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**BUILDING A BRIDGE FOR DEFENSE:
THE EUROPEAN UNION'S COMMON FOREIGN AND
SECURITY POLICY**

CHERYL SWACK*

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The objective *vis-à-vis* Political Union should be to demonstrate more visibly that WEU is an integral part of the European integration process. The objective *vis-à-vis* the [NATO] Alliance should be to achieve a strong, new transatlantic partnership by strengthening the European component, contributing to the [NATO] Alliance's evolution . . .¹

I. INTRODUCTION

The act of defending one's state or region is generally seen as an "inherent and autonomous right" legitimated in international law under Article 51 of the United Nations Charter.² The concept of international self-defense, as a right to protect one's territory against an armed attack attempted by another state, initially developed from two independent sources: first, Hugo Grotius' natural law doctrine of self-defense, states that preservation of the self [is to be] regarded as a natural right of the state ". . . that could not be abrogated or limited by positive law;"³ and second, positive law is of minor importance to power, which means that: "self-defense could not be governed by law

1 EXTRAORDINARY MEETING OF THE COUNCIL OF MINISTERS: PARIS, 22 FEBRUARY 1991, *reprinted in* THE CHANGING FUNCTIONS OF THE WESTERN EUROPEAN UNION (WEU): INTRODUCTION AND BASIC DOCUMENTS, at 106 (Arie Bloed & Ramses A. Wessel eds., 1994) [hereinafter CHANGING FUNCTIONS].

2 Oscar Schachter, *Self-Defense and the Rule of Law*, 83 AM. J. INT'L L. 259, 259 (1989); United Nations Charter art. 51 [hereinafter U.N. CHARTER] ("Nothing in the present Charter shall impair the inherent right of individual . . . self-defense if an armed attack occurs against a Member of the United Nations . . .").

3 Schachter, *supra* note 2, at 259. (Article 51 of the U.N. Charter reflects Grotius' natural law doctrine by characterizing self-defense as an "inherent right"); see HUGO GROTIUS, *DE JURE BELLI AC PACIS*, bk. II, ch. I, pt. III, at 172 (Carnegie Endowment trans. 1925) (1646) ("the right of self-defense . . . has its origin directly, and chiefly, in the fact that nature commits to each his own protection.").

when a grave threat to the power of a state [or region] or to its way of life was perceived by that state [or region].”⁴ Even though self-defense is now governed by Article 51 of the United Nations Charter, international lawyers and legal scholars still subscribe to the concept of self-defense “as an autonomous, nonderogable right that ‘exists’ independently of legal rules.”⁵ Thus, under international law, states and regions consider self-defense to be the “only ground for the unilateral use of force.”⁶ Then, once a state or region makes a decision to defend itself, this decision exerts great leverage over that particular state or region’s “law-shaping” procedures, “influencing expectations as to the acceptability of future actions [advocating] use of force.”⁷

Common defense plans had been discussed since the inception of the idea to unite Western Europe. Nonetheless, Western Europe’s quest to find a legal framework for managing its security issues has been difficult and drawn-out. The European Economic Community

4 Schachter, *supra* note 2, at 260; see Dean Acheson, *Remarks*, 57 ASIL PROC. 13, 14 (1963) (Law “simply does not deal with such questions of ultimate power . . . The survival of states is not a matter of law.”); cf. HERSCH LAUTERPACHT, *THE FUNCTION OF THE LAW IN THE INTERNATIONAL COMMUNITY* 180 (1933) (“Such a claim is self-contradictory inasmuch as it purports to be based on legal right and at the same time, it dissociates itself from regulation and evaluation of the law.”).

5 Schachter, *supra* note 2, at 260.

6 *Id.* at 265 (This definition of self-defense is realistic since first, legal prohibitions against use of force, like those found in the U.N. Charter or other collective security alliances, have not eradicated international aggression; and second, the right of collective self-defense recognizes that the victims of an attack may need military aid from other states.).

7 *Id.* at 266.

("EEC"), established by the TREATY OF ROME on March 25, 1957,⁸ had been intentionally created and strictly maintained as an economic association among member nations. However, the TREATY OF ROME does permit an individual member state to take necessary measures to protect its security interests,⁹ to "adopt necessary measures in the event of substantial internal disturbances, of serious international tension or in the event of war,"¹⁰ and to have access to the European Court of Justice.¹¹ All these provisions permit members to remain as sovereign nations. By the beginning of the 1980's, the EEC began to discuss the advantages of community-wide political cooperation. These discussions resulted in the signing of the Single European Act,¹² giving the EEC a legal basis for political cooperation. European Political Cooperation, codified in Article 30 of SEA, permits member states to "jointly formulate and implement a

8 Treaty Establishing the European Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter TREATY OF ROME].

9 Article 223(1) provides:

(a) No Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential elements of its security;

(b) Any Member State may take the measure it considers necessary for the protection of the essential interests of its security, and which are connected with the production of or trade in arms, ammunitions and war materials; such measures shall not, however, prejudice the conditions of competition in the common market in respect of products not intended for specifically military purposes. *Id.*

10 Heinrich Kirschner, *Symposium on U.S.-E.C. Legal Relations: The Framework of the European Union Under the Treaty of Maastricht*, 13 J.L. & COM. 233, 241(1994); see TREATY OF ROME, *supra* note 8, at art. 224.

