. Times, June 15, 1991, at I:3.

The Soviet Union has concluded bilateral treaties with Czechoslovakia and Hungary providing for the withdrawal of Soviet forces by the end of 1991. See Gati, *Central Europe Is Scared*, N.Y. Times, Feb. 14, 1991, at A27. Poland hopes to conclude a similar treaty with the Soviet Union but the negotiations have run into difficulties. See Battiatia, *Soviets Rebuff Poles on Troop Pullout*, Wash. Post, Feb. 13, 1991, at A14. Under the terms of the Treaty on the Final Settlement with Respect to Germany, the Soviet Union is obligated to remove all its troops from German territory by 1994. See Article 4(1), reprinted in *Arms Control Today* (Oct. 1990), at 34.

38. North Atlantic Council Ministerial Communique, December 1990 [hereinafter *Communique*], paragraph 4, reprinted in 38 *NATO Review*, No. 6, at 22 (Dec. 1990).

might threaten to spill across borders or draw in outside participants.³⁹ Moreover, substantial military capabilities still exist within the Soviet Union, including diverse nuclear capabilities control of which is uncertain and subject to change.⁴⁰ Second, risks and challenges to European security will arise from instabilities within Eastern Europe, including ethnic conflicts, secessionist pressures, refugee flows, and the numerous difficulties involved in making the transition to democracy and to viable market economies.⁴¹ Third, although often unspoken, Germany's neighbors are concerned to see that Germany, with its considerable economic, political, and military power, remains firmly rooted in Western collective institutions.⁴² Finally, threats to European security may arise from outside Europe, as illustrated by the risks Turkey faced during the Gulf War.

To what extent can NATO evolve in ways that make it more responsive to the current challenges to European security? Can it, in the words of a recent NATO communique, be "both an anchor of stability and an agent of change"?⁴³ At the broadest level, such questions inevitably raise the issue of the nature and desirability of an American commitment to European security in the coming decades. The current U.S. administration has argued that a strong North Atlantic Alliance, including active American political engagement and a continuing U.S. military presence in Europe, is the essential foundation for a secure Europe well into the future.⁴⁴ The United States recognizes that it exercises its greatest influence on matters of European security in the councils of NATO, and that American influence will diminish as broader European institutions expand in scope and importance. In contrast, the French government has taken the lead, along with Foreign Minister Hans-Dietrich Genscher of Germany, in urging that the European Community ("EC") develop a

39. See, e.g., *The United States and NATO in an Undivided Europe*, Report by the Working Group on Changing Roles and Shifting Burdens in the Atlantic Alliance (1991) [hereinafter Report], at 5-6; Olcott, *The Soviet Dis(Union)*, 82 FOREIGN POLICY 118 (1991); Keller, *In Soviet Life, Thaw Becomes Chill*, N.Y. Times, Feb. 3, 1991, at 1; Gati, *supra* note 37.

40. See Report, *supra* note 39, at 11-12.

41. See, e.g., Nelson, *Europe's Unstable East*, 82 FOREIGN POLICY 137 (1991); Bohlen, *3 East European States Grope for Union*, N.Y. Times, Dec. 16, 1990, at I:16; Heisbourg, *Population Movements in Post-Cold War Europe*, 33 SURVIVAL 31 (Jan/Feb 1991). The recent turmoil in Yugoslavia is but one illustration of the difficult problems facing Eastern Europe. See Sudetic, *Yugoslav Planes Strafe and Bombs Breakaway State*, N.Y. Times, June 29, 1991, at I:1, col. 6.

42. See Report, *supra* note 39, at 6.

43. See Communique, *supra* note 38, at 24 (para. 17).

44. See, e.g., the following speeches: President Bush, *NATO and the US Commitment to Europe*, May 4, 1990, reprinted in U.S. Department of State, Current Policy No. 1276, at 2; Secretary of State Baker, *A New Europe, A New Atlanticism: Architecture for a New Era*, Dec. 12, 1989, reprinted in U.S. Department of State, Current Policy No. 1233 [hereinafter *A New Europe*], at 2; Baker, *The NATO Alliance and the Future of Europe*, June 7, 1990, reprinted in U.S. Department of State, Current Policy No. 1284, at 3. See also Rosenthal, *Bush Sees Revamped NATO as Core of Europe's Power*, N.Y. Times, May 5, 1990, at I:4; Osborne, *U.S. Warns EC Not to 'Disrupt' Role of NATO*, Independent (U.K.), Mar. 6, 1991, at 9.

common security policy as well as a European military force, which would be created by merging the WEU and the EC perhaps by the late 1990s.⁴⁵ Some of the other Western European allies, such as Italy, are sympathetic to this position, while others, notably Britain and the Netherlands, stress the need to preserve a strong transatlantic security link through NATO and thus avoid actions that might distance the United States from Western Europe.⁴⁶

In the face of these rather different visions of the future of European security, any effort to recast the Alliance's mission is bound to be difficult, but it is not unprecedented. NATO recast its mission once before in response to significantly changed circumstances in the Harmel exercise of 1967, which took place during a time of growing interest in detente with the Soviet Union and the countries of Eastern Europe.⁴⁷ The Harmel Report, *Future Tasks of the Alliance*, stressed that "the political tasks of the Alliance have assumed a new dimension" and that in addition to its function of maintaining the military forces and political cohesion necessary for deterrence and defense, the Alliance would pursue a second function of working to resolve the underlying political issues in Europe, most notably through a policy of detente.⁴⁸ As the Report concluded, "The ultimate political purpose of the Alliance is to achieve a just and lasting peaceful order in Europe accompanied by appropriate security guarantees."⁴⁹ By recognizing that "military security and a policy of detente are not contradictory but complementary," but also stressing that "the pursuit of detente must not be allowed to split the Alliance," the Harmel exercise helped the Alliance chart a course through the changing circumstances of the next two decades.⁵⁰

In the present context, a new point of departure for the Alliance was set by the NATO Summit of July 1990, which produced the *London*

45. See *Franco-German Proposal for Joint EC Security Policy*, *The Week in Germany*, Feb. 8, 1991, at 2; Drozdiak, *Europe Disunited in Gulf Response*, *Wash. Post*, Feb. 19, 1991, at A6. Both Genscher and German Chancellor Helmut Kohl have stressed, however, that NATO remains an essential part of the structure of European security even as they have advocated that an integrated Western Europe and an expanded CSCE play a greater security role in the future. See, e.g., Kohl, *A United Germany in a United Europe*, June 5, 1990, reprinted in German Information Center, *Statements & Speeches*, Vol. 13, No. 15, at 3; Kohl, *Europe: Every German's Future*, Statement delivered on Feb. 3, 1990, reprinted in Press Release, Embassy of the Federal Republic of Germany, at 4,5,7; Genscher, *A Vision for the Whole of Europe*, Feb. 5, 1991, reprinted in German Information Service, *Statements & Speeches*, Vol. 14, No. 3, at 3-5; Genscher, *The Future of a European Germany*, Apr. 10, 1990, reprinted in German Information Service, *Statements & Speeches*, Vol. 13, No. 9, at 2-5.

