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The Atlantic Alliance and European Security in the 1990s

Introduction

In April 1989, when the Atlantic Alliance¹ ("Alliance") commemorated its fortieth anniversary, no one could have foreseen the dramatic events that would unfold in the subsequent months. The changes that followed evidenced that the Alliance, formed as part of the post-World War II United States containment policy, had fulfilled its principal purpose, i.e., to provide a legal basis for a security commitment between the United States and its Atlantic allies and, thereby, to prevent the westward expansion of Soviet power² and set in motion forces that would eventually topple bankrupt East Bloc communist regimes.³

For the United States, the Alliance represented a departure in foreign policy. Before the Alliance, the United States had foregone active

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1. The Atlantic Alliance ("Alliance") is based upon the North Atlantic Treaty signed in Washington, D.C., April 4, 1949. North Atlantic Treaty, Apr. 4, 1949, art. V, 63 Stat. 2241, T.I.A.S. No. 1964, 34 U.N.T.S. 243.

2. See generally J. GADDIS, STRATEGIES OF CONTAINMENT (1982) [hereinafter STRATEGIES OF CONTAINMENT]; CONTAINMENT: CONCEPT AND POLICY (T. Deibel & J. Gaddis eds. 1986); CONTAINMENT: DOCUMENTS ON AMERICAN POLICY AND STRATEGY (T. Etzold & J. Gaddis eds. 1978); NATO AND THE POLICY OF CONTAINMENT (L. Kaplan, ed. 1968); R. OSGOOD, CONTAINMENT, SOVIET BEHAVIOR, AND GRAND STRATEGY (1981).

3. It was the market economies and political pluralism of the West that exerted such a magnetic attraction upon the politically and economically impoverished peoples of Eastern Europe, leading to the revolutionary events of 1989. See generally Childs, *East Germany: Coping with Gorbachev*, 88 CURRENT HIST. 385 (1989); Binder, *Grim State of East Germany's Economy is Disclosed to Parliament*, N.Y. Times, Nov. 16, 1989, at A20, col. 1.

participation in the defense of Europe, except in wartime. Initially reluctant to join the Alliance, the United States entered into the transatlantic security commitment because of deepening tensions with the Soviet Union and urging by allies, especially Great Britain.⁴ The Alliance also formed an important part of United States foreign policy which was designed to contain Soviet power.⁵ In the transformation of American policy following World War II, the United States forged security relationships extending from the North Atlantic to the Western Pacific.⁶ Possessing an integrated command structure, the North Atlantic Treaty Organization ("NATO") has represented an entangling alliance *par excellence*. The Alliance has also formed a basis for deploying forces in Europe in numbers and for a timeframe unprecedented in American history, except during wartime.⁷

NATO has been based on a conception of deterrence in which nuclear weapons have played a crucial role. Treaty nations believed that a formal commitment to defend Western Europe by the United States, the sole possessor of nuclear weapons when the Alliance was founded, would contribute to a European security equilibrium sufficient to prevent war. Thus, NATO provided a guarantee of American support as a basis for deterring the outbreak of armed conflict. Analysts argued that such a guarantee would be preferable to the conditions that led to U.S. military intervention in World Wars I and II.⁸

Geostrategically, the Alliance was founded on the assumption that only the United States could counterbalance the military power of the Soviet Union.⁹ Just as the United States intervened in the two World Wars to prevent the domination of Europe by powers hostile to American interests, so the United States saw a Europe under Soviet hegemony as a threat to the United States itself. The Alliance, therefore, became the cornerstone for a series of extended security commitments designed to prevent the hostile domination of Europe and Asia.¹⁰ The transatlantic relationship embodied in NATO forms an indispensable part of the United States' global strategic framework constructed following World War II with the onset of the Cold War.

Since its inception, NATO provided a security commitment in which the United States guaranteed its allies that it would use nuclear

4. See generally Henrikson, *The Creation of the North Atlantic Alliance*, in AMERICAN DEFENSE POLICY 296 (J. Reichart & S. Sturm eds. 5th ed. 1982); D. COOK, FORGING THE ALLIANCE: NATO 1945-1950 (1984); N. HENDERSON, THE BIRTH OF NATO (1983); NATO'S ANXIOUS BIRTH 1-60 (N. Sherwen ed. 1985); R. OSGOOD, NATO: THE ENTANGLING ALLIANCE 1-101 (1961).

5. See generally sources cited *supra* note 4.

6. See generally STRATEGIES OF CONTAINMENT, *supra* note 2.

7. See generally R. OSGOOD, *supra* note 4; NATO AT FORTY 64-101 (J. Golden, D. Kaufman, A. Clark & D. Petraeus eds. 1989).

8. See generally Henrikson, *supra* note 4, at 303-04, 308-09; N. HENDERSON, *supra* note 4 (for history of the treaty process which secured United States's commitment to NATO).

9. See Henrikson, *supra* note 4, at 298, 301.

10. See generally STRATEGIES OF CONTAINMENT, *supra* note 2.

weapons, if necessary, against a Soviet attack, even if solely launched with conventional forces.¹¹ After the outbreak of the Korean War in June 1950, NATO acquired substantial conventional forces, but never in sufficient numbers to mount a fully conventional defense against a Soviet attack.¹² The experience of the Korean conflict, in which the United States responded to the North Korean attack against South Korea with conventional forces, led NATO to a major military buildup and the formation of an integrated command structure, based on a forward defense strategy which could only be sustained if the Federal Republic of Germany ("FRG") contributed conventional capabilities as a member of the Alliance.¹³

The Soviet Union's acquisition of a nuclear capability in the 1950s increased the vulnerability of the United States to attack. In the context of U.S. vulnerability, the issue became whether, and under what circumstances, the United States would escalate to the nuclear level. Would any American President risk the destruction of New York or Washington in defense of Paris or Frankfurt? The degree of uncertainty surrounding the American commitment revealed the weakness of the transatlantic security coupling and justified the apprehension of NATO's European members that the United States might decouple its own security from that of Western Europe in order to prevent its own destruction. A solid United States commitment was, therefore, essential to the hypothetical escalatory ladder stretching from the NATO-European battlefield to the United States Strategic Air Command; for, it was presumed, that only the threat of escalation would deter war in NATO-Europe, in particular on the Central Front.¹⁴

I. NATO's Future Role

In contrast to the first half of the century, the locus of wars since World War II has been outside the NATO-European area. Whether NATO contributed to this change can never be known. For two generations, vast arsenals arrayed on both sides of the inner German border, dividing East from West, have coexisted peacefully. The European political-military equilibrium since World War II has contained the largest aggregation of military power in history. Such capabilities have challenged the assertion that arms races lead inevitably to war. Despite the momentous developments of recent months on both sides of the inner German bor-

11. See generally D. SCHWARTZ, *NATO'S NUCLEAR DILEMMAS* (1983) (on the concept of extended deterrence); *NUCLEAR WEAPONS IN EUROPE* (A. Pierre ed. 1984) (also on the concept of extended deterrence).

12. See generally Hahn, *Toward a New NATO Consensus*, in *ATLANTIC COMMUNITY IN CRISIS* (W. Hahn & R. Pfaltzgraff eds. 1979) (on the need for flexible response).

13. See generally R. MCGEEHAN, *THE GERMAN REARMAMENT QUESTION* (1971); Henrikson, *supra* note 4, at 312-14; A. CORDESMAN, *NATO'S CENTRAL REGION FORCES* (1988) (for current details of West Germany's military contribution to NATO).

14. See generally D. SCHWARTZ, *supra* note 11.

der, the vast array of military power remains largely intact.¹⁵ Even if Soviet forces withdraw from Eastern Europe, substantial forces, capable of mobilization and deployment, will remain in Europe.

Clearly, the coming era consists of uncharted waters. A new situation presenting challenges and opportunities, as well as dangers, is replacing the predictable relationship between the two blocs. Traditionally, periods characterized by profound political transformation have contained powerful destabilizing forces.¹⁶ The history of Eastern Europe, the present focus of dramatic change, alternates between periods of power domination and internal conflict. As Soviet hegemony collapses, old antagonisms and conflicts resurface in forms that pose potentially serious problems for any future European security arrangement.

Changes that seemed virtually impossible even a few months ago are altering the familiar East-West political landscape that emerged after World War II in Europe. The loosening of the Soviet Union's grip in Eastern Europe,¹⁷ the resurgence of nationalism in the Soviet Union,¹⁸ and the deepening crisis resulting from the economic failure of Soviet-style Socialism,¹⁹ have altered profoundly the security landscape of NATO. Because member countries formed the Alliance in response to the Soviet threat, the question arises as to NATO's purpose in this new era.

In politics and in other realms, institutional structures important at one time in history are swept aside after fulfilling their purposes or are replaced if they fail to satisfy the needs for which they were created. To

15. See generally Davis & Pfaltzgraff, *The Shifting Euro-Atlantic Military Balance—Some Avenues of Redress*, in ATLANTIC COMMUNITY IN CRISIS 91 (W. Hahn & R. Pfaltzgraff eds. 1979); INT'L INST. FOR STRATEGIC STUDIES, *THE MILITARY BALANCE 1989-1990* (1990); A. CORDESMAN, *supra* note 13; W. LEWIS, *THE WARSAW PACT: ARMS, DOCTRINE AND STRATEGY* (1982).

16. See generally G. CRAIG & A. GEORGE, *FORCE AND STATECRAFT* 3-59 (1983).

17. See generally Rachwald, *Soviet-East European Relations*, 88 CURRENT HIST. 369 (1989); Staar, *Poland: Renewal or Stagnation?*, 88 CURRENT HIST. 373 (1989); Volgyes, *Hungary: Dancing in the Shackles of the Past*, 88 CURRENT HIST. 381 (1989); Childs, *supra* note 3; Ulc, *Czechoslovakia: Realistic Socialism?*, 88 CURRENT HIST. 389 (1989).

18. See generally, e.g., N.Y. Times, Jan. 12, 1990, at A1, col. 5; Clines, *Azerbaijani Front Reports Battle with Soviet Troops; Call-up of Reserves Halted*, N.Y. Times, Jan. 20, 1990, at A1, col. 5; Bohlen, *The Soviets and the Enmities Within*, N.Y. Times, Apr. 16, 1989, § 4, at 3, col. 1; D. LIEVEN, *GORBACHEV AND THE NATIONALITIES* (1988); Brzezinski, *Post-Communist Nationalism*, 68 FOREIGN AFF. 1 (1990); Lapidus, *Gorbachev's Nationalities Problem*, 68 FOREIGN AFF. 92 (1989); Fein, *Gorbachev Urges Lithuania to Stay with Soviet Union: But Success is Doubtful*, N.Y. Times, Jan. 20, 1990, at A1.

19. See generally "Z," *To the Stalin Mausoleum*, 119 DAEDALUS 295 (1990); E. HEWETT, *REFORMING THE SOVIET ECONOMY: EQUALITY VS. EFFICIENCY* (1988); P. DESAI, *THE SOVIET ECONOMY: PROBLEMS AND PROSPECTS* (1987); A. AGANBEGYAN, *INSIDE PERESTROIKA: THE FUTURE OF THE SOVIET ECONOMY* (1989); *PERESTROIKA AND THE ECONOMY: NEW THINKING IN SOVIET ECONOMICS* (A. Jones & W. Moskoﬀ eds. 1989); J. SHELTON, *THE COMING SOVIET CRASH* (1989); A. ASLUND, *GORBACHEV'S STRUGGLE FOR ECONOMIC REFORM* (1989). See, e.g., Kurtzman, *Confronting the Soviet Union's Economic Morass*, N.Y. Times, Oct. 29, 1989, § 3, at 6, col. 1; Fein, *Soviet Official Explains Ruble Devaluation*, N.Y. Times, Aug. 15, 1989, at A1, col. 1.

the extent that NATO provided the security umbrella for the recovery, subsequent prosperity and unity of Western Europe, the hopes of its founders have been largely fulfilled. Such achievements would have been impossible had the security needs of Western Europe not been underwritten by the United States in the Alliance.

The successes of one era, however, contain the seeds of problems that emerge in the future years. Similarly, failures of one period give birth to opportunities. The devastation of World War II provided the setting for building politically and economically advanced states in Western Europe. The revolutionary changes sweeping Eastern Europe, which are providing, for the first time, a basis for German unification, will produce challenges and problems that need to be addressed in the 1990s and beyond.

Because the Alliance was founded as an indispensable element in the security equilibrium of Europe, the question that must be addressed concerns the nature of the balance to be maintained and the role the United States will play in such a configuration. Because the Alliance formed the institutional basis for an American transatlantic commitment, the Alliance's utility would be lost if a U.S. commitment were no longer needed. In assessing NATO's importance for the 1990s, the United States and Western Europe need to achieve a consensus on this important question. The answer will determine both the nature of the American security relationship and the levels and types of military capabilities required from the United States. If the security equilibrium of Europe does not need a transatlantic security link, then NATO, as the embodiment of that relationship, has amply served its purpose and can safely be discarded. If, however, the United States must remain an important element in the emerging security equilibrium in Europe, the question arises as to the appropriate form of the transatlantic relationship. To the extent that NATO, as the legal basis for such a transatlantic relationship, continues to be needed, the structure of the Alliance must be maintained and updated.

NATO's role in the emerging European security environment consists of keeping the United States engaged actively in the deterrence of conflict in Europe. Even with the prospective dissolution of the Warsaw Pact²⁰ and the withdrawal of Soviet forces from Eastern Europe,²¹ a security framework which provides for a security equilibrium will remain

20. See, e.g., Tagliabue, *Moscow's New Olive Branch: Shevardnadze, in Warsaw, Sees End to Military Alliances*, Int'l Herald Tribune, Nov. 27, 1989, at 1; Trainor, *With Reform, Tough Times for the Warsaw Pact*, N.Y. Times, Dec. 20, 1989, at A15, col. 1; Riding, *Russians at Conference, Soviet General Sees Broad Changes in Warsaw Pact*, N.Y. Times, Jan. 18, 1989, at A8, col. 1 [hereinafter *Russians at Conference*]; Riding, *Hungary Seeks Withdrawal of Soviet Forces in Two Years*, N.Y. Times, Jan. 19, 1990, at A10, col. 1 [hereinafter *Hungary Seeks Withdrawal*].

21. See, e.g., *Prague Wants Soviet Pullout by Year's End*, N.Y. Times, Jan. 10, 1990, at A10, col. 1; Whitney, *Prague and Moscow Begin Talks on Soviet Pullout*, N.Y. Times, Jan. 16, 1990, at A10, col. 1; *Russians at Conference*, supra note 20; *Hungary Seeks Withdrawal*, supra note 20.

necessary especially as the nations of Eastern Europe and the Soviet Union undergo transformations that hold numerous dangers for destabilization.²² There exists in Western Europe no plausible deterrent to counter the regeneration and mobilization of Soviet forces other than a United States security relationship. Regardless of the reductions in strategic nuclear capabilities under the Strategic Arms Reduction Treaty ("START"),²³ the Soviet Union will possess a nuclear arsenal capable of targeting Western Europe.

Geographically, the Soviet Union, even if several of its republics gain autonomy, would still constitute in geographic terms the world's largest land power. Western Europe, on the other hand, lacks the defense-in-depth that the Soviet Union, spanning two continents, possesses. The existence of a NATO counterpoise that includes North America provides the defense-in-depth that Western Europe lacks.

Thus, the discussion of the "dissolution of blocs" in Europe is often marred by an absence of geostrategic considerations. The Soviet Union is linked geographically to the European continent in which Soviet power has been so fully deployed and which will continue to be the locus of modernized military forces that emerge from the complex and uncertain process of change now sweeping Eastern Europe. By contrast, the United States is separated from Europe by the Atlantic Ocean and becomes formally a part of the European security equilibrium only if it is so related by a legal instrument such as the North Atlantic Treaty.²⁴ In

22. The dangers for destabilization are inherent in the political, economic, and military changes extant in most of Eastern Europe and to lesser degrees in the Soviet Union. With Soviet dominance of Eastern Europe weakening, these nations are charting new, divergent paths and, simultaneously, old nationalisms are resurgent. Furthermore, the process of conversion from centrally-planned economies toward free-market economies contains seeds for much domestic social turmoil as whole nations are weaned from state control. Finally, as the Soviets begin to remove troops from East European countries, new factors in the Central European security environment emerge. See generally Schmemmann, *Unification: Caution Flag*, N.Y. Times, Dec. 14, 1989, at A22, col. 1 (for some concerns regarding German reunification) [hereinafter *Unification: Caution Flag*]; Schmemmann, *The Rush to One Germany Starts to Blur Europe's Map of Alliances*, N.Y. Times, Feb. 4, 1990, § 4, at 1, col. 1 [hereinafter *The Rush to One Germany*].