46. See Drozdiak, *supra* note 45; Fitchett, *Dutch Show New Toughness on Defense*, *Int'l Herald Tribune*, Feb. 19, 1991; Riding, *Western Europe Urges Air Embargo Against Iraq*, *N.Y. Times*, Sept. 19, 1990, at A12; Mauthner, *U.S. Backs Stronger European Security and Defense Role*, *London Financial Times*, Dec. 18, 1990, at 2.

47. See Brockpahler, *The Harmel Philosophy: NATO's Creative Strategy for Peace*, 38 *NATO REVIEW*, No. 6, at 17 (Dec. 1990).

48. *Future Tasks of the Alliance* [hereinafter Harmel Report], reprinted in U.S. Department of State, *BULLETIN*, Vol. 58 (Jan. 8, 1968), at 51.

49. *Id.*

50. *Id.*

*Declaration on a Transformed North Atlantic Alliance.*⁵¹ In that historic document, the allies extended "the hand of friendship" to their former Cold War adversaries and proposed that the member states of the Warsaw Treaty Organization as well as all other CSCE member States join in a "joint declaration in which we solemnly state that we are no longer adversaries" and affirm a commitment to non-aggression.⁵² Such a declaration was made in November 1990 by the twenty-two countries that were members of NATO and the Warsaw Pact.⁵³ Following in the Harmel tradition, the NATO allies indicated in London their desire to enhance the political dimension of the Alliance, as provided for by Article 2 of the Treaty, in order to establish new partnerships with all the nations of Europe and to help build new structures of a more united continent. As a reflection of the Alliance's changing political role, the allies invited President Gorbachev and representatives from the countries of Eastern Europe to address the North Atlantic Council and even to establish regular diplomatic liaison and military contacts with NATO.⁵⁴

The allies also declared in London that NATO's military forces and strategy would be changed fundamentally in response to the new conditions in Europe: NATO would prepare a new military strategy moving away from its traditional "forward defense" to a reduced "forward presence" and modifying "flexible response" to make nuclear forces "truly weapons of last resort."⁵⁵ NATO's reduced reliance on nuclear weapons was reinforced in October 1991. Following a U.S. initiative to eliminate all ground-based tactical nuclear weapons in Europe, including artillery shells and short-range missiles, NATO leaders decided to cut in half NATO's stockpiles of air-launched nuclear weapons.⁵⁶ The result of these dramatic moves will be a remaining stockpile of about 700 air-launched nuclear weapons in Western Europe, which represents a reduction of eighty percent in NATO's existing nuclear arsenal.

NATO's initiatives to date are a sensible response to current trends. But whether they can keep the Alliance both vital and relevant in the future is far from clear. Analysis of this question can be divided into four areas: (1) redefining NATO's military role; (2) redefining NATO's political role; (3) NATO's role in conflicts outside the North Atlantic area; and (4) NATO's relationship to other European security institutions.

51. London Declaration, *supra* note 34.

52. *Id.* at 2 (paras. 4 & 6).

53. *Joint Declaration of Twenty-Two States*, Nov. 19, 1990, reprinted in 38 NATO REVIEW, No. 6, at 26-27 (Dec. 1990).

54. London Declaration, *supra* note 34, at 2 (paras. 7 & 8).

55. *Id.* at 3 (paras. 18 & 20).

56. Riding, *NATO to Cut Aircraft A-Bombs by 50%*, N.Y. Times, Oct. 18, 1991, at A3.

IV. Redefining NATO's Military Role

The London Declaration called for the preparation of "a new allied military strategy", as well as "new force plans consistent with the revolutionary changes in Europe."⁵⁷ That revision of NATO strategy and force plans is expected to be completed by the end of 1991.⁵⁸ As the North Atlantic Council examines the broader questions of NATO's future role, a Strategy Review Committee is developing a revised strategy focusing on three objectives—protecting the peace, crisis management, and deterring war.⁵⁹ In tandem, NATO's Military Committee is examining the forces needed to implement a revised strategy.

In the past, the fundamental military role of NATO has been clear and compelling: to deter an aggression from the Warsaw Pact and to defend NATO territory should such an aggression occur. The forces designed to provide a forward defense of NATO territory have included multinational forces divided into eight national corps equipped with both conventional and nuclear weapons and deployed in layer-cake fashion along the old inter-German border. The diminishing Soviet military presence in Central and Eastern Europe coupled with the demise of the Warsaw Pact on March 31, 1991,⁶⁰ make the prospect of the traditionally feared short-warning attack exceedingly unlikely. At the same time, because the Soviet Union (however it is reconstituted) will retain substantial conventional and nuclear forces within its borders, the Alliance should retain, as a matter of sheer prudence, a capability to deter and to respond to a possible reconstituted threat for the time being. Just as the Alliance enabled the Western Europeans to rebuild their economies after World War II without fear of being left vulnerable to Soviet military might, the Alliance can provide a backdrop of stability in Europe as the Eastern Europeans transform their political and economic systems and as the Europeans evaluate what sorts of institutional structures can best promote security in Europe in the decades ahead.

57. *Id.* at 3 (para. 20).

58. See Meham, *NATO Defense Ministers Drafting Strategy Based on Smaller and More Mobile Forces*, AVIATION WEEK & SPACE TECHNOLOGY, Dec. 17, 1990, at 70-71; Smith, *NATO Sets New Stance for New Era*, Wash. Post, May 29, 1991, at A1. In late May 1991, NATO defense ministers agreed to a major reorganization of NATO forces which will include a multinational rapid reaction force, seven defense corps in Central Europe, and a significant reduction in U.S. forces in Europe. *Id.*; Montgomery, *NATO Is Planning to Cut U.S. Forces in Europe by 50%*, N.Y. Times, May 29, 1991, at A1. These and other modifications will be subject to formal approval at a meeting of NATO heads of state scheduled for November 1991.

59. See excerpts of SACEUR's address to the Turkish War College, Istanbul, Turkey, Oct. 8, 1990, reprinted in ACE Output, Vol. 9, No. 4 (Nov. 1990), Public Information Office, Supreme Headquarters Allied Powers Europe (SHAPE)/Allied Command Europe (ACE), at 14-15. See also Greenwood, *Refashioning NATO's Defenses*, 38 NATO Review, No. 6, at 2 (Dec. 1990).

60. See Bohlen, *Warsaw Pact Agrees to Dissolve Its Military Alliance by March 31*, N.Y. Times, Feb. 26, 1991, at A1. Soviet forces are due to be completely withdrawn from Eastern Europe by the end of 1994. See Mauthner, *A Common Defense for Europe*, London Financial Times, Dec. 11, 1990, at 17.

The force posture that would enable NATO to serve this residual deterrence function will be quite different from NATO's traditional forward defense capability. Rather than a layer-cake forward defense posture, a more flexible, mobile "forward presence" at the frontiers of NATO territory can serve to signify the Alliance's continued commitment to the collective defense of its members.⁶¹ Mobile forces are especially important in providing political reassurance to the countries at NATO's northern and southern flanks, Norway and Turkey, which have often felt somewhat distant from the central focus of the alliance.⁶² In addition to more mobile forces, interest has grown in Alliance circles in developing multinational units at the corps level, both as a response to declining troop commitments in the face of a diminishing threat and as a more politically palatable form of foreign troop presence on German territory in the future.⁶³ Indeed, in May 1991, NATO's defense ministers agreed to create seven defense corps in Central Europe, six of which will be multinational.⁶⁴ After 1994, however, no non-German forces can be stationed on former East German territory under the terms of the treaty on the final settlement concerning Germany concluded by the two Germanies, the Soviet Union, the United States, Britain, and France.⁶⁵ Thus, the corps to be stationed on that territory will be all-German.

Whether a substantial American troop presence in Europe should continue for the next decade and beyond is an important issue that must be faced squarely by the Alliance. At present, the allies are agreed that some U.S. troop presence in Europe is desirable to preserve the transatlantic security link in the face of the many uncertainties now confronting Europe. Even so, American ground forces in Europe are likely to be cut in half in the next few years as a result of agreed modifications in NATO's force posture.⁶⁶ A continuing U.S. military presence in Europe, even if greatly reduced, will still permit the United States to play the role of both guarantor and balancer as the European allies sort out what kind of "European security identity" is both desirable and attainable.

61. For a useful discussion, see Greenwood, *supra* note 59, at 4-5; Mecham, *supra* note 58.

62. See Report, *supra* note 39, at 13.

63. See Lowe & Young, *Multinational Corps in NATO*, 33 SURVIVAL 66-67 (Jan./Feb. 1991). See also Gordon, *NATO Weighing New Look with Combined Allied Units*, N.Y. Times, May 23, 1990, at A8; White, *UK-French Talks on Combined Forces*, London Financial Times, Apr. 9, 1990, at A4; Healy, *New NATO Strategy: Meld a Multinational Operation*, L.A. Times, July 24, 1990, at 1.

64. See Montgomery, *supra* note 58.

65. Treaty on the Final Settlement with Respect to Germany, Arts. 4(1), 5(3), reprinted in *Arms Control Today*, Oct. 1990, at 34.

66. See Montgomery, *supra* note 58; Smith, *supra* note 58. See also Nunn, *A New Europe—A New Military Strategy*, Wash. Post, Apr. 24, 1990, at A25; *Finding a New Role for NATO in a New Germany*, Jane's Defence Weekly, Jan. 26, 1991, at 113; Report, *supra* note 39, at 12.

The role of nuclear weapons in NATO strategy and force posture is being reevaluated in the new context of European security. NATO will place substantially less reliance on nuclear weapons in the future, eliminating nuclear artillery and land-based missiles in Europe and relying on a greatly reduced number of nuclear capable aircraft to provide a sort of minimum deterrence.⁶⁷ In terms of strategy, NATO is still unlikely explicitly to renounce the possible first-use of nuclear weapons any time soon, but rather to continue the modifications in force posture that may ultimately create a *de facto* no-first-use policy. The indications so far are that NATO will be able successfully to alter its strategy and forces along these lines to continue to fulfil the military function of deterring war for as long as the European NATO allies regard such residual deterrence as a stabilizing force in Europe.

Even if there is a need for a residual NATO deterrence and defense capability for some time to come, the more likely and immediate threats to European security in the near future will arise from instabilities in Central and Eastern Europe, including ethnic and nationality tensions and domestic upheavals accompanying the transition to democracy and to market economies. Can NATO military forces be reconfigured to play a crisis management role in response to such situations? Should they be?

To the extent that such instabilities touch on the frontiers of NATO territory, the Alliance may decide further to develop highly mobile crisis management forces, such as the Allied Command Europe ("ACE") Mobile Force, which could be deployed quickly to trouble spots along the NATO frontier. Such forces would supplement the "forward presence" capabilities already in place. During the Gulf War, for example, the air component of the ACE Mobile Force, including air squadrons from Germany, Italy, and Belgium, was deployed to Turkey to deter the threat posed by Iraq to Turkish territory.⁶⁸ Spurred on by this experience, NATO defense ministers agreed in May 1991 to create a multinational rapid reaction force of 50,000 to 70,000 troops capable of responding quickly to threats to NATO territory.⁶⁹

A more contentious issue is whether such forces should undertake crisis management or peacekeeping missions in trouble spots in Europe but *outside* NATO territory.⁷⁰ Any such expanded military role for NATO would be highly controversial for a number of reasons. It could be seen as provocative by the Soviet Union and, possibly, by some Eastern European states. It is also a role better performed by other more broadly-based organizations such as CSCE or the United Nations.