23. See generally INT'L INST. FOR STRATEGIC STUDIES, STRATEGIC SURVEY 1988-1989, at 43-49 (1989) (on START negotiations); Bertram, *U.S.-Soviet Nuclear Arms Control*, in SIPRI YEARBOOK 1989, at 359-68 (1989); Smith, *A Snag In Talks On Arms*, Int'l Herald Tribune, Oct. 25, 1989; Loasby, *The Learning Curve to the START Treaty*, 22 INT'L DEF. REV. 265 (1989); Manthorpe, *Part I: What Is Pushing Gorbachev Into Arms Control?*, U.S. NAVAL INST. PROCEEDINGS 37 (1988); Manthorpe, *Part II: What Is Pushing Gorbachev Into Arms Control?*, U.S. NAVAL INST. PROCEEDINGS 73 (1989); Friedman, *An Arms Obstacle Falls: Moscow Puts Aside 'Star Wars' Demand*, N.Y. Times, Sept. 24, 1989, at 1, col. 6; Obderdorfer, *Baker Answers Critics of U.S. Policy*, Washington Post, Sept. 20, 1989, at A1, col. 6; Adams, *START Ratification May Snag on SDI Tests*, Defense News, Nov. 13, 1989, at 1; *Friendly Arms Negotiators Announce Agreements*, N.Y. Times, Dec. 9, 1989, at A10, col. 3; Rubin, *START Finish*, 76 FOREIGN POL'Y 96 (1989); Binnendijk, *START: A Preliminary Assessment*, 11 WASH. Q. 5 (1988); Einhorn, *The Emerging START Agreement*, 30 SURVIVAL 387 (1988); Talbot, *Why START Stopped*, 67 FOREIGN AFF. 49 (1988).

24. The role of public international law and the importance of the extant state-centric paradigm, within which international politics (e.g. geopolitics) and interna-

this sense, the Warsaw Pact and NATO lack equivalency. The Warsaw Pact functioned as the instrument by which the Soviet Union maintained its hegemony in Eastern Europe. Unlike NATO, in which allied forces have always far outnumbered those of the United States,²⁵ the Warsaw Pact has consisted, principally, of Soviet forces stationed in treaty countries without the consent of freely elected governments.²⁶ American forces, on the other hand, will remain in Europe only as long as the host countries and the United States public continue to support such a military presence. As a voluntary association of representative governments formed for common defense, NATO cannot be equated with the Warsaw Treaty Organization.²⁷ Therefore, the dissolution of Soviet hegemony in Eastern Europe does not furnish a logical basis for dismantling NATO.

II. The German Question

For the United States and its NATO-European allies, the German Question lies at the core of the European security problem. An inevitable consequence of the present reduction of East-West political-military tensions has been the emergence of German unification as an issue of growing importance.

By 1989 it had become apparent that Gorbachev was prepared to jettison old-guard communist leaderships in Eastern Europe in favor of

tional law correlate, needs further explanation. The state-centric paradigm emphasizes sovereignty and is based on the foundation provided by the Treaty of Westphalia in 1648, which established the legal order among states which still largely exists to this day. Although many presuppose that codification of public international law follows the dynamics of international politics, the two are interrelated and influence one another. The practice of international politics is more determinative of public international law than vice versa. When the international political situation changes, international legal instruments, such as treaties, invariably change to codify the new circumstances (*rebus sic stantibus*).

The Congress of Vienna (1815) and the Treaty of Aix-la-Chapelle (1818) codified the changed geopolitical order in Europe after the Napoleonic wars. Likewise, the Treaty of Versailles (1919) codified the changed political order in Europe at the end of World War I and created, *inter alia*, the League of Nations. No comprehensive treaty, however, codified *per se* the new geopolitical order in Europe after Germany's defeat in World War II, thus leaving the German question formally unanswered. Instead, a new system of order evolved, reflecting changed political realities, such as the assertiveness of the Soviet Union in Europe, and was subsequently codified in the North Atlantic Treaty and the Warsaw Treaty Organization. These treaties must now confront a change in political circumstances in Europe, i.e., the withering authority of the Soviet Union in Eastern Europe. A treaty codification of existing political realities that attempts to resolve the German question will probably result; again, codification of public international law follows the dynamics of international politics. Treaty law, thus, constitutes the most substantive source of international law (as indicated in the Statute of the International Court of Justice, Article 38.1.(a)).

25. See generally sources cited *supra* note 15.

26. See generally THE WARSAW PACT: POLITICAL PURPOSE AND MILITARY MEANS (R. Clawson & L. Kaplan eds. 1982); W. LEWIS, THE WARSAW PACT: ARMS, DOCTRINE, AND STRATEGY (1982).

27. See sources cited *supra* note 26. See generally S. DUKE, UNITED STATES MILITARY FORCES AND INSTALLATIONS IN EUROPE 7 (1989); W. LEWIS, *supra* note 26, at 1-6.

reformist elements.²⁸ Once the certainty of Soviet military support was removed, despite the continued stationing of Soviet forces on their territory, East European communist regimes fell like a row of dominoes.²⁹ What took years in the case of Poland, where the Solidarity movement was founded a decade earlier,³⁰ was accomplished in a matter of weeks or days elsewhere.³¹ The crumbling of the communist regime in Poland,³² together with the unwillingness of Hungary to halt the use of its territory as a point of transit for East Germans fleeing to the West,³³ helped precipitate the events leading to the downfall of the Honecker Government in the German Democratic Republic ("GDR").³⁴

Unlike Poland, whose nationalism is deeply rooted in history, the East German state was the artificial creation of the postwar division of Europe. East Germany's *raison d'être* rested on the myth that it constituted the "first socialist workers' state on German territory."³⁵ By 1989 its faltering economy could not maintain a population restless for the affluence and freedom of West Germany.³⁶ What followed was the beginning of a process of German unification from below. The pace of this change has exceeded the assimilative capabilities of both West Germany and East Germany. The decision of East German authorities on November 9, 1989, to open the Berlin Wall and other parts of the fortified barrier accelerated the process of unification that began with the exodus of East Germans through Hungary.³⁷ The German Question quickly became the most important topic of the East-West political agenda as East Germany became essentially a dependency of West Germany.³⁸

Just as the Wall had been constructed in 1961 to stop the migration from East Germany, which was losing a major segment of its most pro-

28. See, e.g., *Gorbachev Urged Ouster of Honecker, West German Says*, L.A. Times, Oct. 21, 1989, at A12, col. 1; Tuohy, *Honecker Told of Need for Reforms*, L.A. Times, Oct. 8, 1989, § F, at 95, col. 1; Tuohy, *Honecker Quits; East Germany May Change Course*, L.A. Times, Oct. 19, 1989, at A1, col. 1.

29. See, e.g., *Eleven Months of Peaceful Revolution*, N.Y. Times, Dec. 3, 1989, § 4, at 3, col. 1 [hereinafter *Eleven Months of Peaceful Revolution*]; *Up to the Minute Scores from the Revolution in the East Bloc*, N.Y. Times, Feb. 18, 1990, § 4, at 2, col. 2.

30. See generally N. ANDREWS, *POLAND 1980-81: SOLIDARITY VERSUS THE PARTY* 55 (1985); Geremek, *Between Hope and Despair*, 119 DAEDALUS 91 (1990).

31. See sources cited *supra* notes 28-29; see, e.g., Whitney, Binder, & Schmemmann, *Party Coup Turned East German Tide*, N.Y. Times, Nov. 19, 1989, at A1, col. 3.

32. In April 1989 Solidarity was legalized and, in ensuing elections, defeated the Communist government; Tadeusz Mazowiecki, a Solidarity official, became Prime Minister. See generally Geremek, *supra* note 30 and sources cited *supra* note 29.

33. See generally Childs, *supra* note 3, at 388.

34. See generally sources cited *supra* notes 28-29; Whitney, Binder & Schmemmann, *supra* note 31.

35. See H. SPANGER, *THE GDR IN EAST-WEST RELATIONS* 6 (1989).

36. See, e.g., Schmemmann, *Free Travel Fails to Curb Exodus of East Germans*, N.Y. Times, Dec. 16, 1989, at A1, col. 6.

37. See, e.g., Whitney, Binder & Schmemmann, *supra* note 31.

38. West Germany has accepted large numbers of East German emigres onto its welfare rolls, offered lucrative grants and loans to the East German government, and offered to subsume the nonconvertible Ost Mark into the Deutsche Mark.

ductive population to the West,³⁹ the Wall's opening in November 1989 symbolized the failure of the East German government to separate its population from the attractions of a dynamic Western Europe and, in particular, the Federal Republic of Germany.⁴⁰ As events of the last months of 1989 demonstrated, the division of Germany could continue only as long as the GDR, backed by the Soviet Union, was prepared to maintain the physical separation of the two states as symbolized by the Wall.

Just as the German Question lies at the core of European security, the issue of the form that a unified German state will take is of central importance to the architecture of a new European equilibrium. In the past, support for German unification in principle had been easy to state as long as its prospect loomed only in some distant and improbable future. It was widely assumed that the division of Europe imposed after World War II would be sustained into an indefinite future.⁴¹ Past discussions concerning alternative solutions focused on three approaches:⁴² (1) a unified Germany aligned with the West as a part of NATO; (2) a neutral nonaligned German state; and (3) improbable as it seems, a unified German state linked in some manner with the Soviet Union. In the FRG the political debate of the 1950s featured a discussion in which West German Chancellor Konrad Adenauer envisaged the integration of the FRG into the institutions of the West, including the European Community ("EC") and NATO, as furnishing the framework within which German unification could, from a position of strength, eventually be achieved.⁴³ The Social Democratic Party ("SPD") envisaged then that a neutral Germany would be the price to pay for unification, and the links between Bonn and NATO therefore served only to delay the process of bringing the two German states together.⁴⁴ The collapse of East Germany and the apparent willingness of Gorbachev to accept terms considered an anathema by previous Soviet leaders has vin-

39. See generally J. KELLER, *GERMANY, THE WALL AND BERLIN* (1964); R. SLUSSER, *THE BERLIN CRISIS OF 1961* (1973).

40. See Binder, *Grim State of East Germany's Economy is Disclosed to Parliament*, N.Y. Times, Nov. 16, 1989, at A20, col. 1; Gordon, *Kissinger Expects a United Germany*, N.Y. Times, Nov. 16, 1989, at A21, col. 1.

41. See generally A. DePORTE, *EUROPE BETWEEN THE SUPERPOWERS: THE ENDURING BALANCE 145-65* (1979).

42. See generally E. FREY, *DIVISION AND DETENTE: THE GERMANIES AND THEIR ALLIANCES* (1987); W. GRIFFITH, *THE OSTPOLITIK OF THE FEDERAL REPUBLIC OF GERMANY 131-223* (1978); J. RICHARDSON, *GERMANY AND THE ATLANTIC ALLIANCE: THE INTERACTION OF STRATEGY AND POLITICS* (1966); D. CALLEO, *THE GERMAN PROBLEM RECONSIDERED: GERMANY AND THE WORLD ORDER 1870 TO THE PRESENT 179-205* (1978).

43. See generally K. ADENAUER, *MEMOIRS* (1966); W. HANREIDER, *WEST GERMAN FOREIGN POLICY, 1949-1963* (1967).

44. See generally W. GRIFFITH, *supra* note 42; D. BARK & D. GRESS, *1 & 2 A HISTORY OF WEST GERMANY* (1989). For a more recent discussion of SPD security policy, see generally Weiller, *SPD Security Policy*, 30 *SURVIVAL* 515 (1988); Campbell, *Nuremberg and Beyond: Defining a New SPD Security Policy in SECURITY PERSPECTIVES OF THE WEST GERMAN LEFT* 40 (W. Griffith ed. 1988).

dicated Chancellor Adenauer's vision.⁴⁵

The specter that long haunted German unification, namely that Germany and the Soviet Union would sign an agreement worked out exclusively between them,⁴⁶ will prove unfounded if Moscow accepts a unified Germany within NATO. The relationship between Germany and the Soviet Union is as important as the German Question to the equilibrium of Europe. A close alignment between the two states is incompatible with a European security order based on stability. To the extent that the intentions of a neutral unified Germany would always be suspect in the minds of its neighbors, especially to the East,⁴⁷ such a status would hold the dangers of instability. By the same token, to the extent that the equilibrium in Europe can be more securely based on a Western pillar of which Germany forms a part, it follows that the future architecture, like that of the recent past, requires that the German state which emerges preserve as tight a link as possible with the West. Furthermore, a unified Germany must be based upon a political system directly akin to the Basic Law of the FRG and must have full participation in the EC and the Atlantic Alliance.

Past discussions of German unification have foundered on the apparent irreconcilability of neutrality and membership in the institutions of the West.⁴⁸ To an extent, such alternatives helped frame the discussion of unification after the opening of the Berlin Wall. The proposal put forward by then East German Premier Hans Modrow on February 1, 1990, provided for a neutral Germany from which all foreign forces would be withdrawn.⁴⁹ The government of Chancellor Helmut Kohl quickly rejected the proposal.⁵⁰ The debate in West Germany that separates the opposition SPD and the governing CDU-FDP coalition, is reminiscent of the debate of the 1950s, when Chancellor Adenauer confronted the critics of West German NATO membership over the unification issue. The bargaining leverage of West Germany and the West in negotiating the terms of unification has changed, perhaps beyond Adenauer's expectations. The West once feared a West German-Soviet relationship in which the Soviet Union could demand, without resistance

45. See, e.g., Clines, *Kohl's German Unity Plan Is 'Dangerous' Soviets Say*, N.Y. Times, Dec. 6, 1989, at A19, col 1; *Excerpts from Speech by Gorbachev on Bloc*, N.Y. Times, Dec. 12, 1989, at A18, col 5. See generally Yergin, *Soviet-West German Relations: Finlandization or Normalization*, in *SOVIET FOREIGN POLICY TOWARD WESTERN EUROPE* 102 (G. Ginsburgs & A. Rubinstein eds. 1978); R. PIPES, *SOVIET STRATEGY IN EUROPE* (1976); T. WOLFE, *SOVIET POWER AND EUROPE, 1945-1970* (1970).

46. See generally sources cited *supra* note 44.

47. See, e.g., Schmemmann, *How to Hammer Germany Back Together: The Nuts and Bolts*, N.Y. Times, Feb. 27, 1990, at A8, col. 1; Schmemmann, *Kohl's Political Math*, N.Y. Times, Feb. 28, 1990, at A1, col. 1; Kifner, *Warsaw Fights for Role in German Unity Talks*, N.Y. Times, Feb. 28, 1990, at A12, col. 5.

48. See generally Burley, *The Once and Future German Question*, 68 *FOREIGN AFF.* 65 (1989-90); D. CALLEO, *supra* note 42, at 161-78; W. HANREIDER, *supra* note 43.

49. Kamm, *East Berlin Chief Presents His Plan to Unite Germany: Neutrality Emphasized*, N.Y. Times, Feb. 2, 1990, at A1, col 6.

50. *Id.*

or amendment by West Germany, that a unified Germany be neutral.⁵¹ In 1990, the West was able to refuse such terms when they were proposed as an initial gambit by the East, in the expectation that more favorable terms could be obtained.

The framers of the present transatlantic relationship and the European Community assumed that a peaceful European security order required both a Western counterpoise to the Soviet Union and the integration, as fully as possible, of Germany into a Western institutional collaboration. Within such an architecture, the FRG became the indispensable component of a NATO forward defense and the leading economic power of the European Community. NATO became an institution in which the allies could develop a consensus on the level and type of West German contribution to the common defense.⁵²

Continuing this logic, a unified Germany should participate in a framework designed to assure the future security equilibrium of Europe. Whether this arrangement is possible depends, considerably, on the unfolding political debate within Germany. The process of integrating East Germany into a new German state will cause unpredictable consequences.⁵³ The injection of more than 16,000,000 East Germans into the political process of a unified Germany will also create many uncertainties. This problem is magnified by the fact that the last free election on the territory of the GDR before March 18, 1990, occurred in the waning days of the Weimar Republic shortly before Hitler came to power in 1933.⁵⁴ The strength of East Germany's SPD, with strong links to its sister party in West Germany, will likely have important implications for the unifying state. The current West German SPD holds substantially different positions than the party of Chancellor Kohl concerning the future roles of NATO in Europe and Germany in the Alliance.⁵⁵ The strength of the SPD in a unified Germany will undoubtedly affect Germany's overall orientation as a part of the future Western security framework. Should the SPD become the ruling party, Germany would likely give increasing priority to pan-European relationships and some-

51. See generally Yergin, *supra* note 45; R. PIPES, *supra* note 45; T. WOLFE, *supra* note 45; W. GRIFFITH, *supra* note 42.

52. See generally sources cited *supra* note 2. See also K. ADENAUER, *supra* note 43.

53. Such problems might include economic recession, increasing tension between East and West Germans (East Germans may be perceived to take jobs and doles reserved for West Germans), tension resulting from the definition of Germany's eastern border with Poland, reactions of a unified Germany's neighbors to its unification, and frustrations of East Germans who are absorbed into West German domestic politics without the East German representation they had in the GDR. See, e.g., Kamm, *No Undue Haste to Unity, Irate East German Urges*, N.Y. Times, Feb. 21, 1990, at A10.

54. See D. CALLEO, *supra* note 42.

55. See, e.g., Markham, *Saar Mayor Campaigns Against U.S. and NATO*, Int'l Herald Tribune, Jan. 11, 1985; Schmemmann, *Saar Vote Sets Stage for Challenge to Kohl*, N.Y. Times, Jan. 29, 1990, at A10; Schmemmann, *Bonn's Social Democrats Trying to Upstage Kohl on Reunification*, N.Y. Times, Dec. 12, 1989, at A16. See generally Weiller, *supra* note 44; Campbell, *supra* note 44.

what reduced emphasis to the moorings to the West that have been central to the architecture of the past two generations.

III. German Unification and NATO

In the wake of the March 17, 1990 election in the GDR and regardless of the outcome of future elections, the process of German unification is proceeding at an accelerating pace.⁵⁶ The task for Germany's allies will be to lock the emerging German state into the future security architecture as fully and as soon as possible. This architecture should include the Atlantic Alliance, in which the military forces of the FRG have been integrated since West Germany joined NATO in 1955.⁵⁷ Numerous questions confront the designers of such a future architecture. To the extent that the European security equilibrium requires the participation of a German military force, is it politically acceptable or even militarily feasible for the force to be deployed outside of a multilateral framework such as NATO? A Germany that was not fully a part of NATO could hardly have its military units integrated into the Alliance structure as they have been since the admission of the FRG in 1955. The case for preserving German membership in NATO in order to utilize German defense units, even at lower, residual levels is compelling.⁵⁸ The alternative of a German military operating outside such a framework, or having a disarmed neutral Germany, harbors potential dangers for European security,⁵⁹ at least in the minds of many in Europe and elsewhere.⁶⁰ Strategic logic thus leads to the conclusion that German

56. See, e.g., Schmemmann, *Reunification Next?*, N.Y. Times, Nov. 16, 1989, at A20, col. 1; Protzman, *Kohl to Outline Plan for German Unity*, N.Y. Times, Nov. 28, 1989, at A14, col. 4; Protzman, *Kohl Offers an Outline to Create Confederation of the Two Germanys*, N.Y. Times, Nov. 29, 1989, at A1, col. 4; Whitney, *Bonn Leader Softens His Plan for German Unity*, N.Y. Times, Dec. 12, 1989, at A1, col. 3; *Unification: Caution Flag*, *supra* note 22; *Troubled by Migration from East, Bonn Sharpens Reunification Call*, N.Y. Times, Jan. 19, 1990, at A1, col. 4; *West Germans Assert Gorbachev Has Cleared Way to Reunification*, N.Y. Times, Feb. 1, 1990, at A1, col. 4; *The Rush to One Germany*, *supra* note 22; Rupnik, *Central Europe or Mitteleuropa?*, 119 DAEDALUS 249 (1990).

57. See generally sources cited *supra* note 12.

58. See, e.g., Toner, *Survey Finds Americans Favor a Reunited Germany*, N.Y. Times, Dec. 1, 1989, at A21, col. 4; Friedman, *U.S. Ties with West Germany Begin to Eclipse "Special Relation" to Britain*, N.Y. Times, Dec. 10, 1989, at A32, col. 1; Friedman, *Baker Says Reunification Isn't Just a German Issue*, N.Y. Times, Dec. 12, 1989, at A16, col. 1.

59. Many Europeans and others are (rightly or wrongly) concerned about a perceived, so-called national trait of militarism on the part of the Germans, especially if German nationalism is resurgent. In addition, a disarmed, neutral Germany could pose a temptation for future expansion by a resurgent Soviet Union. See, e.g., Binder, *East Germans React Coolly to Kohl Plan for Closer Ties*, N.Y. Times, Nov. 30, 1989, at A19, col. 1; Whitney, *Unease Fills Western Europe over Rapid Changes in East*, N.Y. Times, Dec. 1, 1989, at A1, col. 4; Whitney, *Rapid Change in East is Taking a Toll on the Western Allies*, N.Y. Times, Dec. 6, 1989, at A16, col. 4; Schmemmann, *Germany Inc.: Awesome Power Might Be the Only Predictable Trait of a Unified Land*, N.Y. Times, Feb. 18, 1990, § 4, at 1.

60. See Riding, *2 Viewpoints On Germany: West Europe Divided On Whether to Cheer*, N.Y. Times, A1; Fitchett, *United Germany: Scenarios for NATO*, Int'l Herald Tribune, Feb. 2, 1990, at 1; Murray, *Genscher insists unified Germany stays in Nato*, The Times (London), Feb. 1, 1990; Trainer, *Shift in the Western Alliance's Focus: From Moscow to a*

armed forces at levels deemed acceptable to NATO will constitute an important part of the future European security equilibrium. Such agreement would be the object of discussion within NATO, since it relates to the sharing of defense responsibilities among its members.⁶¹

The question of the appropriate level of Allied forces stationed in East Germany is closely related to that of German involvement in NATO. As of early 1990, the Soviet Union had as many as 380,000 troops in East Germany.⁶² Just as the new governments of Poland, Czechoslovakia, and Hungary have called for the withdrawal of all Soviet forces from their respective territories,⁶³ it is unlikely that a substantial number of Soviet troops would remain in Germany except as part of a multilateral agreement. The discussion of the future of foreign military forces in the GDR has included possible provision for only strictly limited levels of deployment.⁶⁴ The question concerning the degree of

Unified Germany, N.Y. Times, Feb. 18, 1990; Trainer, *Watching Over Germany: Focus of NATO Shifts From Pact*, Int'l Herald Tribune, Feb. 19, 1990, at 1; Cody, *Across Europe, Discreet Unease on Germany Unity*, Int'l Herald Tribune, Feb. 21, 1990, at 1; Hilton, *Nato role for a united Germany*, The Independent (London), Feb. 6, 1990; Fialka, *Strategists Weigh A United Germany, NATO's Future*, Wall St. J., Feb. 5, 1990; Lewis, *United Germany Urged to Be in NATO*, N.Y. Times, Feb. 15, 1990; El Pais (Madrid), Feb. 25, 1990, at 6 (Interview with Foreign Secretary Douglas Hurd by R. M. de Riteurto); *Der Spiegel*, Mar. 26, 1990, at 182 (Interview with Prime Minister Margaret Thatcher by Hans Hielscher, Dieter Wild, and Hans Werner); *Corriere Della Sera*, Mar. 22, 1990, at 9 (report by Fabrizio Dragosei on the Italian Communist Party's opposition to German integration into NATO).

On the views of Spanish Prime Minister Felipe Gonzalez, see *Cologne Deutschlandfunk Network*, 1200GMT, Mar. 21, 1990, translated in *Daily Report: Western Europe* (Foreign Broadcast Information Service), Mar. 22, 1990, at 4. On the views of Belgian Prime Minister Wilfried Martens, see *Brussels Domestic Service*, 1700GMT, Mar. 21, 1990, translated in *Daily Report: Western Europe* (Foreign Broadcast Information Service), Mar. 22, 1990, at 2.

61. The issue concerning Germany's relationship with NATO is based, in large part, on the assumption that West Germany will become the successor state of German unification. Article 23 of West Germany's Basic Law provides for the integration of the GDR into the FRG. The FRG successor state could either remain part of NATO, seek to amend the North Atlantic Treaty, withdraw from the Treaty, or seek some new form of associate status in conjunction with the Treaty.

62. See, e.g., Whitney, *Soviet Forces Were Ordered to Stay in Barracks, East Germans Say*, N.Y. Times, Dec. 3, 1989, at A31; INT'L INST. FOR STRATEGIC STUD., *THE MILITARY BALANCE 1989/90*, at 38 (1989).

63. See, e.g., *Prague Wants Soviet Pullout by Year's End*, supra note 21; Whitney, supra note 21, at col. 2; *Russians at Conference*, supra note 20; *Warsaw Calls for Border Treaty Before Germans are Reunited*, N.Y. Times, Feb. 22, 1990, at A15, col. 5; Fowler, *Soviets Prepare Czech Departure*, N.Y. Times, Feb. 25, 1990, at A12, col. 1.

However, Prime Minister Tadeusz Mazowiecki of Poland recently stated that Soviet troops should remain until the German unification issue, especially concerning Poland's border with Germany, is resolved, although Soviet troops should ultimately withdraw from Poland. See, e.g., Greenhouse, *Polish Official Vows to Defend Border*, N.Y. Times, Feb. 21, 1990, at A10, col. 1.

64. Before February 13, 1990, the Warsaw Treaty Organization ("WTO") included in the negotiations on reducing Conventional Forces in Europe ("CFE") a ceiling of 350,000 troops on all "foreign forces" deployed in central Europe, which was defined as consisting of the Benelux countries, Luxembourg, Denmark, the FRG, the GDR, Czechoslovakia, Poland, and Hungary. By February 1, 1990, Poland, Czechoslovakia, and Hungary had requested that the Soviet Union withdraw its

deployment in East Germany relates directly to the requirements of the future European security equilibrium. For example, were Soviet forces to withdraw into the Soviet Union, the West would gain increased military warning time, thereby diminishing the prospects of a Soviet surprise attack. In such circumstances, it would be possible for the West to rethink its requirements for forward defense.⁶⁵ Smaller units with increased mobility and enhanced firepower capabilities could replace the current, relatively static, "layer-cake" deployments of the national

troops from their territory. As of July 1989, the Soviet Union had deployed 175,000 troops in the three countries in addition to the 380,000 troops deployed in East Germany. The Soviet Union, however, had previously avowed to reduce the number in East Germany to 330,000 by January 1991. Thus, in order for the USSR to meet its commitments to reduce forces to 350,000 in central Europe, it could have withdrawn all of its forces from Poland, Czechoslovakia, and Hungary, but would not have had to withdraw any more forces from Germany. The Soviet leadership has since changed its views on accepting more radical cuts in the number of foreign troops deployed in Germany because it realized that a unified Germany would not likely tolerate the large numbers of foreign forces envisioned under the WTO proposal. The Soviet Union thus agreed on February 13, 1990, to a U.S. proposed limit on U.S. and Soviet forces in central Europe set at 195,000 troops. Soviet officials also inquired at this point whether it was possible to reduce this level further, apparently eager to see the United States withdraw most of its forces from Germany after Soviet officials had pledged on February 11, 1990, to withdraw all of its forces from Eastern Europe by 1995; a few months earlier, the Soviet Union had pledged to withdraw all Soviet forces abroad by the year 2000. Soviet negotiators subsequently demanded the complete withdrawal of all non-United States NATO forces from West Germany at the fifth round of the CFE talks at Vienna which ended on February 22, 1990. See generally sources cited *infra* note 105.

The West German government under Chancellor Kohl has asked that all Soviet troops be withdrawn from the GDR preferably by the end of 1990. See, e.g., Fitchett, *Genscher Foresees Unity This Year: Bonn Aid Seeks Soviet Withdrawal*, Int'l Herald Tribune, Feb. 10-11, 1990, at 1. Problematically, NATO's current CFE proposal will serve to legitimize a continued Soviet military presence in the GDR.

65. Forward defense is an integral element of NATO's flexible response strategy and roots NATO force planning and defense strategy in the belief that it should be capable of defending West Germany's territorial integrity, and the 30 percent of the West German population and the 25 percent of its industry which lie within 100 km of the intra-German border. This politically mandated objective of NATO defense strategy demands that NATO's conventional defense posture be oriented toward the formation of a cohesive defense line near the intra-German border. But NATO's consistent inability to provide adequate conventional forces has raised questions about the viability of the forward defense strategy on purely military grounds. In the event NATO has only a short period of time in which to mobilize and deploy its forces before the large Soviet conventional force groupings in East Germany begin to move across the border, the forward defense strategy will not be viable, unless NATO is prepared to use its nuclear forces. Thus, the forward defense and flexible response strategies act synergistically in deterring Soviet aggression in Europe: the Soviet Union, if it wished to pursue a lightning war in Europe (with little or no warning of an attack), would be faced with the high probability that NATO would use its nuclear forces — and would not hesitate to do so first in order to defend the territory of a NATO ally; but, if Warsaw Pact mobilization takes longer than Soviet planners expect (Soviet military doctrine and strategy has traditionally been directed at preparing to conduct a lightning war in Europe in the event of armed conflict), NATO would have sufficient time to mobilize conventional forces adequate to conduct a staunch defense of the intra-German border, or even launch conventional counter-offensives into Eastern Europe.

corps elements of NATO's front-line forces.⁶⁶

Within NATO's inherently defensive setting, the deployment requirements for "forward-based" units would differ from those today.⁶⁷ The force structure that would emerge would depend on new high technology, more extensive use of reserve forces, and in particular, the ability to mobilize such forces in a timely fashion and to bring them to necessary levels of readiness.

Whether such a security setting would be inherently more stable than the balance that has deterred war in Europe for the past two generations remains to be seen. In particular, one cannot determine whether governments would effectively utilize the warning time gained from the changes presently sweeping Europe. In the past, reserve force mobilization was, in itself, a potent signal of crisis escalation conveyed to an adversary. In any event, the changing political landscape of Europe will stimulate new approaches to defense planning, including the force structures needed for deterrence purposes. What is important, from the perspective of the United States and its allies in Europe, is the extent to which a unified Germany forms a part of the Western pillar of security.

It is possible to envisage alternative models of the future security relationship between a unified Germany and the Atlantic Alliance. Optimally, from a Western perspective, Germany would retain full membership in NATO, including full participation of its armed forces in the Alliance's integrated command structure. NATO allies would decide, in a multilateral context, whether the number of authorized active West German forces should remain at current (495,000) or prospective (400,000) authorized levels.⁶⁸ Similarly, NATO allies would determine

66. At the Annual Wehrkunde Conference on European Security, held on February 3-4, 1990, defense officials from West Germany, the Netherlands, Great Britain, Belgium, and one official from the Western European Union voiced support for the formation of highly mobile, multinational units, under NATO command, as a response to the withdrawal of NATO forces from West Germany. The official stressed that the formation of such units would help link a unified Germany with NATO's military command structure and ensure that United States troops remain in Europe. See, e.g., Hitchens, *NATO Leaders Reconsider Use of Multinational Forces*, Def. News, Feb. 12, 1990, at 9.

67. See U.S. DEP'T OF THE ARMY, FIELD MANUAL 100-5, OPERATIONS (1986) (elucidates current Army doctrine including the provision of more mobile forces). If Soviet troops withdrew from Eastern Europe, NATO would benefit substantially from the extended warning time of any future Soviet attack. Such extended warning time would permit the redeployment of a substantial number of United States troop elements from Europe to the United States, and likely increase reliance on reserve troops.

68. The West German Ministry of Defense requested on October 29, 1989, the approval of a plan to reduce the authorized peacetime strength of the Bundeswehr from 495,000 to 420,000 by 1995. On December 6, 1989, the West German Cabinet decided to reduce the authorized peacetime strength of the Bundeswehr to 400,000 by 1995, but conditioned the plan on the success of conventional arms talks between NATO and the WTO. See, e.g., Stoltenberg to Announce Military Cuts, German Press Agency, Dec. 6, 1989; Fisher, *West German Cabinet Approves 20% Troop Cut*, Wash. Post, Dec. 7, 1989, at 29, col. 3; *Die Bundeswehr soll auf 420,000 Soldaten verkleinert werden*, Frankfurter Allgemeine Zeitung, Oct. 30, 1989, at 1.

the appropriate number of active and reserve forces within the broader framework of the requirements for overall force levels and security structures. Were a unified Germany to retain full membership in NATO, U.S. and other foreign forces would not necessarily be stationed on East German territory. If they were, they would only be so deployed in conjunction with a CFE Treaty.⁶⁹ The value of a framework that fully integrates German forces into a NATO defense framework lies in its multilateral decision-making process. Such a process would primarily include Alliance members, but would also consider the broader interests of states to the East, such as Poland and Czechoslovakia.

A second model for a unified Germany and its relationship with the Alliance is based on the French experience. Like France, Germany would remain a signatory of the North Atlantic Treaty, but would not participate in the integrated NATO command structure.⁷⁰ Such an arrangement, however, contains at least one shortcoming. If German military forces are to be maintained, they could not be deployed as part of a multilateral or integrated force that included the United States. As in the case of France, NATO and Germany would have a *de facto* cooperative relationship, but German military units would be organized under German national command. An alternative within this option might be to organize German forces around a European defense pillar based, perhaps initially, on Franco-German collaboration. Such a defense concept would call into question the appropriateness of France's nuclear policy regarding a deterrent guarantee confined solely to the territory of France.⁷¹ In short, only if the separation of West German forces from the NATO command structure led to their integration into a new European defense entity would such an approach prove satisfactory. To the extent that such a model could be extended beyond Franco-German collaboration to include other West European states, the NATO command

69. See, e.g., Trainor, *Shift in the Western Alliance's Focus: From Moscow to a United Germany*, N.Y. Times, Feb. 18, 1990, at A20, col. 1; Fletcher, *Kremlin Softens View of German Links with NATO*, The Times (London), Feb. 15, 1990, at 8, col. 7. See generally sources cited *supra* note 64.

70. France withdrew from NATO's integrated military command structure in 1967, but remains in NATO's political organizations. Nonetheless, France's military maintains liaison offices with various NATO military staffs. For details of the French experience in NATO, see generally G. DE CARMOY, *THE FOREIGN POLICIES OF FRANCE, 1944-1968* (1970); CROZIER, *DE GAULLE* 521-45 (1973); HOFFMANN, *DECLINE OR RENEWAL? FRANCE SINCE THE 1930's*, at 355-62 (1974); W. KULSKI, *DE GAULLE AND THE WORLD: THE FOREIGN POLICY OF THE FIFTH FRENCH REPUBLIC* (1966).