67. See, e.g., Gordon, *U.S. Shift Seen on Defense of Europe*, N.Y. Times, Mar. 14, 1990, at A18; Kohl *Remarks on NATO, War, Baltics Reported*, FBIS-WEU, Jan. 30, 1991.

68. See U.S. Department of State Dispatch, Vol. 2, No. 1 (Jan. 7, 1991), at 8.

69. See Montgomery, *supra* note 58; Smith, *supra* note 58.

70. The allies differ over whether the rapid reaction forces should be used in disputes outside NATO territory. See Smith, *supra* note 58. For a fuller discussion of the "out-of-area" debate, see *infra* notes 82-110 and accompanying text.

Indeed, any amendment of the German constitution to provide expressly for participation in military forces outside the NATO area will likely be tied to UN authorization.⁷¹

Ultimately, the European NATO allies may well decide that any collective response, military or otherwise, to crises in Europe outside the traditional NATO area is best handled by a pan-European institution such as the CSCE or a West European institution such as the EC.⁷² In light of the considerable differences of view over any NATO military role outside Western Europe and the ample challenges already posed by the rapidly evolving political situation in Europe, NATO is best suited to play a more narrowly focused military role, providing a residual deterrent against any reconstituted threat from the East and a crisis management capability with respect to crises impinging on NATO borders but not beyond them.

V. Redefining NATO's Political Role

The leaders of the Alliance indicated in the London Declaration, and more recently in December 1990, that they intend to "enhance the political component" of the Alliance.⁷³ In so declaring, the allies invoked Article 2 of the Treaty, in which they commit themselves to the further development of peaceful and friendly international relations, as well as Article 4, which provides for consultation on threats to the security of any of the allies without geographical restriction.

Yet the precise content of NATO's "enhanced" political role has not been made clear. If it means more intensive consultation and cooperation among the allies on matters of traditional concern to the Alliance—such as arms control in Europe and verification of Soviet troop withdrawals—it will be useful in forging common positions.⁷⁴ NATO could also take up issues such as limitations on the transfer of arms and sensitive military technologies to tension-filled regions of the world, a matter which could benefit from efforts to establish a more consistent set of policies and practices.⁷⁵ NATO ministerial meetings could also seek to coordinate cooperative political action in response to develop-

71. See *infra* notes 103-107 and accompanying text.

72. The French government is a strong proponent of creating a European rapid reaction force under the control of the European Community. See Smith, *Cheney to Take Up French Proposal for European Force Outside NATO*, Wash. Post, May 27, 1991, at A27; Doughty, *Secret Memo Reveals Deep Divisions on NATO Role*, London Financial Times, Feb. 8, 1991, at 3; Apple, *Little Opposition Expressed by the West to Bush's Plans to Revamp NATO*, N.Y. Times, July 4, 1990, at A8; Davidson, *France and Germany Align Defence Positions*, London Financial Times, Apr. 27, 1990, at 28.

73. London Declaration, *supra* note 34, at 2 (para. 2); Communiqué, *supra* note 38, at 22 (para. 2).

74. See Secretary of State Baker's proposal to establish a NATO arms control verification staff, in Baker, *A New Europe*, *supra* note 44, at 3.

75. The need for improved efforts to regulate arms sales seems especially compelling following the Gulf War. See, e.g., Kinzer, *Germany Says It Seeks to Curb Its Arms Exporters*, N.Y. Times, Feb. 7, 1991, at A12.

ments and possible setbacks in the Soviet Union and Eastern Europe. Such consultation gives the Western Europeans a valuable chance to influence U.S. policy while at the same time providing a forum for the United States to convey its views on developments in Europe.

The London Declaration seemed to have something more in mind, however, when it spoke of building "new partnerships with all the nations of Europe."⁷⁶ The degree to which NATO should be in the forefront of forging such partnerships is a subject of dispute among the allies. Although they agreed to invite the Soviet Union and the states of Eastern and Central Europe to establish diplomatic liaison relationships with NATO, there is no clear agreement within the Alliance over how extensive such contacts should be. The United States would like to strengthen these contacts, and thus expand NATO's role in exchanges and cooperation with the countries of the East, while France would prefer to see such NATO contacts strictly limited, with CSCE playing the central role in building bridges across the European continent.⁷⁷ In light of the many uncertainties and potential instability in the Soviet Union, however, the Eastern Europeans may well desire closer ties to NATO as insurance against uncertainty. Czechoslovak President Vaclav Havel, meeting with NATO officials in March 1991, warned of the "political, economic and security vacuum" in Eastern Europe⁷⁸ and urged that the Atlantic Alliance "should not be forever closed to neighboring countries" pursuing the goals of freedom and democracy.⁷⁹ Yet steps toward formal Eastern European *membership* in the Alliance would risk antagonizing and isolating the Soviet leadership and thus could undermine European security. Not surprisingly, NATO leaders were cautious in response to Havel's discussion about potentially broadening NATO's membership, reiterating instead their intent to "broaden and deepen" NATO's diplomatic and military *contacts* with Eastern Europe.⁸⁰ The degree to which NATO should expand beyond its current membership, however, will remain a delicate and possibly contentious issue in the decade ahead.

Another potential "enhanced" political role for NATO would be to serve as an instrument for helping to resolve intra-European conflicts involving ethnic and nationality disputes. Compared to CSCE, however, NATO has neither the capabilities nor the composition to perform disinterested mediation. In supporting the development of CSCE's institutional structures, including a CSCE Conflict Prevention Center in

76. London Declaration, *supra* note 34, at 2 (para. 4).

77. See Doughty, *supra* note 72.

78. Drozdiak, *Havel Urges NATO to Seek Ties with East's New Democracies*, Wash. Post, Mar. 22, 1991, at A22, col. 3.

79. *Id.* at A18, col. 4.

80. *Id.* at A22, col. 5. Any expansion of the Alliance's membership would require the unanimous agreement of its current members, *see supra* note 14 and accompanying text, and is unlikely to happen given French opposition to any moves in this direction.

Vienna, the allies seem to have recognized this fact.⁸¹

In sum, it is not yet clear that there is an "enhanced" political mission for the Alliance beyond its traditional role of providing a vehicle for political consultation and cooperative action on developments that directly affect the security of its members. By continuing to provide a political caucus of the Western democracies in these times of turmoil and transition in Eastern Europe, NATO can perform a valuable stabilizing function. By attempting to take on a broader political agenda, however, NATO risks spreading itself too thin, exposing disagreements among its members and thereby hampering its own effectiveness as a much-needed "anchor of stability" in Europe.