71. On the history and conceptual underpinnings of French nuclear strategy, see generally *FRENCH SECURITY POLICY IN A DISARMING WORLD: DOMESTIC CHALLENGES AND INTERNATIONAL CONSTRAINTS* (P. Le Prestre ed. 1989); R. LAIRD, *FRANCE, THE SOVIET UNION, AND THE NUCLEAR WEAPONS ISSUE* 45-89 (1984); D. YOST, *FRANCE'S DETERRENT POSTURE AND SECURITY IN EUROPE* 29 (1984); Kemp, *NUCLEAR FORCES FOR MEDIUM POWERS: PARTS II AND III: STRATEGIC REQUIREMENTS AND OPTIONS* (1974); F. DE ROSE, *EUROPEAN SECURITY AND FRANCE* (1985); P. GALLOIS, *THE BALANCE OF TERROR* (1961); P. Gallois, *French Defense Planning*, 1 *INT'L SECURITY* 20-25 (1976); W. KULSKI, *supra* note 70; Laird, *Soviet Perspectives on French Security Policy*, 27 *SURVIVAL* 65 (1985).

structure would need to be revised, perhaps based on the framework of the Western European Union ("WEU").⁷² Such a model would give Western Europe the defense pillar that it has lacked. The Atlantic Alliance would also have to be revised to encompass a security link that remains to be fully defined between North America and Western Europe.

The proposal of such an arrangement for a unified Germany suggests a new path toward European security. If Europe could not assume that a unified Germany would become part of a West European security pillar, the substitution of a national German command for the NATO framework would probably create perceptions that would destabilize Germany's neighbors in Europe. The French model is based upon a national approach to defense and a continuing quest for autonomy in military and foreign policy decision-making.⁷³ To the extent that the

72. The Western European Union [hereinafter WEU] includes the Benelux countries, France, West Germany, Italy, Great Britain, Spain, and Portugal. Turkey has expressed interest in joining the WEU. The WEU traces its origins to the fifty-year Treaty of Alliance and Mutual Assistance signed at Dunkirk March 4, 1947, by Great Britain and France, and the fifty-year Brussels Treaty signed March 17, 1948, on economic, social, and cultural cooperation, and collective self defense between Great Britain, France, and the Benelux countries. See generally *Extracts from the Brussels Treaty*, in NATO INFORMATION SERVICE, NATO FACTS AND FIGURES 266-68 (1971) [hereinafter NATO FACTS AND FIGURES].

Initially, the purpose of both treaty alliances was to ensure European political and military cooperation in the event of a resurgent Germany. After the Berlin blockade in 1949, the signing of the North Atlantic Treaty in 1949, and the Soviet-backed North Korean invasion of South Korea in 1950, the focus of European defense collaboration shifted to the possibility of a Soviet invasion of Western Europe and to the question of how to regulate the rearmament of West Germany and Italy. The legal status of the WEU is governed by the Paris Agreements, which were signed on October 23, 1954. The Paris Agreements are reprinted in *Documents Relating to the Accession To The Treaty of the Federal Republic of Germany*, NATO FACTS AND FIGURES, *supra* note 72, at 306-34.

The issues that the Paris Agreements resolved led, in part, to the breakdown of negotiations on the formation of a European Defense Community [hereinafter EDC]. The Paris Agreements, for example, provided that British troops would be stationed on German soil, a move that the UK had rejected under the EDC proposal because its forces would be controlled by a supranational entity. See *infra* note 80. The Paris Agreements also invited West Germany and Italy to accede to the North Atlantic Treaty and the WEU. The Soviet Union responded to the Paris Agreements by having Albania, Bulgaria, Czechoslovakia, GDR, Hungary, Poland, and Rumania sign the Warsaw Treaty on May 14, 1954.

Despite its auspicious beginning, however, the WEU failed to become a locus for European defense cooperation, as most of its members preferred to enhance defense collaboration through NATO. On June 12, 1984, however, the WEU countries agreed to reactivate the WEU in order to expand their cooperation in the development and production of weapons systems and provide tangible proof of European efforts to strengthen the European "pillar" of the NATO Alliance. On October 26-27, 1984, the defense ministers of the WEU member countries published the "Rome Declaration" announcing their decision to increase defense cooperation within the WEU framework. In September 1988, Spain and Portugal signed protocols that provided for their entry into the WEU. See Ambassador Alfred Jean Cahen, *The WEU and the European Dimension of Common Security*, DEFENCE YEARBOOK 1989, at 25-37 (London: Brassey's Defence Pub's 1989).

73. See generally sources cited *supra* note 70.

French model represents, or contributes to, a revival of German nationalism, it would frighten Europeans who identify German nationalism and military independence with the territorial expansion of Germany.⁷⁴ Military independence in eras past was the ultimate and pervasive symbol of a destructive (and self-destructive) German nationalism that was cast aside in the multilateral framework of which West Germany played such a constructive part in the decades following World War II. The French model, to the extent that it could become for Germany an end in itself, rather than a means towards integrating Germany into a European pillar, represents a regression in strategic thought and architectural design.

In a third model for a unified Germany, Germany would withdraw from NATO's integrated command structure and from the Alliance, but retain associate status in the Alliance. Such an arrangement would ensure Soviet agreement, but endanger the relationship between Germany and the West. The United States deterrence guarantee would be weaker with respect to an "associate" member compared to that accorded a full member of NATO. Unless a European pillar replaced the U.S. guarantee, Germany's security links to the West would be either severed, or at least substantially weakened at any effective multilateral level. An associate status would call into question even a residual U.S. military presence in Germany. If the United States is not committed by a mutual treaty to the defense of West Germany, then American forces would have no plausible rationale for remaining in Germany. Under these circumstances, any American nuclear guarantee would necessarily be cast into doubt.

Finally, a model for German unification exists based on neutrality. The Kohl government, however, rejected the model, which was first put forward by the Soviet Union in the mid-1950s⁷⁵ and offered again by then East German Premier Hans Modrow in early 1990.⁷⁶ Nevertheless, such a formulation cannot be entirely discounted as a possible outcome of the ongoing security debate in a German political setting that includes East Germany, whose population has long been conditioned to view NATO in less than favorable terms. In addition, West German opposition parties appear to support both the gradual replacement of *both* the Warsaw Pact and NATO with an all-European framework such as that alluded to in the CSCE process;⁷⁷ together with major reductions

74. See, e.g., Pace, *Scholars Say Veneer of Nonchalance Masks Worry on German Unification*, N.Y. Times, Nov. 26, 1989, at A21, col. 4; Riding, *Survey Finds 2 in 3 Poles Opposed to German Unity*, N.Y. Times, Feb. 20, 1990, at A10, col. 1.

Military independence in eras past was the ultimate and pervasive symbol of a destructive German nationalism that was cast aside in the multilateral framework of which West Germany became so important a constructive part in the decades following World War II. See generally D. CALLEO, *supra* note 42, at 161-177 (on post-war German modernization).

75. See generally 1 D. BARK & D. GRESS, *supra* note 44, at 386-89.

76. See Kamm, *supra* note 49, at A1.

77. See *infra* notes 97 and 106.

in German defense forces.⁷⁸ Adoption of this approach would lead almost inevitably to fewer German security links with the West and place Germany outside of the Western contribution to the European security equilibrium.

IV. European Defense Collaboration and NATO

In addition to the transatlantic relationship, of which NATO is the embodiment, providing for the legal commitment of the United States, the architecture of a future European security framework inevitably will feature increasing defense collaboration in Europe itself.⁷⁹ To be sure, the history of such efforts abounds with disappointment. The failure of Western European governments to agree in the early 1950s on the proposed European Defense Community, which would have integrated their military forces, was symptomatic of the broader problem of building an acceptable framework for political unity.⁸⁰ Defense constitutes

78. See generally sources cited *supra* note 44; R. PFALTZGRAFF, K. HOLMES, C. CLEMENS & W. KALTEFLEITER, *THE GREENS OF WEST GERMANY: ORIGINS, STRATEGIES, AND TRANSATLANTIC IMPLICATIONS*, SPECIAL REPORT (1983).

79. For the basic history and logic behind this assumption, see Howe, *The European Pillar*, 63 *FOREIGN AFF.* 330 (1984-85).

As NATO undergoes the transition from the trans-Atlantic alliance in which the United States plays the leading defense role in both conventional and nuclear deterrence to one in which European states assume a greater share of the defense burden, European states will seek to strengthen intra-European defense collaboration in both conventional and nuclear deterrence. The Intermediate-range Nuclear Forces Treaty [hereinafter INF Treaty], signed in December 1987, provided additional impetus for NATO European allies to undertake efforts intended to enhance defense cooperation among themselves. The INF Treaty signalled the beginning of the withdrawal of the United States nuclear umbrella from Western Europe and enhanced perceptions in the West that the United States's commitment to the defense of Western Europe was diminishing. As a result, some Western European allies, in particular France, West Germany, and Great Britain, sought to compensate for the diminishing United States military commitment to Europe by increasing defense collaboration with other European states.

80. Initially, the EDC was proposed as a defense counterpart to a proposed European Political Community [hereinafter EPC], which, had it been accepted, would have established a European body that governed political, defense, and trade issues. The aim of the EDC would have been to establish a supranational union in Western Europe, in which West German contingents and other European states would form a European army under a supranational command, but integrated into the NATO military command structure. On August 29, 1954, the French National Assembly rejected the proposed treaty establishing the EDC, and joined Great Britain, which had already rejected the proposal, to defeat efforts to form the EPC. As a result, France, West Germany, Italy, Belgium, the Netherlands, Luxembourg, and Great Britain formed the WEU, which became the basis for intra-European defense cooperation. On the formation of the WEU, see generally NATO *FACTS AND FIGURES*, *supra* note 72, at 266-68.

In October 1988, West German Chancellor Helmut Kohl stressed the importance of strengthening the European pillar of the trans-Atlantic alliance and reviewed the idea of forming a European army, which would consist of the previously established joint Franco-German brigade, and a proposed British-German brigade. NATO European states reacted with skepticism, however, believing that the proposal could lead to a significant reduction in United States involvement in European defense. See, e.g., Thelen, *Kohl Calls For Army of Europe*, *DEF. NEWS*, Oct. 24, 1988, at 45.

the ultimate prerogative of national sovereignty. Had Western Europe agreed on a defense framework, the capacity of NATO-European countries to provide for their own security would have been enhanced considerably. Instead, the Alliance furnished the basis for defense collaboration at the Euro-Atlantic level.⁸¹ Without a defense pillar consisting of an integrated cooperative effort by the European allies, the

On the background to the proposal of an EDC and the history of European defense collaboration between 1945 and the early 1980s, see generally T. TAYLOR, EUROPEAN DEFENSE COOPERATION 15-66 (1984); H. CLEVELAND, THE ATLANTIC IDEA AND ITS EUROPEAN RIVALS (1966); D. LERNER & R. ARON, FRANCE DEFEATS EDC (1956); E. FURSDON, THE EUROPEAN DEFENSE COMMUNITY: A HISTORY (1980); ATLANTIC COMMUNITY IN CRISIS 55-172 (F. Hahn & R. Pfaltzgraff eds. 1979).

81. See generally *Extracts from the Brussels Treaty*, *supra* note 72; North Atlantic Treaty, *supra* note 1. Original Signatories to the North Atlantic Treaty include Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Great Britain and the United States. Greece and Turkey acceded to the North Atlantic Treaty on October 22, 1951. See *Protocol to the North Atlantic Treaty on the Accession of Greece and Turkey*, Oct. 22, 1951, 3 U.S.T. 43, T.I.A.S. 2390, 126 U.N.T.S. 350, reprinted in NATO FACTS AND FIGURES, *supra* note 72, at 274-75. Spain acceded to the North Atlantic Treaty on December 10, 1981. NATO INFORMATION SERVICE, NATO FACTS AND FIGURES 383 (1989).

The North Atlantic Treaty provides the basic legal foundation for United States-NATO European security cooperation, and, to a limited degree, for European defense collaboration. The Atlantic Treaty and the Brussels Treaty, as modified by the Paris Agreements, signed on October 23, 1954, provide the legal foundation for the European "pillar" of the trans-Atlantic alliance. 6 U.S.T. 4117, T.I.A.S. No. 3428, ___ U.N.T.S., reprinted in NATO FACTS AND FIGURES, *supra* note 72, at 306-34.

In analyzing the EDC and WEU, it appears as if multilateral treaty-based security commitments, as a customary norm of international law, become less binding on all treaty members when any treaty member fails to take "tangible measures" in support of its commitments. The binding nature of the commitment and the definition of "tangible measure" should be determined in the actual text of the treaty, or in some cases, by custom. For example, "tangible measures" as defined in the treaty, should include whether a state has explicitly agreed to permit foreign troops to be stationed on its soil. But, "tangible measures" also extend beyond the text of the actual treaty to include those expectations derived from custom. For example, when foreign troops are continuously permitted in a country, not as a matter of right under the language of a treaty, but in order to facilitate the objectives of a mutual defense pact, then "tangible measures" includes the custom of allowing the foreign presence. Besides custom and express commitments in a treaty, political commitments are a factor in determining what constitutes a "tangible measure."

Had the United States, for example, withdrawn all of its forces from Europe in 1961, at the height of the 1961 Berlin crisis, the European parties to the North Atlantic Treaty would probably have considered the multilateral security commitments of all the parties to be inoperative, or worse, that the Treaty had been abrogated. Similarly, were the United States to withdraw all of its forces from Europe unilaterally in the early 1990s, when most NATO states consider the continued presence of United States forces in Europe to be a vital component of the United States commitment under the North Atlantic Treaty, then NATO's European members might consider the binding nature of the United States commitment to the defense of Europe severely eroded, or even, that the United States had abrogated the Atlantic Treaty.

In a similar vein, the United States may consider the failure of particular European members of NATO to meet their obligations to the common defense to have eroded the binding strength of the U.S. security commitment under article 5 of the North Atlantic Treaty. The United States might also consider the forced reduction of American troops in a particular NATO-European state to have diminished the strength of the U.S. security commitment to that state.

contributions to NATO's integrated command structure remained on a

U.S. defense commitments in Europe are rooted in article 5 of the North Atlantic Treaty:

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 consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking 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.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

North Atlantic Treaty, April 14, 1949, 63 Stat. 2241, 2244, T.I.A.S. No. 1964, at 4, 34 U.N.T.S. 243, 246.

The North Atlantic Treaty does not have a termination date. According to article 13 of the Treaty, a state can withdraw from the Treaty within one year after giving notice of its "denunciation" of the Treaty to the United States. The Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces governs the presence of United States and allied forces on the territory of other NATO states. June 19, 1951, 4 U.S.T. 1792, T.I.A.S. No. 2846, 199 U.N.T.S. 67, *reprinted in NATO FACTS AND FIGURES, supra note 72, at 276-89. See also* Convention on the Presence of Foreign Forces in the Federal Republic of Germany, Oct. 23, 1954, 334 U.N.T.S. 3, *reprinted in NATO FACTS AND FIGURES, supra note 72, at 311-12.*

The NATO Treaty and the Brussels Treaty, as modified by the Paris Agreements, provide the legal foundation for security commitments between West European states. The Brussels Treaty, in force until 1998, commits treaty signatories to build a common defense system and to strengthen cultural and economic ties. The Treaty also establishes two ministerial-level bodies: a supreme body for Western Union — the Consultative Council — consisting of foreign ministers from treaty states; and the Western Defense Committee, a committee subordinate to the Consultative Council, consisting of defense ministers from treaty states.

The joint defense clause of the Brussels Treaty implies a stronger defense commitment than article 5 of the North Atlantic Treaty. Article 5 states that in the event of an armed attack in Europe, parties to the treaty are to take "such action as it deems necessary." The Brussels Treaty, on the other hand, requires its treaty states to provide, in the event of an armed attack, "all the military and other aid and assistance in their power," to the party or parties so attacked. According to article IV of the Brussels Treaty:

If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.

Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defense, Mar. 17, 1948, 19 U.N.T.S. 51.

The focus of the Brussels Treaty is much wider than standard defense commitments. While the Atlantic Treaty was intended, according to its preamble, to "unite" its Parties for "collective defence and for the preservation of peace and security," the Brussels Treaty was, according to its preamble, a "treaty for collaboration in economic, social and cultural matters and collective self-defence . . ." *Id.*

The Brussels Treaty, when signed in 1948, also provided a legal basis for European cooperation in the "event of a renewal of Germany of a policy of aggression." *Id.* A related protocol to the Treaty was signed on October 23, 1954, as part of the "Paris Agreements" by Belgium, France, Luxembourg, the Netherlands, Great Britain, the FRG, and Italy. 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,

national basis.⁸²

How an integrated European defense would have evolved will never be known. Conceivably, it might have led to the pooling of technologies needed to create a European nuclear force capable of supplementing, if not substituting for, the deterrence commitment of the United States. Although France and Great Britain built their own nuclear forces,⁸³

331 U.N.T.S. 253. Article II of the Protocol deleted from the Preamble the phrase "to take such steps as may be necessary in the event of renewal by Germany of a policy of aggression," and replaced it with the phrase: "to promote the unity and to encourage the progressive integration of Europe." *Id.* Article III of the Protocol also inserted into the Brussels Treaty a new article, article IV, which states: "In the execution of the Treaty the High Contracting Parties and any organs established by Them under the Treaty shall work in close co-operation with the North Atlantic Treaty Organization." *Id.*

The "Paris Agreements" include a Declaration signed by Belgium, the Netherlands, Luxembourg, France, and Great Britain, which invites the FRG and Italy to accede to the Brussels Treaty. The "Paris Agreements" also included the signature of a protocol on West Germany's accession to the NATO Treaty. Belgium, the Netherlands, Luxembourg, France, Great Britain, FRG, and Italy signed protocols to the Brussels Treaty on the following subjects:

- (1) Protocol revising and completing the Brussels Treaty;
- (2) Protocol on the forces of the Western European Union;
- (3) Protocol on the control of armaments; and,
- (4) Protocol on the Agency of Western European Union for the Control of Armaments.