VI. NATO and Out-of-Area Conflicts

An even more controversial issue is whether the Alliance should focus greater efforts on responding collectively to security threats from outside of Europe, most notably the Middle East. The allies have long recognized that regional conflicts outside of Europe may affect their security. Yet they consistently have resisted collective NATO action in response to out-of-area conflicts.⁸² The North Atlantic Treaty does not preclude joint NATO action in such cases, but neither does it require it.⁸³ Under Article 4 of the Treaty, the allies are only obliged to "consult" regarding security threats beyond the geographical bounds of the NATO area.⁸⁴ As the Harmel Report noted, "In accordance with established usage the Allies or such of them as wish to do so will . . . consult on such problems without commitment and as the case may demand."⁸⁵ The difficulty of achieving even ad hoc cooperation on such matters in the past suggests that future efforts to reach agreement on a formal Alliance role in conflicts outside the NATO area bear little prospect of success. Even so, some U.S. officials and some British officials have urged

81. See London Declaration, *supra* note 34, at 4 (para. 22). See also Charter of Paris for a New Europe, adopted on November 21, 1990, at the Summit Meeting of the Heads of State or Government of the States participating in the Conference on Security and Cooperation in Europe [hereinafter Charter of Paris], reprinted in United Nations General Assembly Doc. A/45/859, at 21 (1990) (establishing Conflict Prevention Center); and *Supplementary Document to Give Effect to Certain Provisions Contained in the Charter of Paris for a New Europe*, reprinted in *id.* at 46-48 (describing Conflict Prevention Center).

82. See Kupchan, *Regional Security and the Out-of-Area Problem*, in *SECURING EUROPE'S FUTURE* 280-299 (S. Flanagan & F. Hampson eds. 1986). During the first decade of the Atlantic Alliance, the European allies sought American support in defense of their overseas possessions, such as in the Suez crisis of 1956. The United States, however, opposed the use of force by Britain and France in response to the nationalization of the Suez canal by Egyptian President Nassar. *Id.* at 283. Since the mid-1960s, the tables have turned and the European allies have resisted American efforts to secure their support for U.S. involvement in Third World conflicts. *Id.* at 283-284.

83. See *supra* notes 9 and 10 and accompanying text.

84. See *supra* note 10 and accompanying text.

85. Harmel Report, *supra* note 48, at 52 (para. 15).

that the Alliance consider taking on such roles in the future.⁸⁶ NATO's Supreme Commander, General Galvin, has long advocated creating a highly mobile "fire brigade" force which NATO could deploy to trouble spots outside Europe.⁸⁷

The French government is strongly opposed to any moves in this direction, as are a number of other allies, including Norway and Spain.⁸⁸ In keeping with France's historical resistance to U.S.-led efforts to expand the scope of NATO's role, French officials instead advocate developing *European* capabilities to respond to out-of-area crises through the WEU.⁸⁹ German and Italian officials have voiced support for such an effort on several occasions.⁹⁰ It is worth noting in this connection that the treaty obligation undertaken by WEU members to provide mutual military assistance is broader than that undertaken by the NATO allies.⁹¹

The response of the NATO allies during the Gulf War strongly suggests that NATO's role in future out-of-area crises is not likely to go much beyond agreement to *consult* in order to "consider what individual or joint action may be most appropriate under the circumstances."⁹² It is hard to imagine a more compelling case for coordinated NATO action in response to a threat from outside the traditional NATO area than the Gulf War. The security interests of the allies were directly threatened by Iraq; Turkey's territory was at risk, and the dependence of the European

86. See, e.g., Secretary of State James Baker, *Challenges Facing the Atlantic Alliance*, excerpts from North Atlantic Council intervention, NATO Headquarters, Brussels, Belgium, Dec. 17, 1990, reprinted in U.S. Department of State Dispatch, Vol. 1, No. 17 (Dec. 24, 1990), at 353; Smith, *Cheney Said to Seek Aid from NATO States*, Wash. Post, Dec. 7, 1990, at A25. See also Abshire, *NATO Can Ponder a Global Role . . .*, Wall St. J. (European ed.), Aug. 24, 1990, at 12.

87. Wilson, *NATO Commander Envisions 'Fire Brigade' Role*, Wash. Post, Dec. 5, 1990, at A29. As noted earlier, the allies disagree over whether the rapid deployment force agreed to in May 1991 should intervene in disputes outside NATO territory. See Smith, *supra* note 58.

88. See Smith, *supra* note 72; Doughty, *supra* note 72; Mecham, *Europe Searches for Own Voice in Future International Conflicts*, AVIATION WEEK & SPACE TECHNOLOGY, Dec. 24, 1990, at 37; Smith, *supra* note 86.

89. See, e.g., Smith, *supra* note 72; German, *French Groups Propose NATO Change*, FBIS-WEU, Nov. 15, 1990, at 1.

90. See, e.g., Whitney, *Amid Gulf Crisis and Cold War End, Questions on U.S. and NATO Roles*, N.Y. Times, Dec. 26, 1990, at A10; Marshall, *Kohl Discusses a Wider Role for German Military*, L.A. Times, Mar. 14, 1991, at 11; Kohl, *SPD Clash on East Germany, Tax Policy, Role of Military*, This Week in Germany, Mar. 15, 1991, at 1; *CDU Favors Military Role Outside NATO*, FBIS-WEU, March 11, 1991, at 8; German, *French Groups Propose NATO Change*, *supra* note 89; Riding, *supra* note 46.