See NATO FACTS AND FIGURES, *supra* note 72, at 306-34.

82. During peacetime, the armed forces of NATO allies remain under national control. However, the Supreme Allied Commander Europe (SACUER), who is always a United States officer, commands some forces during peacetime. Such forces include units and material attached to the Allied Command Europe ("ACE") Mobile Force, air defense forces, and select quick reaction forces. All West German units remain under NATO control even during peacetime. For information on the NATO command structure, see D. ISBY & C. KAMPS, *ARMIES OF NATO'S CENTRAL FRONT* (1985).

83. On the history and conceptual framework of Great Britain's nuclear deterrent force, see generally ALTERNATIVE APPROACHES TO BRITISH DEFENSE POLICY (J. Baylis ed. 1983); J. McMAHAN, *BRITISH NUCLEAR WEAPONS: FOR AND AGAINST* (1981); M. HOLMES, *BRITISH SECURITY POLICY AND THE ATLANTIC ALLIANCE: PROSPECTS FOR THE 1990s* (1987); A. PIERRE, *NUCLEAR POLITICS: THE BRITISH EXPERIENCE WITH AN INDEPENDENT STRATEGY FORCE, 1939-1970* (1972); A. GROOM, *BRITISH THINKING ABOUT NUCLEAR WEAPONS* (1974); Healy, *A Labour Britain, NATO and the Bomb*, FOREIGN AFF. 716-29 (1987); M. GOWING, *1 & 2 INDEPENDENCE AND DETERRENCE: BRITAIN AND ATOMIC ENERGY 1945-1952* (1974); L. FREEDMAN, *BRITAIN AND NUCLEAR WEAPONS* (1980); S. MENAUL, *COUNTDOWN: BRITAIN'S STRATEGIC NUCLEAR FORCES* (1980).

On the history and conceptual framework of the French nuclear deterrent force, see generally sources cited *supra* note 70.

On the role of the British and French nuclear forces in a broader European and NATO context, see generally A. BEAUFRE, *NATO AND EUROPE* (1966); G. GARVEY, *STRATEGY AND THE DEFENSE DILEMMA: NUCLEAR POLICIES AND ALLIANCE POLITICS* (1984); BEYOND NUCLEAR DETERRENCE: NEW AIMS, NEW ARMS (J. Holst & U. Nerlich eds. 1977); *NUCLEAR WEAPONS IN EUROPE* (A. Pierre ed. 1984); D. SCHWARTZ, *NATO'S NUCLEAR DILEMMAS; STRENGTHENING DETERRENCE: NATO AND THE CREDIBILITY OF WESTERN DEFENSE IN THE 1980s* (J. Wolfe, K. Rush & B. Scowcroft eds. 1982); G. TREVERTON, *NUCLEAR WEAPONS IN EUROPE* (1981); G. KEMP, *NUCLEAR FORCES FOR MEDIUM POWERS* (1974).

For data on the current status of British and French nuclear forces, see generally MINISTRY OF DEFENSE, *STATEMENT ON THE DEFENCE ESTIMATES 1989* (1989); THE

neither country can offer other European states a commitment based on escalation, if necessary, to the strategic-nuclear level.⁸⁴ In the 1990s, the security setting in Europe features a growing nuclear capability under the national controls, respectively, of Great Britain and France as a result of the impressive strategic modernization programs in which both are engaged. Both countries will possess an increasing number of warheads with improved accuracy, whereas the extended deterrence commitment of the U.S. will be receding as the number of U.S. nuclear systems deployed in Europe and elsewhere decreases largely as a consequence of the INF and START treaties.⁸⁵ The future European security equilibrium will require some type of nuclear component.⁸⁶ Most analysts also agree that conventional deterrence in the past has failed as a basis for political-military stability in Europe.⁸⁷ Europe, therefore,

INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES, *THE MILITARY BALANCE 1989-1990* (1989); SIPRI *YEARBOOK 1989: WORLD ARMAMENTS AND DISARMAMENT 18-19, 27-32* (1989).

84. See generally sources cited *supra* notes 71 & 83.

85. The proposed Strategic Arms Reduction Treaty ("START") promises to lock in, via reductions in U.S. and Soviet strategic nuclear forces, a relatively stable balance between the two countries' nuclear forces. While the result will probably enhance the United States's ability to deter a Soviet nuclear attack, psychologically the treaty will confirm what U.S. allies had long suspected: that the USSR's rapid growth and modernization of strategic nuclear forces has significantly weakened the U.S. nuclear guarantee. See sources cited *supra* note 23.

86. NATO first deployed nuclear forces on European soil primarily to deter a Soviet attack utilizing overwhelmingly superior conventional forces. Currently, the Soviet Union, while facing a highly uncertain, turbulent future, retains an overwhelming superiority in nuclear forces relative to those deployed by NATO in Europe. Therefore, even after considering the proposed Soviet unilateral reductions and a START Treaty, most NATO governments believe that the United States must retain some nuclear forces in Europe to "couple" the U.S. strategic nuclear deterrent to Europe. Without U.S. nuclear forces committed to the defense of Western Europe, the European military equation would become highly destabilized. Independent French and British nuclear forces could not effectively deter the large Soviet arsenal of strategic and tactical nuclear forces that will remain in Europe even after compliance with a CFE, CFE II, START, and START II Treaties.

President Bush has stated that U.S. troops must remain in Europe "as a stabilizing factor" even if the Soviets withdraw all their forces from Eastern Europe. Gordon, *American Troops Needed in Europe, President Asserts: Rebuffs Moscow's Plan, Restating U.S. Position, Bush Opposes Gorbachev's Call to Make Forces Equal*, N.Y. Times, Feb. 13, 1990, at A1, col. 4.

Some Soviet officials have apparently concluded that a completely de-nuclearized world that has not first achieved "an appreciable limitation of the sovereignty of all states . . . and . . . an effective international body . . . capable of actually limiting the actions of national governments in their own countries," could be highly destabilizing. Polyakov, *Would a Post-Nuclear World Be Stable?*, *MIROVAYA EKONOMIKA I MEZH DUNARODNYE OTNOSHENIYA*, Oct. 1988, at 121-22, translated in Foreign Broadcast Information Service, *JPRS Report, Arms Control*, Feb. 7, 1989, at 34-35. But, neither Soviet government officials nor Soviet academics have yet drawn the logical inference that nuclear weapons would provide a measure of military and political stability in Europe.

87. Europe's pre-nuclear history is replete with examples of the failure of conventional armies to maintain the peace. Both World Wars broke out despite some European politicians' belief that the potentially horrific toll exacted by modern conventional ordnance would deter German aggression. Some people, prior to

should focus on the appropriate type and level of nuclear capabilities needed in a future security equilibrium in which the U.S. deployment of nuclear capabilities on the Continent may become politically impossible. Without U.S. nuclear deployments, the likelihood of any American conventional forces remaining there will also be cast into doubt.⁸⁸

With the removal of all U.S. forces — nuclear and conventional — it will be argued that NATO, as a legal basis for an American force presence in Europe, would indeed be both obsolete and unnecessary.⁸⁹ Nor is it plausible to assume that if U.S. nuclear capabilities could no longer be stationed in Europe, the United States would be prepared to extend a nuclear guarantee that could only be fulfilled by forces launched from off-shore platforms, including from the United States itself. Excluding such an extreme situation, the question will remain not only what level and type of United States nuclear and conventional presence is likely and necessary as part of a transatlantic security coupling in the years ahead, but also what the relationship between such forces and an emerging West European defense pillar is.

World War I, believed the power of the machine gun would be adequate to deter war. Similarly, some nations believed prior to World War II that the concept of strategic bombing would be adequate to deter war.

88. The United States probably will not position its troops in Europe without the support of weapons that its political and military leadership deems necessary to defend those troops. Therefore, it is doubtful that the United States would deploy its own forces in Europe without some form of nuclear deterrent. Presently, there is a broad consensus within both the U.S. government and public for maintaining a nuclear deterrent to buttress U.S. military commitments at home and abroad.

89. Conceivably a NATO without European-based U.S. forces could remain a stabilizing influence in Europe, but its credibility as a deterrent would be severely weakened. The real issue here is the credibility of a state's treaty commitments. Without U.S. forces in Europe, the United States legal commitment to defend Western Europe would be perceived as weakened. Conversely, without NATO, no legal basis for stationing U.S. forces in Europe would exist. NATO's continued existence is the crucial basis for stationing U.S. troops in Europe both in peacetime and during a crisis or conflict.

U.S. troops were originally deployed in Europe to maintain stability in the face of a hostile and threatening Soviet Union. It is in NATO's interest, as well as in the interest of the emerging democracies in Eastern Europe and even that of the Soviet Union, to maintain a U.S. security commitment to the defense of Western Europe. Such commitment would serve as a stabilizing influence in a region that has seen apparently stable orders undermined by new or resurgent ambitions of one or more powers. In the 1990s and beyond, potential sources of instability will exist in many areas including political turbulence in the Soviet Union, potential conflicts among Eastern European states, and the efforts of a re-unified Germany to adjust post-war borders imposed by the United States and Soviet Union.

If all U.S. forces are withdrawn from Europe, some will argue that NATO's existence will no longer be necessary. Indeed, Soviet officials have already begun a campaign to assure that NATO is dissolved. In 1989, the USSR reiterated a proposal, first made in the 1950s, that NATO and the WTO be disbanded. The Soviet Union also appears eager to see the CSCE become the basis for an "all-European" security framework. But, while NATO provides the legal basis for stationing U.S. forces in Europe, the existing CSCE formula does not provide legal justification for the U.S. presence.

To the extent that a unified Germany remains anchored westward, its links in Europe necessarily will be closest with France. An evolving Franco-German relationship within a European defense pillar could not avoid discussion of the contribution of an indigenously-based West European nuclear capability to the overall security equilibrium. The French (and British) nuclear forces could not fully contribute to such a balance if they remain restricted to deterrence solely with respect to the national territory of their possessors. Therefore, a West European defense pillar, as part of a European security framework, must give due consideration to deploying British and French nuclear forces for use beyond their respective territorial boundaries, including deterrence over a unified Germany.

Although it has usually been relegated to the stature of a "reserve organization," the Western European Union ("WEU"),⁹⁰ which stemmed from the Brussels Treaty of 1948,⁹¹ furnishes a potential basis for a strengthened European defense pillar. The WEU provided the framework for NATO to admit West Germany in 1955 by facilitating agreement on conditions for West German armament which helped placate French fears about a possible revival of German militarism. Recently, the WEU has attempted to revitalize itself as the strengthening of the West European defense pillar has again become an issue.⁹² In the 1950s, the WEU helped Western Europe agree on the amount of German participation in a Western defense framework; in the 1990s the WEU may provide the structure linking a unified Germany to a West European defense framework. The overall architecture of Europe in the 1990s includes the European Community⁹³ with its accelerating economic dynamism symbolized by the term "Europe 1992."⁹⁴ The WEU might serve as a parallel institution to the EC, dedicated to the strengthening of the security consensus and the eventual establishment of a unified defense entity. The EC might also serve a security and defense role if Europeans have the political will to amend and strengthen the Treaty of Rome.⁹⁵

90. See sources cited *supra* note 72.

91. See *Extracts From The Brussels Treaty*, *supra* note 72. The Paris Agreements, signed on October 23, 1954, modified the commitments undertaken by the parties to the Brussels Treaty. See *supra* note 81.

92. See sources cited *supra* note 72.

93. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 3, reprinted in E. STEIN, P. HAY & M. WAELBROCK, *DOCUMENTS FOR EUROPEAN COMMUNITY LAW AND INSTITUTIONS IN PERSPECTIVE* 40-86 (1976).

94. For treatment of the full range of issues raised by the plans for economic integration as a result of the 1992 Plan, see G. Harrison, *European Community: Issues Raised by 1992 Integration* (May 31, 1989) (Congressional Research Service Report for Congress); R. Howe, *The European Community's 1992 Plan: Selected References, 1986-1989* (Aug. 1989) (Congressional Research Service Report for Congress); and M. Elling, *The European Community: Its Structure and Development*, (Aug. 31, 1988) (Congressional Research Service Report for Congress).

95. Officials within the European Community's European Political Cooperation Secretariat appear confident that the EC could take a leading role in arms control policy and other European security matters. In 1989, the EC took initial steps

Exactly how such an architecture will develop remains to be seen. Because the core of West European stability in security and economic terms lies in the Franco-German relationship, France is motivated to strengthen West European collaboration, including defense, in an effort to forestall any movement of Germany toward neutralism. French President François Mitterrand's initiative in hosting European Community Summit meetings forms part of a strategy to place into a multilateral European context the growing German interest in new relationships with Eastern Europe. German interest in strengthening its relationship with Eastern Europe will increase as the efforts toward German unification are accelerated.⁹⁶ The strategic logic of this unfolding scene would appear to argue for a greater effort on the part of France to build a West European defense pillar in order to structure and balance the vast potential of a unified Germany, both economically and politically.

V. Helsinki II and the CSCE Process

NATO, for reasons already stated, should remain a vital part of the architecture of Europe in order to ensure that the United States continues to play a role commensurate with its own and its allies' interests. By the same token, the Conference on Security and Cooperation in Europe (CSCE) will play a vital role in the future security architecture in Europe. A product of the Helsinki Final Act of 1975,⁹⁷ CSCE has furnished a framework that includes Canada and the United States in the discussion

towards expanding its role in arms control discussions by supporting a global ban on chemical weapons and by publicly urging the rapid completion of a treaty on the reduction of conventional armed forces in Europe ("CFE"). As of March 1990, the EC was prepared to expand its role in the European arms control process at the 1990 CSCE summit, where the EC is expected to set forth its own arms control proposals. Some government officials in the EC member countries believe that the EC could serve as a coordinating group within the larger CSCE forum. U.S. officials, however, have expressed concern that the CSCE may not be a proper forum for supporting arms control talks because it requires unanimous decision-making by its 35 member states before it can take action. See Hitchens & Politi, *EC Eager to Play Key Role in Arms, Security Policy*, Def. News, Mar. 5, 1990, at 1, 27.

96. West German Foreign Minister Hans Dietrich Genscher has stated that Germany should continue to take the lead in the European detente process. In particular, West Germany has led the development of cooperative structures designed to integrate the Eastern European economies, especially the German Democratic Republic. Germany has also provided mechanisms for cooperation with the EC and has recently taken the lead in forming a European Development Bank and a pan-European environmental agency. See Nahrendorf & Sottorf, *Report on Interview with Foreign Minister Hans-Dietrich Genscher*, Handelsblatt (Düsseldorf), Feb. 9-10, 1990, at 6, translated in Foreign Broadcast Information Service, *Daily Report, Western Europe*, Feb. 13, 1990, at 5-7.

This policy continues West Germany's traditional *Ostpolitik*. See generally C. CLEMENS, *RELUCTANT REALISTS: THE CHRISTIAN DEMOCRATS AND WEST GERMAN OSTPOLITIK* (1989); E. FREY, *DIVISION AND DETENTE: THE GERMANIES AND THEIR ALLIANCES* (1987); W. GRIFFITH, *OSTPOLITIK OF THE FEDERAL REPUBLIC OF GERMANY*; D. KEITHLY, *BREAKTHROUGH IN THE OSTPOLITIK: THE 1971 QUADRIPARTITE AGREEMENT* (1986); Ash, *Mittleuropa?*, 119 *DAEDALUS* 1 (1990).

97. Conference on Security and Cooperation in Europe, Final Act, Aug. 31, 1975, reprinted in *INTERNATIONAL ARMS CONTROL: ISSUES AND AGREEMENTS* 441-45 (C.

of European security issues. The CSCE, however, does not commit the United States to the security of Europe, and therefore should not be seen as an alternative to the Atlantic Alliance. Rather, the CSCE, which includes members from both East and West, functions somewhat in a form analogous to the "Congress System," which in the nineteenth century provided the consensual basis for European political settlement following periods of conflict, as in the case of the Congress of Vienna after the protracted Napoleonic wars.⁹⁸ Since these historic European conferences furnished the basis for agreements that ratified boundary and other changes that were the result of preceding conflict, the CSCE provides a natural framework within which a *pan-Euroatlantic* agreement on the unification of Germany may be codified. Such an agreement would formalize the existing boundaries, including the German-Polish border, which are the legacy of World War II.⁹⁹

During his visit to Rome on November 30, 1989, just before his Malta meeting with President Bush, Soviet President Mikhail Gorbachev proposed a Helsinki II meeting¹⁰⁰ as a follow-up to the 1975 Helsinki

Blacker & G. Duffy eds. 1984). The "Final Act" was the concluding document of the Conference on Security and Cooperation in Europe ("CSCE"), held in Helsinki.