91. Article 5 of the modified Brussels Treaty provides that if any of the parties are the object of an armed attack, the other parties will "afford the Party so attacked all the military and other aid and assistance in their power." P. BORCIER, *supra* note 35, at 15. Modified Article 8 also provides that the WEU Council shall be convened at the request of any of the parties "in order to permit them to consult with regard to any situation which may constitute a threat to peace, in whatever area this threat should arise, or a danger to economic stability." *Id.*

92. Communique, *supra* note 38, at 24 (para. 15). See, e.g., Kamen, *NATO: Growing Irrelevant?*, Wash. Post, Sept. 16, 1990, at A33.

allies on oil from the region was clear. NATO did deploy the air component of the ACE Mobile Force to Turkey,⁹³ and NATO affirmed its commitment to defend Turkish territory under Article 5 of the North Atlantic Treaty.⁹⁴ Even so, Germany expressed considerable ambivalence about participating in a defense of Turkish territory in response to a possible attack from Iraq.⁹⁵ Moreover, it was the WEU, not NATO, that served to coordinate the European naval presence in the Gulf,⁹⁶ just as it had coordinated European naval activity in defense of neutral shipping during the earlier Iran-Iraq war.⁹⁷ To be sure, individual NATO allies, particularly Britain and France, made substantial contributions to the multinational forces in the Gulf, but these contributions were not coordinated under NATO auspices.⁹⁸

The German constitutional debate may provide another constraint on expanding NATO's role in out-of-area contingencies. Although many constitutional law scholars disagreed, the German government interpreted the constitution as precluding German participation in the UN-authorized multinational force in the Gulf.⁹⁹ The specific language of Germany's Basic Law is less than clear on this point.¹⁰⁰ It provides, "Apart from defence, the Armed Forces may only be used to the extent

93. See *supra* note 68 and accompanying text.

94. *Statement on the Gulf, issued by the North Atlantic Council on December 17, 1990*, para. 5, reprinted in U.S. Department of State Dispatch, Dec. 24, 1990, at 354.

95. See, e.g., Fisher, *Germany Reluctant to Defend Turkey if Iraq Retaliates*, Wash. Post, Jan. 22, 1991, at A20; *Bonn's Gulf Response Said Confused, Improvised*, Der Spiegel, Jan. 28, 1991, reprinted in FBIS-WEU, Feb. 7, 1991, at 11-17; *Vogel Bundestag Statement on Gulf, USSR*, FBIS-WEU, Feb. 1, 1991, at 10-11.

96. See Riding, *Western Europe Urges Air Embargo Against Iraq*, N.Y. Times, Sept. 19, 1990, at A12; Whitney, *supra* note 90.

97. See Whitney, *supra* note 90.

98. See Healy, *NATO Fumbles a Chance to Find a Post-Cold War Role*, L.A. Times, Aug. 18, 1990, at A11.

99. See Fisher, *Kohl Seeks a Charter Shift for Future UN Wars*, Wash. Post, Mar. 1, 1991, at A31.

100. The main provisions of Germany's Basic Law concerning military forces include the following:

Article 24 (Entry into a collective security system)

(1) The Federation may by legislation transfer sovereign powers to inter-governmental institutions.

(2) For the maintenance of peace, the Federation may enter a system of mutual collective security; in doing so it will consent to such limitations upon its rights of sovereignty as will bring about and secure a peaceful and lasting order in Europe and among the nations of the world.

(3) For the settlement of disputes between states, the Federation will accede to agreements concerning international arbitration of a general, comprehensive and obligatory nature.

Article 26 (Ban on war of aggression)

(1) Acts tending to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare for aggressive war, shall be unconstitutional. They shall be made a punishable offence.

(2) Weapons designed for warfare may not be manufactured, transported or marketed except with the permission of the Federal Government. Details shall be regulated by a federal law.

Article 87a (Build-up, strength, use and functions of the Armed Forces)

explicitly permitted by this Basic Law.”¹⁰¹ It also provides, “For the maintenance of peace, the Federation may enter a system of mutual security.”¹⁰² In the aftermath of the Gulf War, German Chancellor Helmut Kohl has advocated a constitutional amendment that explicitly would permit German participation in forces authorized by the United Nations, including both peacekeeping operations by UN “Blue Helmet” forces and UN-authorized forces such as the one in the Gulf.¹⁰³ Kohl has also indicated that he would support German involvement in a *European* force outside the traditional NATO area.¹⁰⁴ Foreign Minister Genscher has advocated a constitutional amendment permitting participation in any UN-authorized force,¹⁰⁵ but the Social Democratic Party (“SPD”) is opposed to any amendment that goes beyond participation in UN “Blue Helmet” peacekeeping operations.¹⁰⁶ In light of the SPD position, any constitutional amendment likely to garner the necessary two-thirds majority in the German parliament may not even authorize German participation in UN “enforcement” actions such as that in the Gulf, let alone involvement in a NATO out-of-area force. The German government may, however, revise its interpretation of the constitution and conclude that it already permits German participation in some UN-authorized military activities.¹⁰⁷

Quite apart from German constitutional concerns, any enhanced formal role for NATO in out-of-area conflicts might compete inappropriately with the role of the United Nations. This would depend on whether the out-of-area threat facing the Alliance is a military threat to the *territory* of one of the allies from outside the NATO area, on the one

(1) The Federation shall build up Armed Forces for defence purposes. Their numerical strength and general organizational structure shall be shown in the budget.

(2) Apart from defence, the Armed Forces may only be used to the extent explicitly permitted by this Basic Law.

P. STARES, *ALLIED RIGHTS AND LEGAL CONSTRAINTS ON GERMAN MILITARY POWER* 145, 146 (1990).

101. *Id.* at 146 (art. 87a(2)).

102. *Id.* at 145 (art. 24(2)). Willy Wimmer, state secretary in the German Defense Ministry, interprets this provision to permit German participation in UN-authorized forces without a constitutional amendment. See *Official on UN Operations, Soviet Troops*, FBIS-WEU, March 5, 1991, at 17-18 (“It is possible for our Armed Forces to operate outside the NATO area without amending the constitution, for the simple reason that we became a member of the United Nations without any restrictions. Our own constitution says that we are allowed to join a system of collective security any time. If the Security Council asked us to send troops we would have to do so.”).

103. See Marshall, *supra* note 90; Fisher, *supra* note 99.

104. See Marshall, *supra* note 90; Kohl, *SPD Clash on Eastern Germany, Tax Policy, Role of Military*, *supra* note 90. See also *CDU Favors Military Role Outside NATO*, *supra* note 90.

105. See Genscher on *German Role, Aftermath in Gulf*, FBIS-WEU, Mar. 4, 1991, at 11; Genscher *Addresses Bundestag on Gulf*, FBIS-WEU, Feb. 1, 1991, at 8.