The CSCE is neither a defense treaty nor an alliance based on mutual defense commitments. Rather, it is simply a statement of common policy that cannot substitute in its present form, or in any readily foreseeable form, for the North Atlantic Treaty. The 35 states participating in the CSCE process reconvene periodically to review progress on the implementation of the Final Act's common policy.

98. See generally J. LOCKHART, *THE PEACEMAKERS, 1814-1815* (1968); H. NICOLSON, *THE CONGRESS OF VIENNA: A STUDY IN ALLIED UNITY, 1812-1822* (1948).

99. Poland's current borders were fixed by the Potsdam Agreement, signed by the major allied powers of World War II. See generally H. FRIES, *BETWEEN WAR AND PEACE: THE POTSDAM CONFERENCE* (1960). At Potsdam, the Western powers codified the postwar settlement, to which President Roosevelt had already agreed at the Yalta Conference in February 1945. At Yalta, Roosevelt conceded to Stalin's demand that the Polish-Soviet border be fixed at the line secured by Soviet troops in September 1939, under the German-Soviet Non-aggression Pact of August 1939. Roosevelt also conceded to Stalin's demand that the Western border of Poland be established along the Oder-Neisse river. Approximately one-third of Poland's current territory consists of these former German territories, which remain heavily populated by ethnic Germans. See generally W. LAFEVER, *AMERICA, RUSSIA AND THE COLD WAR, 1945-1984* (2d ed. 1985); R. MESSER, *THE END OF ALLIANCE: JAMES F. BYRNES, ROOSEVELT, TRUMAN, AND THE ORIGINS OF THE COLD WAR* (1982); S. TERRY, *POLAND'S PLACE IN EUROPE: GENERAL SIKORSKI AND THE ORIGIN OF THE ODER-NEISSE LINE, 1939-1943* (1983); A. ULAM, *EXPANSION AND COEXISTENCE: THE HISTORY OF SOVIET FOREIGN POLICY, 1917-1973* (2d ed. 1974); Brzezinski, *The Future of Yalta*, 63 *FOREIGN AFF.* 279 (1984/85).

100. Speech by M.S. Gorbachev at Rome City Hall (Nov. 30, 1989), reprinted in *For a Changing and Stable World*, Pravda, Dec. 1, 1989, at 1, translated in Foreign Broadcast Information Service, *Daily Report, Western Europe*, Dec. 1, 1989, at 13. When Gorbachev made his speech, a 35-nation summit was already being considered and a Helsinki follow-up summit meeting was scheduled for March 24, 1992. European Community officials had also been discussing the possibility of holding the summit earlier, perhaps in 1990, at which agreements related to a prospective CFE Treaty might be signed.

Although the proposal for a Helsinki II summit was not unprecedented in the Gorbachev era, its specific nature, proposed format, and agenda were unprecedented. Previously, in mid-July 1988, Gorbachev had proposed that a "second Rey-

CSCE meeting. Gorbachev allegedly seeks to facilitate the emergence of a "European realm of law" based on "existing norms of international law" and the exclusion of "all forms of external force,"¹⁰¹ and specifi-

kjavik," that is, an all-European summit, be held to accelerate arms control discussions. See Speech by M. S. Gorbachev, Pravda, July 12, 1988, at 2, translated in FBIS-SOV, July 12, 1988, at 40-46. In a speech before the Council of Europe on July 6, 1989, he also mentioned "The holding in about 18-24 months time of the second Helsinki conference." See Moscow Television Service, 1117 GMT, July 6, 1989, translated in FBIS-SOV, July 7, 1989, at 29-34.

The United States responded slowly to Gorbachev's Rome proposal, but did agree with other NATO states that such a conference could be convened early if it were well prepared and came only after a CFE Treaty had been concluded. See Binyon & Bonnart, *NATO Aims for Role in Reshaping Europe*, The Times (London), Dec. 16, 1989, at 9, col. 1. In mid-January 1990, the EC officially endorsed the idea of an early Helsinki II conference. See Hitchens, *EC Endorses 35-Nation Summit*, Def. News, Jan. 29, 1990, at 1, 40.

101. An excerpt of the most relevant passages from Gorbachev's Rome City Hall speech follows:

Cicero said that when there is saber rattling, the laws are silent. We now seem to be approaching a condition in which arms are silent. That means that the laws must speak loud and clear. We are convinced that our common desire must be a world of law, and of peace through law. It is the awareness of this that has led to the emergence of the idea of a European realm of law: a unified realm, but by no means a uniform one. For the law of each country will inevitably bear the imprint of national and social specifics.

But in what area must full uniformity exist? It must exist in the understanding and application by all states of the norms of international law, and here there is much work to be done. After all, the main body of present international law was built in the pre-nuclear age, at a time when the global problems that have now reached a critical state were only just being engendered. The actual character of the realization of international law is also changing. For centuries it was thought — and it is still thought — that observance of its norms is ensured by compulsion. Now this is unacceptable and dangerous. Observance of the norms of international law must be based upon a balance of interests, and motivated by interest. That will be the main guarantee of the effectiveness of international law when all forms of external force excluded.

...
 We are in favor of a changing, but stable world. This is the objective dialectic of development. And the supreme responsibility of contemporary politics with regard to mankind is to help this law of history to serve progress and the good of the people.

Speech by M. S. Gorbachev at Rome City Hall, *supra* note 100, at 16-17.

Gorbachev's speech was filled with contradictions, including his reference to a "European realm of law." On the one hand he talked about a "unified" European realm of law, but then moved into a discussion of universal norms of international law. What does Gorbachev mean by a European realm of law that is a "unified realm, but by no means a uniform one"? His statements deserve further clarification by Soviet officials. Indeed, Gorbachev proposed in his Rome City Hall speech that thought should be given to "holding a meeting of experts from the 35 countries to discuss the juridical aspects of the European process as part of the preparations for a European conference — Helsinki II." M. S. Gorbachev, *supra* note 100, at 17.

Questions remain. Is Gorbachev soliciting Western support and understanding for the Soviet Union's efforts to advance its own laws to meet customary international law standards and accord with its commitments under the Helsinki Final Act? Or does Gorbachev envision joint efforts, possibly in a multilateral forum under the auspices of the CSCE, to establish new precedents and norms for customary international law? Judging by the statements of Soviet officials before March 1, 1990, the

cally, to strengthen the CSCE so that it can function as the *European* framework for discussing East-West issues. By implication, such a framework might eventually exclude the United States, or at least diminish United States influence over Western Europe, a long-held Soviet foreign policy goal.¹⁰² Gorbachev's architecture for Europe would also be in conformity with the long-standing Soviet goal of replacing NATO and the Warsaw Pact with an all-European collective security system.

In many respects, the CSCE process offers an appealing framework on which to construct a European security system.¹⁰³ Because Helsinki II contains a broad membership, including both neutral and non-aligned states, and its mandate extends beyond purely military matters, it could provide an appropriate forum for discussing an architecture that would include economic, political, and military elements. The process, however, would have to include Canada and the United States and refrain from degenerating into a factionalized propaganda forum.

The CSCE's mandate, which extends beyond purely military matters, such as defense and arms control, to address the economic and political dimensions of European security and unity, enhances its appeal. Clearly, as U.S. Secretary of State James Baker stressed in his December 12, 1989, speech in Berlin, it is in the context of this broader concept of security — encompassing economic, political *and* military “legs” — that the United States and its Allies can most effectively fashion a “New Europe” within a “New Atlanticism.”¹⁰⁴ In summary, the CSCE process provides built-in opportunities to interlink what often are unwisely treated as separate policy realms: East-West arms control, economic restructuring and trade relations, and political reform, including human rights.

Public and official sentiment in Western Europe — certainly among the “center” and “center-left,” but increasingly among the “center-right” — seems to support an accelerated CSCE process. Europeans are attracted to the CSCE process because it appears to answer the question with which Europeans are obsessed: “What will the future Europe look

former appears closer to the truth. Gorbachev's statements in Rome reflect the Soviet Union's own difficulty in making the transition from a state whose leadership was guided by the notion that law should serve only the interests of the class struggle to a state fully integrated into the world community, whose leadership is influenced by a “balance of interests,” and more by the existing norms of customary international law. But until Soviet officials further clarify what exactly Gorbachev meant by developing a European “realm of law,” this interesting proposal is not likely to move forward.

102. For discussion of Soviet strategy toward Europe, see generally SOVIET FOREIGN POLICY TOWARD WESTERN EUROPE (G. Ginsburgs & A. Rubinstein eds. 1978); N. MALCOLM, SOVIET POLICY PERSPECTIVES ON WESTERN EUROPE (1989); SOVIET STRATEGY TOWARD WESTERN EUROPE (E. Moreton & G. Segal eds. 1984); SOVIET STRATEGY IN EUROPE (R. Pipes ed. 1976); A. ULAM, *supra* note 99.

103. This view was expressed, for example, by Senator Joseph R. Biden in a recent editorial. See Biden, *Helsinki II, Road Map for Revolution*, N.Y. Times, Jan. 28, 1990, at E21, col. 2.

104. Friedman, *Europeans Praising Baker Blueprint*, N.Y. Times, Dec. 14, 1989, at A22, col. 4.

like?" Interest in outlining the parameters of a new European security system has diminished the earlier West European interest in arms control via the CFE negotiations.¹⁰⁵ For a growing number of Europeans, a missing part of the puzzle to a "New Europe" could be found in the institutionalization of the CSCE process, including the various "stabilizing measures" now being negotiated at the Vienna talks on Confidence and Security Building Measures ("CSBMs").¹⁰⁶ The CSBM talks are, in fact, more closely tied to the CSCE process than the CFE negotiations.¹⁰⁷ U.S. opposition to such an evolution would be counterproductive for the United States because it has just taken the first steps toward defining a new relationship with the European Community and a new role for NATO.

Because it functions on a much broader, political level, the CSCE process is unwieldy and factionalized, often degenerating into a propa-

105. The negotiations on Conventional Armed Forces in Europe are being conducted by the NATO and Warsaw Pact organizations in Vienna. The mandate for the talks on Conventional Armed Forces in Europe was to achieve a stable and verifiable balance of conventional forces in Europe at much lower levels than exist currently. This mandate was agreed to on January 10, 1989, following almost two years of consultations among the 23 states party to the NATO and Warsaw treaties. See U.S. INFORMATION AGENCY, *TO STRENGTHEN STABILITY AND SECURITY, CFE: NEGOTIATION ON CONVENTIONAL ARMED FORCES IN EUROPE* (1989).

The new CFE regime has its origins in NATO's Halifax Statement (May 30, 1984) which called for "bold new steps" in conventional arms control, and in the WTO's "Budapest Appeal" (June 11, 1986), which offered to discuss conventional force reductions in Europe in an Atlantic-to-the-Urals ("ATTU") framework. Informal talks between NATO and the WTO on the mandate for conventional force talks began on February 17, 1987. On July 27, 1987, NATO presented its draft mandate for conventional force talks.

For more information on the course of the CFE negotiations, see, e.g., Adams, *Soviet Willingness to Compromise Speeds Arms Talks*, Def. News, Feb. 19, 1990, at 9; Adams & Hitchens, *CFE Talks Delayed Until NATO Settles Military Maneuver Limits*, Def. News, Sept. 18, 1989, at 82; de Briganti & Hitchens, *Disagreements Lurk Beneath NATO's Compromise Package*, Def. News, Sept. 25, 1989, at 3; Def. Daily, Feb. 9, 1990, at 222; Hitchens, *CFE Session Ends With Verification Issues Lingering*, Def. News, Feb. 26, 1990, at 4; Hitchens, *NATO Concessions on Tanks, Aircraft Could Speed CFE Talks*, Def. News, Feb. 12, 1990, at 23; Gordon, *A Troop-Cut Assent: Gorbachev Accepts Vital Part of Plan By Bush to Reduce Forces in Europe*, N.Y. Times, Feb. 10, 1990, at 6; Apple, *Bush Calls on Soviets To Join In Deep Troop Cuts For Europe As Germans See Path To Unity*, N.Y. Times, Feb. 1, 1990, at A1, col. 3; Smith, *Warsaw Pact Offers More Open Inspections*, Wash. Post, Oct. 20, 1989, at A36, col. 3; Gordon, *Soviet Side Offers Plan to Narrow Difference on Limiting Aircraft*, N.Y. Times, Sept. 29, 1989, at A6, col. 5.

106. The new round of negotiations on confidence and security-building measures began on March 9, 1989, and includes the 35 states participating in CSCE. The negotiations are intended to build upon the progress made in the negotiation of CSBMs. See Document of the Stockholm Conference on Confidence and Security-Building Measures and Disarmament in Europe, Sept. 19, 1986, excerpted in 29 SURVIVAL 79 (Jan./Feb. 1987); Darilek, *The Future of Conventional Arms Control in Europe, A Tale of Two Cities: Stockholm, Vienna*, 29 SURVIVAL 5 (Jan./Feb. 1987).

The CSBM talks are intended to continue after and supplement the Mutual and Balanced Force Reduction ("MBFR") talks, which ended on February 2, 1989.

107. See Darilek, *supra* note 106. The CSBM talks involve all 35 CSCE participating states, whereas the CFE negotiations involve only the members of the NATO and WTO alliances.

ganda platform.¹⁰⁸ Recent political changes in the East may diminish the “propaganda content” of future talks, but Soviet President Gorbachev — in calling for a “common European home”¹⁰⁹ in concert with his call for a “Helsinki II” conference — clearly has a political strategy that is at odds with Secretary Baker’s “New Atlanticism.”¹¹⁰

From the U.S. perspective, then, it is important that the CSCE process *not* be pursued at the expense of current intra-NATO and NATO-EC dialogues, and that Allied efforts *not* be diverted from current efforts to reach concrete results at the CFE talks. However, NATO-European interests are strong in building on the CSCE structure, especially the CSBM stabilizing measures, as one key component to a future European security system. United States resistance to the CSCE could be counter-productive, jeopardizing more important discussions now opening with

108. See Speech by George Shultz to the Thirty-Five Nation Conference on Security and Cooperation in Europe, July 30, 1985, *excerpted in* 27 SURVIVAL 293 (Nov./Dec. 1985); KAMPELMAN, *THREE YEARS AT THE EAST-WEST DIVIDE* (L. Sussman ed. 1983); VON GEUSAU, *UNCERTAIN DETENTE* (1979).

109. See Speech by Gorbachev at Rome City Hall, *supra* note 100. According to Soviet Foreign Minister Eduard Shevardnadze, one of the USSR’s long-range arms control objectives is to establish “a common European and a common global home.” Statement of Edward Shevardnadze before the United Nations General Assembly, June 15, 1988, *translated in* Soviet News, June 15, 1988, at 214. A recent article by Professor Gennadiy A. Vorontsov set forth the standard Soviet approach to the theme of building a “common European house.” See Vorontsov, *From Helsinki to the ‘Common European House’*, MIROVAYA EKONOMIKA I MEZHDUNARODNYYE OTNOSHENIYA, Sept. 1988, at 35, *translated in* Foreign Broadcast Information Service, *JPRS Report: Arms Control*, Jan. 10, 1989, at 35.

Professor Vorontsov argues that the move toward a “common European house” will strengthen Europe’s world role, increasing its contribution to world affairs. He also states that a growth in the independence of Europe does not mean that the West European countries will become detached from the United States. However, he suggests that to build a “common European house,” it is necessary to reduce U.S. influence in Western Europe, with a concurrent growth of Soviet contacts and influence over all of Europe. For example, he argues that the Western European states should abrogate their political commitments with the United States regarding restrictions on the sale of advanced technologies to the East. Also the Western European countries, he states, should expand trade with the East European countries and the Soviet Union, and cooperate in research and development projects. He argues that the European states should attempt to end the U.S. “psychological warfare” that it purportedly wages against the USSR by using human rights issues. Professor Vorontsov also refers to the purportedly prevalent views among “opposition groupings” in Western Europe that allegedly favor a Western European group of nations “maneuvering between the two blocs.”

For a Soviet discussion of the role of the CSCE process in enhancing the “pan-European process,” see Anisimov, *The Helsinki Process: Vienna Stage*, 8 SLOVO LEKTORA 12 (Aug. 1989), *translated in* Foreign Broadcast Information Service, *JPRS Report: Arms Control*, Nov. 13, 1989, at 40.

110. See Friedman, *supra* note 104. The views of French Foreign Minister Roland Dumas and West German Foreign Minister Hans Dietrich Genscher on Baker’s speech are examined in Lemaitre, *Title of Art*, *Le Monde*, Dec. 16, 1989, at 5. General European reactions to Baker’s statements on the future U.S. role in Europe are examined in Fitchett, *Europeans Laud Baker Vision Of U.S. Role on the Continent*, *Int’l Herald Trib.*, Dec. 14, 1989, at 1.

the Allies on the future of NATO and the evolution of United States-EC ties.