106. See Tagliabue, *German Socialists Oppose the Use of Troops Outside NATO Area*, N.Y. Times, June 2, 1991, at I:13. See also Kinzer, *Genscher at Eye of Policy Debate*, N.Y. Times, Mar. 22, 1991, at A10; *SPD Supports Bundeswehr Actions Outside NATO*, FBIS-WEU, Mar. 7, 1991, at 8-9.

107. See Fisher, *Germany to Send Troops to Iran to Aid Refugees*, Wash. Post, Apr. 24, 1991, at A23.

hand, or is a broader out-of-area threat to the *interests* of one or more of the allies, on the other. While NATO is obligated under Article 5 of the North Atlantic Treaty, and entitled under Article 51 of the UN Charter, to take military action in collective defense of any of its members who are subject to an armed attack,¹⁰⁸ a more open-ended military and crisis management role for NATO not tied to the North Atlantic area could interfere with responsibilities more appropriately exercised by a reinvigorated UN Security Council.¹⁰⁹ Moreover, a greater NATO out-of-area role is likely to be viewed with suspicion and resentment by Third World States as a condominium of former colonial powers acting to protect their own interests at the expense of weaker states.

In light of these various considerations and constraints, the Alliance should address security concerns that do not involve a military threat to NATO territory through consultation and perhaps ad hoc cooperation rather than as a matter of formal commitment to joint action. Cooperation on use of bases, airlifts, and supplies in such contingencies can be the subject of bilateral agreements between individual NATO allies.¹¹⁰ But efforts to go beyond the flexible, ad hoc approach provided for in Article 4 of the Treaty could undermine the ability of the NATO allies to cooperate in response to political developments *within* Europe by exposing and exacerbating the numerous differences of view and interest among the allies regarding crises outside of Europe.

VII. NATO's Relationship to other European Security Institutions

Since its establishment in 1949, the Alliance has grown accustomed to being the central security institution in Western Europe. Efforts to develop a European defense identity through the WEU or otherwise have not caused any serious questioning of NATO's primacy until recently. In today's radically changed environment, however, with the prospect of a "Europe whole and free" more real than ever before, NATO's relevance to the broader spectrum of European security concerns is not self-evident. Indeed, institutions like the CSCE, the EC, and the WEU seem to many Europeans to hold out more promise as vehicles for addressing the multi-faceted challenges to European security and stability in the years ahead. This perforce suggests a less dominant future role for NATO.

Several European allies, particularly France and Germany, support further development of the WEU as the beginning of a European defense identity that could ultimately become a security component of

108. See *supra* note 22 and text accompanying note 7.

109. Recall that the Senate Foreign Relations Committee in 1949 expressed the view that even consultation under Article 4 of the North Atlantic Treaty "should not be held under the treaty unless the United Nations is for some reason prevented from dealing with the particular situation which has arisen." See *supra* note 24 and accompanying text.

110. For a discussion of options for multilateral cooperation, see Kupchan, *supra* note 82, at 293-297.

the European Community.¹¹¹ The United States and Britain, in contrast, favor development of the WEU as a European pillar of the Alliance.¹¹² In that role, it would reinforce rather than compete with NATO, preserving a strong transatlantic security link well into the future.

In December 1990, the North Atlantic Council proclaimed that security in Europe can best be achieved "by a framework of interlocking institutions in which the interests of all European states can be accommodated."¹¹³ That framework would include the Alliance, CSCE, and "the process of European integration."¹¹⁴ The communique finessed the divisive issues surrounding the development and evolution of a uniquely European defense entity. On the one hand, the communique welcomed a "European security identity and defense role, reflected in the construction of a European pillar *within* the Alliance."¹¹⁵ On the other hand, it went on to "support current efforts to strengthen the security dimension in the process of European political integration."¹¹⁶ These are two quite different visions for the locus of a European security identity, with significant implications for NATO's future defense role.

In the near term, it is quite possible for closer European defense cooperation through the WEU to progress as *both* a pillar of NATO and as a potentially separate European defense organization. Indeed, on the operational level, some of NATO's new multinational corps, comprised solely of European forces, could potentially wear both a WEU and a NATO hat, and "dual track" command structures could conceivably be established.¹¹⁷ In the longer term, however, there is clearly a fork in the road: contentious issues concerning the relation between NATO, the WEU, and the EC must eventually be faced.

In all likelihood, the Atlantic Alliance will continue to provide a stabilizing transatlantic foundation for European security for some time to come. Yet a separate European "security identity" potentially offers many advantages in the longer term. It could, for example, extend security guarantees or even membership to Eastern European states without necessarily being seen as provocative by Moscow. Moreover, French resistance is likely to limit NATO's ability to enhance its own political role in the future, including further development of ties with Eastern Europe and the Soviet Union. In short, a uniquely European defense identity could have a greater flexibility and capacity to evolve in

111. See Mauthner, *supra* note 46. See also Drozdiak, *supra* note 45; Riding, *supra* note 46.

112. See Mauthner, *supra* note 46; Drozdiak, *supra* note 45.

113. Communique, *supra* note 38, at 23 (para. 7).

114. *Id.*

115. *Id.* at 22 (para. 5) (emphasis added).

116. *Id.*

117. See, e.g., *Forces Assigned to NATO, WEU Considered*, FBIS-WEU, Feb. 26, 1991 (discussing "two-hat" concept); *Preparing the Path for a European Army*, JANE'S DEFENCE WEEKLY, Jan. 5, 1991, at 15 (discussing the "bottom-up" approach for creating a European army proposed by WEU Secretary-General Willem van Eekelen).

response to changing conditions in Europe than NATO. It could also reassure Germany's neighbors, just as NATO has, that Germany's substantial military capabilities remain integrated in a collective European institution.

Even so, the path of constructing a European security identity attached to the EC is not without substantial obstacles. First, efforts to add a military dimension to the EC could well detract from the Community's urgent "civilian" task of aiding in the economic reconstruction of Eastern Europe. It could also complicate the related task of determining what kind of formal relationships the EC will establish with the states of Eastern Europe. Second, the leaders of Western Europe have sufficient differences of view on matters of foreign and defense policy that a common security policy, let alone a common military force, may be difficult to achieve for some time.¹¹⁸ Third, the memberships of the WEU, the EC, and NATO do not overlap neatly, making transitions somewhat more difficult. Norway and Turkey are members of NATO but not of the WEU, yet their territory is more exposed than the other states of Western Europe. Their relationship with the WEU (and the EC) would need to be resolved. Moreover, three members of the EC are not members of the WEU, namely, Denmark, Greece, and neutral Ireland, complicating any proposed merger of the WEU and the EC. Nevertheless, the WEU may provide the best available institutional foundation for building a European security identity in the decades ahead if the political consensus to do so can be sustained.