Because the CSCE structure includes the United States and Canada, its framework takes into account important North American and transatlantic interests in European security and decreases the chance that the Soviet Union might coax the Allies into a "pan-European" forum which discards Atlanticism. Moreover, the CSCE structure provides new East European leaders with an established forum in which to "stretch their wings" and develop an independent voice. In addition, CSCE's "three basket" format¹¹¹ provides the West with an opportunity to link economic assistance to the East with favorable trade agreements, political reforms, and arms control negotiations. For example, the dissemination

111. See W. GRIFFITH, *EAST-WEST DETENTE IN EUROPE: IN UNCERTAIN DETENTE* 5, 8-13 (1987).

The final Act has three articles, or "baskets." The first establishes procedures for the prior notification and observation of military maneuvers involving more than 25,000 troops. Article ("Basket") I includes the following statements:

The participating States recognize that there are other means by which their common objectives can be promoted.

In particular, they will, with due regard to reciprocity and with a view to better mutual understanding, promote exchanges by invitations among their military personnel, including visits by military delegations.

.....

They also recognize that the experience gained by the implementation of the provisions set forth above, together with further efforts, could lead to developing and enlarging measures aimed at strengthening confidence.

Article ("Basket") II is titled "Questions relating to disarmament," and includes the following single paragraph:

The participating States recognize the interest of all of them in efforts aimed at lessening military confrontation and promoting disarmament which are designed to complement political detente in Europe and to strengthen their security. They are convinced of the necessity to take effective measures in these fields which by their scope and by their nature constitute steps toward the ultimate achievement of general and complete disarmament under strict and effective international control, and which should result in strengthening peace and security throughout the world.

Article ("Basket") III, "General considerations," states:

Having considered . . . subjects related to the strengthening of security in Europe through joint efforts aimed at promoting detente and disarmament, the participating States . . . will . . . proceed, in particular, from the following essential considerations:

The complementary nature of the political and military aspects of security;

The interrelation between the security of each participating State and security in Europe as a whole and the relationship which exists, in the broader context of world security, between security in Europe and security in the Mediterranean area;

Respect for the security interests of all States participating in the Conference on Security and Co-operation in Europe inherent in their sovereign equality;

The importance that participants in negotiating see to it that information about relevant developments, progress and results is provided on an appropriate basis to other States participating in the Conference on Security and Co-operation in Europe and, in return, the justified interest of any of those States in having their views considered.

of Western technology, called for at earlier CSCE meetings,¹¹² could be conditioned on the East's agreement to democratic political protections and Western arms control objectives.

As a means of addressing the "agenda of change," the CSCE process has much to recommend it. But there are enough drawbacks to the CSCE format to caution against its use as the primary framework for channeling Europe's evolution toward a new security structure. Nonetheless, the CSCE process is one set of important negotiations aimed at defining the "New Europe" in a setting that recognizes the importance of the transatlantic tie to European security. Hopefully, a Helsinki II summit might also establish an atmosphere in which the new governments of Eastern Europe can be strengthened. The Vienna CSBMs, including notification schemes, data exchanges and evaluation, and dialogue on military doctrine can also help stabilize Europe. The institutionalization of CSCE, however, should neither replace nor take precedence over the following equally important tasks: (1) "locking in," by the end of 1990, an East-West agreement on the first phase of CFE force cuts;¹¹³ (2) reaching agreement on the future role of NATO;¹¹⁴ (3) clarifying the evolving nature of NATO-EC and United States-EC ties;¹¹⁵ and (4) working with EC and NATO countries in addressing the

Conference on Security and Cooperation in Europe, Final Act, *supra* note 97.

112. See Sharp, *Conventional Arms Control in Europe: Problems and Prospects*, in *WORLD ARMAMENTS AND DISARMAMENTS* 315, 320 (1988).

113. U.S. government officials intend to pursue the completion of some form of CFE agreement as early as possible in order to "lock in" Soviet commitments, political or treaty-based, to reduce their forces in Europe, even if it means delaying final agreement on key issues (such as aircraft, system definitions, verification procedures). For example, the NATO draft treaty envisions a political commitment to the destruction of over 40,000 Soviet tanks, or a Soviet commitment to a verification regime that could serve as a precedent for future negotiations. See Hitchens, *Urgency to Sign Arms Pact May Delay Talks on Touchy Issues*, *Def. News*, Jan. 29, 1990, at 8.

114. The communique issued by NATO foreign ministers at their December 1989 meeting stressed that the NATO Alliance must assume an increasingly political role; that is, transform NATO into more of a political forum for contacts with the East European states and the USSR, while de-emphasizing its military functions. France, however, has generally been opposed to seeing NATO turned into the leading forum for discussing Western policy options concerning change in the East Bloc, preferring instead that the CSCE or EC become such a forum. See Binyon & Bonnard, *supra* note 100.

115. On the potential impact of 1992 on NATO-EC ties, see I. GAMBLES, *PROSPECTS FOR WEST EUROPEAN SECURITY CO-OPERATION* (1989); Edwards, *EC 1992: Potential Implications for Arms Trade and Cooperation*, Congressional Research Service, Nov. 3, 1989; and *EC May Revise Defense Import Tariff Proposal*, *JANE'S NATO & EUROPE TODAY*, June 20, 1989, at 4, 6.

On the potential impact of 1992 on United States-EC ties, see Nölling, *The Impact of 1992 on European Integration and Relations with the United States*, 23 *INTERECONOMICS*, pt. 6, 255-60 (1988); W. Dekker, *The American Response to Europe 1992*, 3 *EUR. AFF.*, pt. 2, 105-10 (1989); Zupnik, *EC-US and 1992: A Prelude to Trade Wars?*, 3 *EUR. AFF.*, pt. 2, 111-15, 118-20 (1989); McAllister, *The United States Looks at 1992*, 289 *EUROPE* 16-17 (1989); Longworth, *U.S. Begins Assessing Impact of 1992 Market Deadline: E.C. Commissioner De Clerco Declares It "Good News for Americans"*, 276 *EUROPE* 14-15 (1988); Yochelson & Hunter, *1992 Will Change the Trans-Atlantic Relationship*, 285 *EUROPE* 14-15, 47 (1989); McAllister, *U.S. Views on the EC Single Market Exercise*, U.S. Department of

question of economic relations and technology transfer with the East.¹¹⁶ Progress in these areas will provide a more stable foundation on which to build East-West discussions concerning the larger, more political question of "whither Europe in the 1990s."

VI. Soviet Strategy in the CSCE Process

One must view Soviet objectives with regard to CSCE within a broader strategic context. The reformist elements of Eastern Europe were given impetus by public statements from Gorbachev and other Soviet officials that the Kremlin would no longer seek to impose upon Eastern Europe any particular political, social, or economic regime; although Moscow was reported to be instrumental in ousting the old guard communist leaders in Eastern Europe.¹¹⁷ The economic failures of both the Soviet Union and Eastern Europe are so great that Western assistance, as well as political and economic pluralism, represent the *sine-qua-non* for domestic improvements. Gorbachev has responded by strengthening Soviet links with existing institutions in the West, in particular, the EC¹¹⁸ and the General Agreement on Trade and Tariffs ("GATT"),¹¹⁹

State, Current Policy No. 1193; Lamb, *EC Project 1992: The Dynamics of Change*, U.S. Department of State, Current Policy No. 1132; Hitchens, *U.S., Canada to Work Quietly Against EC Common Tariff Proposal*, *Def. News*, Sept. 18, 1989, at 57; Amouyal, *Commerce Department Wants Representation to EC*, *Def. News*, Oct. 9, 1989, at 6.

On France's views regarding Secretary of State Baker's proposal to conclude a treaty between the European Community and the United States, see Lemaitre, *Le Monde*, Dec. 16, 1989, at 5.

116. The United States and its NATO allies have been grappling with how to liberalize export controls to Eastern Europe at a time when that region is experiencing profound political change. The United States government announced on Jan. 22, 1990, that U.S. policy on export controls to Eastern Europe was under review and would be liberalized, though to what degree remained unclear. See Silverberg, *U.S. Softens Stance on Export Controls: Measures Would Relax Trade Restrictions to Eastern Europe*, *Def. News*, Jan. 29, 1990, at 1, 46.

117. Gorbachev reportedly urged the long-time East German communist party leader, Erich Honecker, to step aside during his visit to Berlin in October 1989. See *supra* note 28 and sources cited therein. The Romanian regime of Nicolae Ceaucescu was also given no support from the Soviet Union in putting down the December 1988 anti-government rebellion. Gorbachev and Prime Minister Ryzhkov all stated that the USSR would not use force to dictate the internal policies of its Eastern European neighbors. See *supra* notes 29 and 37 and sources cited therein; *infra* note 121 and accompanying text.

118. Prior to 1988, Soviet officials routinely attacked the EC as the "economic arm of NATO." Since then, they have proven eager to expand trade with the EC by agreements concluded on a bilateral basis with the EC and multilaterally between the EEC and CMEA. See I. GAMBLES, *supra* note 115, at 34.

Bilateral trade negotiations between the EC and the USSR began in July 1989. See *EC, Moscow begin talks on trade*, *JANE'S NATO & EUROPE TODAY*, July 25, 1989, at 7. The EC has not expressed much interest in pursuing EC-CMEA cooperation. Nevertheless, in October 1989, it did send a single official to a conference in Moscow for what was originally planned to be a high-level conference between CMEA and EC officials on developing cooperation between them. See Peel, *Snub for Moscow Co-Operation Talks*, *Financial Times*, Oct. 14, 1989, at 2, col. 2.

In December 1989 Soviet Foreign Minister Shevardnadze, quoted in an interview with the Soviet news agency TASS, predicted that current contacts between the EEC

and by permitting the unification of Germany on terms which only recently were unacceptable to Moscow.¹²⁰ The present policies of the Soviet Union in Eastern Europe appear to be part of a strategy designed to salvage as much influence as possible amidst collapse of economies and political systems, whose legitimacy was based on Soviet military might and the powerful internal security forces controlled by the communist elite.¹²¹

One should view Gorbachev's "common European house" within the context of Soviet objectives in Europe. For the Soviet Union in the 1990s, Europe as a whole, and especially Western Europe, looms as an increasingly important focus of interest. Traditionally, Soviet policy has attempted to weaken the relationship between the United States and Western Europe.¹²² In the past, the Soviet Union concerned itself more with the United States than with Western Europe, but the increasing economic and political potential of Western Europe, and in particular

and the Council for Mutual Economic Assistance (CMEA), and bilateral talks between the EEC and individual Eastern European states and the USSR, would "go further" and evolve into a single European "economic zone."

119. In 1986, the Soviet Union applied to participate in the Uruguay round of trade negotiations. The United States has opposed Soviet requests to join GATT on the grounds that the USSR is not ready to make the necessary changes in its economic system to make it compatible with Western economies. Soviet spokesmen have protested, however, that the USSR has at least begun to implement the necessary changes. In September 1989, Soviet Foreign Ministry spokesman Gennadiy Gerasimov stated that the Soviet government had established an inter-departmental commission to ensure that Soviet foreign economic rules and practices comply with GATT standards. *See* Tass (Moscow), 1408GMT, Sept. 11, 1989, *translated in* Foreign Broadcast Information Service, Daily Report, Soviet Union, Sept. 12, 1989, at 4; and Tass, 1022GMT, Aug. 10, 1989, *translated in* Foreign Broadcast Information Service, Daily Report, Soviet Union, Aug. 10, 1989, at 5-6.

120. *See* Clines, *World Vote Urged by Shevardnadze on German Unity*, N.Y. Times, Feb. 3, 1990, at 1; *see also* Clines, *Gorbachev Voices New reservations on German Unity: Cites His People's Fears, Apparently Seeks to Reassure Citizens Over Former Foe — Polish Role Sought*, N.Y. Times, Feb. 21, 1990, at A1; Fletcher, *Kremlin softens view of German links with Nato*, The Times (London), Feb. 15, 1990, at 8, col. 7.

121. The "doctrine of limited sovereignty," or the "Brezhnev doctrine," purported to place limits on the sovereignty of member states of the Warsaw Treaty Organization. *See, e.g.,* Dawisha & Valdez, *Socialist Internationalism in Eastern Europe*, 36 PROBS. COMMUNISM, pt. 2, at 1-14 (Mar.-Apr. 1987). The official Soviet statement attempting to justify the Soviet invasion of Czechoslovakia stated "the sovereignty of individual socialist countries cannot be counterposed to the interests of world socialism and the world revolutionary movement." *Id.* at 1 (*quoting* Pravda, Sept. 28, 1968). To enforce this new order in Eastern Europe, the Soviet leadership made clear, as it had in 1956 when Soviet troops invaded Hungary, that it was prepared to use whatever military force was necessary to ensure the unity of the Warsaw Pact and to maintain Soviet hegemony over Eastern Europe. After Mikhail Gorbachev's rise to power in March 1985, the Soviet leadership made repeated assurances to the Eastern European states and to the West that the USSR would no longer use military force to dictate the internal political arrangements of the Eastern European states. Subsequently, political leaders and populations in Eastern Europe grew bolder in their efforts to first reform their socialist systems and then to reject the old order altogether. *See generally supra* note 16 and accompanying text.

122. *See supra* note 102.

West Germany, has increased Soviet interest in Western Europe.¹²³ Gorbachev's "common European house" theme can be seen as an effort to reconcile the long-standing Soviet goal of restricting United States influence in Europe with the current policy of according Western Europe a greater priority in Soviet global policy. Because of the formidable problems in Eastern Europe and the Soviet Union, Gorbachev finds it necessary to enhance Moscow's links with Western Europe. In the face of diminished hostility from Western Europe and the United States, the Soviet Union can seek Western assistance to help reform the decrepit economic systems that are the legacy of communist rule.

Gorbachev's task thus becomes that of building new relationships with the West at a pace sufficiently in advance of the unfolding specter of collapse in the East. However, the "common European house" cannot, from Moscow's perspective, be built on crumbling communist foundations; therefore, the Soviet Union has taken drastic steps resulting in the removal of communist reformers in Eastern Europe and reorientation towards Western political and economic ideals in order to obtain economic and other Western aid.¹²⁴ The Soviet Union has taken such steps in order to buttress the collapsing East wing of Gorbachev's "common European house." Gorbachev must foster for the Soviet Union sufficient support in the affluent West wing of the edifice in order to rebuild and refurbish the shabby rooms in the East. Gorbachev's motivation for seeking to strengthen the role of the CSCE process in the Europe of the 1990s is thus primarily the attainment of Western economic support for the USSR and Eastern Europe.

VII. Adapting NATO's Role to Europe's New Strategic Realities

The strategic interest of the United States lies in establishing an active and permanent presence in whatever "common European house" develops, for reasons deeply rooted in United States foreign policy.¹²⁵ The United States should set priorities with respect to its interests and strategies, respectively, toward NATO and the CSCE. The CSCE, however,

123. As Western Europe's stature as an independent center of political and economic power grows, the Soviets appear to afford European nations greater stature as independent political entities. The "common European home" theme is built around this notion of a strong and united Europe, including the USSR. See *supra* note 102. In particular, the FRG is seen in the USSR as playing a crucial role in the arms control process. See Maksimova, *Revealing the Potential of Cooperation*, MIROVAYA EKONOMIKA I MEZH DUNARODNYYE OTNOSHENIYA, Oct. 10, 1988, at 61-66, translated in Foreign Broadcast Information Service, JPRS Report, Arms Control, Feb. 7, 1989, at 37-39.

124. See *supra* notes 28-29, 37, and 120.

125. Exploring America's traditional ties with Europe, see, e.g., D. SMITH, *THE GREAT DEPARTURE: THE UNITED STATES AND WORLD WAR I, 1914-1920* (1965); R. DIVINE, *SECOND CHANCE: THE TRIUMPH OF INTERNATIONALISM IN AMERICA DURING WORLD WAR II* (1967); K. KNORR, *NATO AND AMERICAN SECURITY* (1959); H. CLEVELAND, *NATO: THE TRANSATLANTIC BARGAIN* (1970); R. STRAUSS-HUPE, J. DOUGHERTY & W. KINTNER, *BUILDING THE ATLANTIC WORLD* (1963); *NATO AFTER THIRTY YEARS* (L. Kaplan & R. Clawson eds. 1981); *ATLANTIC COMMUNITY IN CRISIS*, *supra* note 12.

should not become, either inadvertently or consciously, a substitute for NATO. In today's dynamic and volatile European security environment, both critics and supporters question the continued relevance of NATO. Both groups agree that in order to remain the pre-eminent institution coordinating and overseeing Western security interests, NATO must broaden its agenda, going even beyond the reforms suggested by the *Harmel Commission Report* more than a generation ago,¹²⁶ to embrace a more direct political role with arms control issues receiving far more

126. NATO FACTS AND FIGURES, *supra* note 72, at 365-67 (Report of the Council, Annex to the Final Communiqué of the Ministerial Meeting). The Council's report came at a time when Gaullist views of France's role in a revived Western Europe and West German Chancellor Willy Brandt's policy of *Ostpolitik* were threatening Alliance unity and the will of the West to maintain adequate defenses. The Harmel report, so named after the study's leader, Foreign Minister Pierre Harmel of Belgium, warned that "the pursuit of detente must not be allowed to split the alliance." *Id.*

Allied leaders believed that defense and detente were not mutually exclusive policies, but rather "complementary." The Council's report stated:

The Atlantic Alliance has two main functions. Its first function is to maintain adequate military strength and political solidarity to deter aggression and other forms of pressure and to defend the territory of member countries if aggression should occur. Since its inception, the Alliance has successfully fulfilled this task. But the possibility of a crisis cannot be excluded as long as the central political issues in Europe, first and foremost the German question, remain unsolved. Moreover, the situation of instability and uncertainty still precludes a balanced reduction of military forces. Under these conditions, the Allies will maintain as necessary, a suitable military capability to assure the balance of forces, thereby creating a climate of stability, security and confidence.

In this climate the Alliance can carry out its second function, to pursue the search for progress towards a more stable relationship in which the underlying political issues can be solved. Military security and a policy of detente are not contradictory but complementary. Collective defense is a stabilising factor in world politics The way to peace and stability in Europe rests in particular on the use of the Alliance constructively in the interest of détente. The participation of the USSR and the USA will be necessary to achieve a settlement of the political problems in Europe.

Id. at 365-66.

The Council emphasized the need for stronger political unity and more political consultation within the Alliance. The NATO ministers were also careful to ameliorate French concerns about the role of the United States in the alliance, which French officials felt was too great, and so agreed to the inclusion of the following passage in the report:

As sovereign states the Allies are not obliged to subordinate their policies to collective decision. The Alliance affords an effective forum and clearing house for the exchange of information and views; thus, each of the Allies can decide its policy in the light of close knowledge of the problems and objectives of the others. To this end the practice of frank and timely consultations needs to be deepened and improved. Each Ally should play its full part in promoting an improvement in relations with the Soviet Union and the countries of Eastern Europe, bearing in mind that the pursuit of detente must not be allowed to split the alliance. The chances of success will clearly be greatest if the Allies remain on parallel courses, especially in matters of close concern to them all; their actions will thus be all the more effective.

Id. at 366.

serious attention in the unfolding East-West dialogue.¹²⁷ As the only forum in which all major allies have a voice, NATO could, and in fact should, play a central role in building a new European security structure.

As part of the process of institutional change and evolution, NATO more actively could manage the arms control regime that emerges in the 1990s and thereby play an important role in any future European security network. Currently, Alliance officials suggest that NATO should logically, at least for the West, be placed in charge of arms control verification.¹²⁸ Some officials also suggest that the elaborate force planning review procedures recently established by NATO could provide the infrastructure for a joint, inter-allied arms reduction coordination process. If NATO does not assume greater responsibility, the prospects of harmonizing the disparate force reduction and restructuring efforts likely to be adopted by individual Alliance members will be slim indeed.

It is far from clear whether the NATO allies will be able to implement agreed reductions in a coordinated manner. Factors such as domestic political pressure, budget constraints, environmental concerns, unfavorable demographic trends, and the growing inclination to take cuts in national force levels even before they are formally agreed upon, in other words *de facto* disarmament,¹²⁹ may in fact complicate a reasoned, collective effort to reorganize Western defenses in the wake of a conventional arms control agreement with the East.

The CFE negotiations,¹³⁰ begun in early 1989, provide a promising

127. Legal considerations are indeed relevant to any discussion of institutional change with respect to NATO. The recent proposal by Secretary of State Baker addresses the issue of an enhanced role for NATO. To the extent that NATO goes beyond defense issues, the North Atlantic Treaty may need to be amended, even though the existing treaty possesses great flexibility and has always provided a framework for political endeavors. Article 2 of the Atlantic Treaty, for example, broadens the scope of the treaty in theory, although it has not done so in practice. The North Atlantic Treaty, *supra* note 1, at 321.

128. The NATO foreign ministers have accepted and endorsed Secretary of State Baker's proposal, made in Berlin, to create a NATO Arms Control Verification Staff. See *NATO Charting New Role*, Int'l Herald Trib., Dec. 16-17, 1989, at 3, col. 1.

129. The government of the United Kingdom recently indicated that a review of British defense requirements was underway, and that political and military changes in Europe may lead to unilateral reductions. See Kemp, *UK Considering Force Cuts*, JANE'S DEF. WEEKLY, Feb. 17, 1990, at 286. France's defense posture is also likely to be affected. See *UN Effort de Defense Face a une Situation Mouvante*, Le Monde, Nov. 28, 1989, at 14. The U.S. defense budget, submitted by President Bush to Congress for fiscal year 1991, proposes extensive cuts in the U.S. force structure. See Fennegan, *Cheney Chided for Timid Cuts to Weapon Systems*, Def. News, Feb. 12, 1990, at 42, 44.

The Benelux countries have begun plans to withdraw their forces from West Germany irrespective of whether a CFE Treaty is signed. In late January 1990, the Dutch government announced that it was going to begin withdrawing its forces stationed in West Germany. See *Dutch upset Nato by troop cuts in Germany*, The Independent (London), Jan. 27, 1990, at 13, col. 4. Belgium has announced that it had recently begun planning for the withdrawal of its forces deployed in West Germany. See *Belgium Plans to Withdraw its NATO Units in Germany*, Int'l Herald Trib., Jan. 20, 1990, at 1, col. 2.

130. See *supra* note 105.

basis for reductions in the most menacing categories of conventional armaments.¹³¹ The CFE began auspiciously as both NATO and the Warsaw Pact put forward proposals that narrowed substantial gaps in their approaches to European security and arms control.¹³² For NATO, the CFE represented an advance over previous negotiations, in particular the protracted but inconclusive Mutual and Balanced Force Reduction ("MBFR") talks,¹³³ since the CFE talks focused on the territory between the Atlantic and the Urals and therefore included the European territory of the Soviet Union. An agreement covering such territory could contribute potentially to increasing warning time of a Soviet attack and reducing the advantages of geographic depth available to the Soviet Union but not to NATO. Furthermore, the CFE provides for asymmetrical reductions of military capabilities to levels that would be equal for NATO and the Warsaw Pact.¹³⁴ Such an approach has great value for the West because it eliminates the substantial numerical advantage possessed by the Soviet Union. In addition, a CFE treaty would come in the wake of an INF Treaty,¹³⁵ which eliminated from the U.S. and Soviet arsenals surface-to-surface nuclear systems with ranges between 500-5500 kilometers.¹³⁶ Because Western nuclear systems are the ultimate hedge against Soviet conventional advantages, further negotiations at

131. The most menacing weapons include tanks, artillery, armored personnel carriers, combat aircraft, and helicopters. These weapons are menacing because a Soviet surprise attack would depend on them for its initial success. See J. GARRET, *THE TENUOUS BALANCE: CONVENTIONAL FORCES IN CENTRAL EUROPE* (1989); J. DOUGLASS, *SOVIET MILITARY STRATEGY IN EUROPE* (1980); J. ERICKSON, L. HANSEN & W. SCHNEIDER, *SOVIET GROUND FORCES: AN OPERATIONAL ASSESSMENT* (1986); P. VIGOR, *SOVIET BLITZKRIEG THEORY* (1983); Galvin, *Some Thoughts on Conventional Arms Control*, 31 *SURVIVAL* 99, 102-05 (1989).

132. See *supra* note 105.

133. See *RECORD, FORCE REDUCTIONS IN EUROPE: STARTING OVER*, (1980); Sharp, *supra* note 112, at 315-46; Canby, *Mutual Force Reductions: A Military Perspective*, *INT'L SECURITY*, Winter 1978, at 122-35.

134. See *CUTTING CONVENTIONAL FORCES I: AN ANALYSIS OF THE OFFICIAL MANDATE, STATISTICS, AND PROPOSALS IN THE NATO-WTO TALKS ON REDUCING CONVENTIONAL FORCES IN EUROPE* (1989). See also *supra* note 105 and accompanying text.

135. Treaty between the United States of America and the Union of Soviet Socialist Republics on the elimination of their Intermediate-range and Shorter-range Missiles, Dec. 8, 1987, in *Selected Documents*, No. 25, Department of State Publication 9555 (1987) [hereinafter *The INF Treaty*], reprinted in *SIPRI YEARBOOK 1988: WORLD ARMAMENTS AND DISARMAMENTS*, 395-406 (1988).

The INF Treaty, the first arms control agreement directly affecting U.S. forces in Europe, was not concluded on a multilateral basis involving NATO allies. The Treaty, therefore, sets a precedent, perhaps a dangerous one, for the withdrawal of U.S. forces outside of the NATO framework.

136. *Id.* Article I of the INF Treaty states that each Party shall eliminate those weapons systems possessed by either state which can be termed "intermediate-range missile" or "shorter-range missile" systems within the definitions provided in article II of the Treaty. *Id.* Article II, paragraph 5 of the Treaty defines an "intermediate-range missile" as "a GLBM [ground-launched ballistic missile] or a GLCM [ground-launched cruise missile] having a range capability in excess of 1000 kilometers but not in excess of 5500 kilometers." *Id.* Article II, paragraph 6 of the Treaty, defines a "shorter-range missile" as "a GLBM or a GLCM having a range capability equal to or in excess of 500 kilometers but not in excess of 1000 kilometers." *Id.*

the nuclear level, with specific reference to Europe, have been postponed until a treaty having conceptually the features of CFE can be agreed upon and implemented.¹³⁷ Because of its importance in reducing Soviet conventional advantages, the CFE was properly embraced as a substantial advance in arms control design and as a logical step in the arms control dimension of East-West security.

To the extent that we find ourselves in the midst of profound political change in Europe, most of which was unforeseeable when the CFE negotiations began, the question arises as to whether or not unfolding political events have made such arms control negotiations moot. The level of Soviet capability under the CFE exceeds the level that newly elected governments in Eastern Europe would permit.¹³⁸ More importantly, since the United States, its NATO-European allies, and the governments of states such as Czechoslovakia and Hungary wish to see the Soviet Union remove all military personnel and equipment from Eastern Europe, the CFE must not now be permitted to legitimize the presence of Soviet forces in countries where they are neither desired nor needed.

Equally important is the need, recognized by the Bush Administration, to break any perceived link between the Soviet force presence in Europe and the number of United States personnel stationed in Europe. This concern was the essence of President Bush's proposal in January 1990 for a mutual United States-Soviet force limit of 195,000 Soviet and U.S. troops in the Central Region Zone¹³⁹ as discussed in the CFE talks, while allowing for an additional 30,000 U.S. troops deployed in Europe but outside the Central European Zone.¹⁴⁰ At the February 1990, Ottawa meeting of the NATO and Warsaw Pact foreign ministers, both sides accepted the Bush proposal for troop deployments.¹⁴¹

Paradoxically, the changes in Eastern Europe have made the role of arms control less decisive in shaping a future European security structure. The commitment of a government to arms control negotiations often helps secure support for modernization programs designed to strengthen negotiating positions. This occurred, for example, when NATO decided to develop and deploy intermediate nuclear forces

137. NATO's deployment of U.S. nuclear weaponry in Europe stemmed from fear that the Warsaw Pact countries' conventional force advantage was otherwise insurmountable. *RECORD*, *supra* note 133, at 6-8. The conventional forces imbalance in Europe, favoring the Warsaw Pact, continued to grow through the late 1980s and was the central factor behind NATO's planning for the deployment and continued modernization of its nuclear forces. The proposed elimination of the Warsaw Pact's conventional advantages under the terms of the various CFE proposals would eliminate an important, but not the sole, rationale for the deployment of NATO nuclear forces. Therefore, the United States and some of its NATO allies pressed to postpone talks on the reduction or elimination of short-range nuclear forces in Europe until after a CFE agreement had been concluded.

138. *See supra* notes 64 and 105 and accompanying text.

139. This area includes the territories of the two Germanies, Luxembourg, the Netherlands, Denmark, Hungary, Poland, and Czechoslovakia.

140. *A Troop-Cut Assent*, *N.Y. Times*, Feb. 10, 1990, at 6, col. 5.

141. *Soviet Willingness to Compromise Speeds Arms Talks*, *Def. News*, Feb. 19, 1990, at 9.

("INF") to offset Soviet SS-20 missile deployments.¹⁴² As with the INF Treaty, arms control agreements may be said to reflect the balance of military power at a particular time, and lock-in that balance by restricting the ability of the signatories to augment specified military capabilities. The value of arms control agreements is seen to be greatest at moments of heightened political tension between states. If arms control agreements in themselves do not diminish existing political differences, they nevertheless may contribute to an atmosphere in which conflicts and tensions are more easily ameliorated and in which further armament reductions become feasible.

When negotiations for a CFE agreement were initiated in 1989, there was evidence from Gorbachev's earlier statements, notably his address to the United Nations on December 7, 1988,¹⁴³ that the Soviet Union was prepared to decrease unilaterally its force structure in Eastern Europe.¹⁴⁴ CFE would have codified reductions extending beyond Gorbachev's proposals. Subsequent events in Eastern Europe which have led Eastern European states to call for withdrawal of Soviet forces from their respective territories, and the prospective unification of Germany, have altered the initial underlying premises of the CFE.

When arms control was most needed, in the days of deepest political tension between East and West, arms control could not be attained. Today, when arms control seems readily attainable, many view CFE as superfluous.¹⁴⁵ Yet the need to preserve CFE as the forum for regulating and coordinating Allied and Soviet-Warsaw Pact force cuts remains. The rapidly changing European security environment needs an agreement, such as the CFE framework could provide, to codify the withdrawal of Soviet forces from Eastern Europe and establish a framework

142. The initial request for NATO nuclear modernization came from European leaders concerned about the deployment of the Soviet SS-20 theater-strategic range missile, which some Western European government officials feared would have the effect of "decoupling" the U.S. nuclear deterrent from Europe. See J. Davis, *Theater-Nuclear Force Modernization and NATO's Flexible Response Strategy*, 457 ANNALS AM. ACAD. POL. & SOC. SCI. (Sept. 1981), at 78-87.

143. *Statements on Conventional Arms Control: Speech by Mikhail Gorbachev at the UN General Assembly*, Dec. 7, 1988, 31 SURVIVAL 171, 171-76 (1989).

144. *Id.* In this speech, Gorbachev pledged:

By agreement with our Warsaw Treaty allies, we have decided to withdraw from the German Democratic Republic, Czechoslovakia and Hungary by 1991 six tank divisions, and disband them. In addition, landing-assault and some other units, including landing-assault units with their armaments and combat material, will be withdrawn from Soviet forces stationed in these countries. The Soviet forces stationed in these countries will be reduced by 50,000 men and 5,000 tanks. The Soviet divisions which still remain on the territory of our allies will be restructured, a large number of tanks will be withdrawn, and they will be withdrawn, and they will become strictly defensive.

Id.

145. See *A Quickening Pace on Arms*, Boston Globe, Feb. 10, 1990, at 1, col. 5; Dean, *Negotiated Force Cuts in Europe: Overtaken by Events?*, ARMS CONTROL TODAY, Jan. 1990, at 12; see also *Why Wait for CFE? Dixon Wants U.S. Troops Out Now*, Defense News, Feb. 12, 1990, at 8 (Interview with Senator Alan Dixon).

in order to regulate force levels from the Atlantic to the Urals.¹⁴⁶ The CFE is not a guarantee of a continued United States presence in Europe. Implicit in any European troop reductions regime is the understanding that American forces will remain in Europe only so long as they are authorized to do so by the elected governments of the states in which they are stationed, and as long as the U.S. Congress continues to support their forward deployment.

Conceptually, the case for a residual U.S. force presence in Europe rests on the geographic reality of the Soviet Union's European presence. It is in the best interest of the United States, its allies, and the future European security equilibrium to establish limits on Soviet forces stationed west of the Urals. It is especially important that such an agreement provide for an acceptable level of U.S. forces to be stationed in Europe as part of the transatlantic security link. Finally, the CFE can play an important role in setting an orderly phasing process for reducing and establishing procedures for assuring compliance with arms control agreements.

In sum, CFE should be viewed, in keeping with a major function of arms control agreements, as codifying a changing set of political-military relationships and setting forth agreed measures for verification that will be complex, calling for aerial surveillance on the basis of the "Open Skies" initiative as well as on-site inspection. CFE will impose on the West verification requirements beyond those with which the intelligence community would otherwise be tasked. Therefore, crucial to any CFE Treaty will be the extent and effectiveness of a verification regime based on the necessary level of intrusiveness. Ultimately, the success or failure of the CFE, as with any arms control endeavor, lies in the extent to which the signatories are prepared to contribute to its success.

Conclusion

Although there are numerous continuities, especially of a geostrategic nature, between the era in which the Alliance was founded and the 1990s, the Europe of the 1990s will be increasingly powerful both in a political and economic sense. Nevertheless, despite the steps that are likely to be registered toward greater unity, especially in the EC and perhaps in the political realm as well, the United States will continue to play an indispensable role in the evolving security equilibrium. Although the leverage available to the United States will diminish, the enduring strategic interests of the U.S. dictate its continuing engagement in shaping a transatlantic partnership. For the dynamic European political setting, the challenge will be to create a security order which builds on the achievements of the past two generations. Its ingredients include, first and foremost, the links between North America and a Europe within which a unifying (or unified) Germany is fully integrated.

146. CFE or some version of the 23-nation negotiation, rather than the 35-nation format of the CSCE, should provide the framework.

Such are the essential requirements for a European security framework that will safeguard the interests of the United States and other nations in the 1990s and beyond.