In the meantime, a further developed CSCE or EC will shoulder the burden in responding to the most immediate challenges to European security, such as the need to protect the rights of ethnic minorities in Eastern Europe, to resolve secessionist disputes, and to root democratic freedoms and institutions and economic reforms more deeply.¹¹⁹ The Alliance has already acknowledged the growing importance of CSCE with its inclusive pan-European membership and its potential to address the broad and complex security concerns growing out of the political, economic and social transformation of Eastern Europe.¹²⁰ What remains to be seen is whether the CSCE Conflict Prevention Center established in November 1990, or the special emergency procedures agreed to in June 1991, will enable the CSCE to respond effectively to the sorts of crises likely to face Europe in the years ahead.¹²¹ The "con-

118. The differences that surfaced in Western Europe in response to the Gulf War have made some European leaders more pessimistic about forging a common European foreign and defense policy in the near future. See *Gulf War: European Unity Fails Its First Test*, JANE'S DEFENCE WEEKLY, Feb. 9, 1991, at 177; Drozdiak, *supra* note 45.

119. See *supra* note 41 and accompanying text.

120. See, e.g., London Declaration, *supra* note 34, at 3-4 (paras. 21-22); Communique, *supra* note 38, at 23 (para. 8). For a proposal to enhance CSCE's conflict resolution role, see Flynn & Scheffer, *Limited Collective Security*, 80 FOREIGN POLICY 77 (1990).

121. Charter of Paris, *supra* note 81, at 21; Fisher, *European Security—Crisis Policy Set*, Wash. Post, June 21, 1991, at A24 (CSCE member states agreed that emergency ses-

sensus principle" on which CSCE operates is likely to impede it from taking effective action just when its mediating capabilities are needed most, as, for example, in response to the civil war in Yugoslavia or to potential ethnic violence or military crackdowns in the Soviet republics. But CSCE still holds out enormous promise if its institutions can be developed to implement effectively the principles from which it sprang.¹²²

Conclusion

The dramatic changes in Europe in the last few years have met and even exceeded the original political objectives of the North Atlantic Alliance. The Soviet Union is withdrawing its forces from Eastern Europe; Western Europe is strong and prosperous; Germany is united and securely integrated into Western institutions; and Communism in Eastern Europe has collapsed. The urgency of the Alliance's original military purpose—to deter Soviet aggression against Western Europe and to defend NATO territory in the event of an attack—has receded dramatically with the demise of the Warsaw Pact and the diminishing Soviet military presence in Eastern Europe. Even as NATO is attempting to modify and pare down its military objectives in light of changed circumstances, it is struggling to define a meaningful political role for itself. To paraphrase Dean Acheson's comment about the decline of the British empire: NATO has lost a mission and has not yet found a role.¹²³ It is floundering for an "enhanced political dimension" at a time when the political commitment necessary to forge a consensus on any such role is declining as other institutions, most notably the CSCE, the EC, and the WEU, vie for the political attention and energies of the European allies.

To say that NATO is less relevant to the problems of European security, however, is not to say that it is irrelevant. The Alliance does have a valuable, even if somewhat residual, role to play in European

sions can be convened if a minimum of 13 countries agree, but any action requires the approval of all 35 CSCE member countries). See the excellent discussion in J. Dean, *The New CSCE Center for Prevention of Conflict—Can it Do the Job?*, paper presented at Cornell University, March 4, 1991, for some cautionary concerns in this regard.

122. The Helsinki Final Act of 1975, which was the concluding document of the CSCE meeting in Helsinki in 1975, is a statement of common policy. The Final Act declares that ten principles will guide the mutual relations of the participating states: sovereign equality and respect for the rights inherent in sovereignty; refraining from the threat or use of force; inviolability of frontiers; territorial integrity of States; peaceful settlement of disputes; non-intervention in internal affairs; respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief; equal rights and self-determination of peoples; co-operation among States; and fulfillment in good faith of obligations under international law. Conference on Security and Cooperation in Europe, Final Act, Aug. 31, 1975, reprinted in *INTERNATIONAL ARMS CONTROL: ISSUES AND AGREEMENTS* (C. Blacker & G. Duffy eds. 1984). These ten principles were reaffirmed in the Charter of Paris, *supra* note 81, at 4.

123. See Acheson, *Our Atlantic Alliance: The Political and Economic Strands*, 29 *VITAL SPEECHES*, No. 6, at 163-64 (1963) ("Britain has lost an empire and has not yet found a role.").

security in the future. In light of the Soviet Union's uncertain political evolution, the transatlantic security link provided by the Alliance will be important for many years to come. Moreover, NATO can serve as a useful political caucus of the Western democracies to discuss arms control in Europe and possible common policies in response to developments in Eastern Europe and elsewhere. Habits of political cooperation have been shaped over a generation and should be continued.

Fortunately, the flexibility of the North Atlantic Treaty with respect to both the means of self-defense and accompanying institutional structures is a tremendous asset in adapting to changing circumstances. As a result of this flexibility, the Atlantic Alliance of 1949 can continue to provide a valuable transatlantic security link and political relationship between the democracies of North America and Western Europe, even as the integrated military forces and organizational structures of NATO are modified significantly. The Treaty has several other strong points: it encourages consultation but does not compel joint action in response to out-of-area contingencies; and it provides for consultation and review of the Treaty in response to the changing factors affecting European security, including the development of other institutions designed to maintain peace and security.¹²⁴

The real challenge for NATO as an institution will be to reconcile the fact of the continuing need for an alliance with the reality of its reduced role in promoting European security. NATO is being kept "on tap" as a hedge against a return to older patterns of conflict and tension. Rather than groping for new and grander roles (such as out-of-area "trouble shooting"), NATO should accept a less dominant role gracefully. This, alas, is easier said than done; organizations do not flourish when they are diminishing in importance. But, having served the purposes for which it was established so ably, NATO must learn to be "on tap" without being "on top."

124. See *supra* note 19 and accompanying text.