11 See *id.* at art. 225.

12 Single European Act, June 29, 1987, O.J. (L 169/1) (1987), [1987] 2 C.M.L.R. 741 [hereinafter SEA].

European foreign policy,"¹³ by "consult[ing] each other, develop[ing] common objectives, determin[ing] common positions, refrain[ing] from impeding the formation of a consensus and refrain[ing] from impeding the joint action this could produce."¹⁴ Furthermore, the SEA foresaw cooperation on security matters by providing, in Article 30(6)(a), that the EEC's member states are "ready to coordinate their positions more closely on the political and economic aspects of security."¹⁵ According to Article 30, achieving "closer cooperation in the field of security . . . [would mean working] within the framework of [either] the WEU or the [NATO] Alliance [as hereinafter defined]."¹⁶ This article will discuss the creation of the North Atlantic Treaty Organization ("NATO") and its role in the defense of the North Atlantic region, especially that of its member states in western, and now central, Europe.¹⁷ Next, the article

13 *Id.* at art. 30.

14 Kirschner, *supra* note 10, at 241.

15 SEA, *supra* note 12, at art. 30(6)(a); see G. Porter Elliot, *Neutrality, the Acquis Communautaire and the European Union's Search for a Common Foreign and Security Policy under Title V of the Maastricht Treaty: The Accession of Austria, Finland and Sweden*, 25 GA. J. INT'L & COMP. L. 601, 614 n.58 (1996) (construing Jonathan Faull, Lecture at the Brussels Seminar on Law and Institutions of the European Community, Institut d'Études Européennes (July 5, 1994)). Several polls have been taken to see the percentage of Europeans favoring a common security policy. In 1987, less than half of the EEC favored a common security policy. By 1989, 36% of those polled wanted a common security policy, whereas 30% spoke out against the idea. After the Gulf War, in 1990, 61% of the EEC citizens polled favored a common security plan while 29% voiced opposition. "By 1993, 77% believed the EEC should pursue a common security policy, compared to only 13% opposed to the idea."

16 SEA, *supra* note 12, at art. 30(6)(c).

17 As of 1999, Poland and Hungary became the first of the former Soviet-bloc nations to gain admittance into NATO.

discusses the formation of the Western European Union ("WEU") as the European Union's ("EU") common foreign and security pillar. Finally, the article compares and contrasts the similarities and differences between NATO and the WEU, discussing each organization's function in protecting Europe's borders from outside invasion.

II. THE CREATION OF THE NATO ALLIANCE

The idea of creating a military alliance to defend Western Europe against the impending threat of an invasion by the Soviet Union grew out of the wreckage of World War II, after the Soviets began to annex Eastern and parts of Central Europe into its sphere of power by use of force. Besides fearing a communist invasion, Western Europe still felt threatened by the memory of a rearmed Germany.¹⁸ Against this setting of increasing insecurity, the United Kingdom and France signed the Treaty of Alliance and Mutual Assistance on March 4, 1947¹⁹ in Dunkirk, France, in which the parties assented to cooperate militarily with each other in the event Germany "disregard[ed] the restrictions placed upon it after [World War II],"²⁰ and attacked either party.

By the late 1940's, the United States began urging Western Europe to unite and thereby remedy its post-war economic and military weaknesses. After signing the Treaty of Dunkirk, British Foreign Secretary Ernest Bevin initiated the enlargement of the scope

18 See Elliot, *supra* note 15, at 613 ("Germany has the capacity to do great harm in Europe and an historic propensity to do so.").

19 TREATY OF ALLIANCE AND MUTUAL ASSISTANCE, Mar. 4, 1947, 9 U.N.T.S. 187 [hereinafter Treaty of Dunkirk].

20 3 *History of the WEU: 3.1 Origins* ¶ 2 (visited Dec. 21, 1996) <<http://www.helsinki.fi/valtttdk/hayrinen/weu.html>>.

of European military cooperation by signing the Treaty of Brussels.²¹ The United Kingdom, France, and the Benelux countries²² first negotiated the Brussels Pact,²³ the precursor to both NATO and WEU, to defend themselves against “an armed attack in Europe.”²⁴ However, the Brussels Pact, unlike the Treaty of Dunkirk, aimed to defend against the Soviet Union, as well as Germany.²⁵

The Brussels Pact, compatible with Article 51 of the U.N. Charter,²⁶ had been primarily conceived as a military alliance, although its complete title also included the words “Collaboration in Economic, Social and Cultural Matters.”²⁷ The purpose of the Brussels Pact, as written in Article 1, had been to uphold the principles of democracy, personal freedom and political liberty, the constitutional traditions and the rule of law” within its member states.²⁸ Under Article 5, the Brussels Pact authorized automatic

21 TREATY OF BRUSSELS, Mar. 17, 1948, 19 U.N.T.S. 51 [hereinafter the BRUSSELS PACT].

22 The Benelux countries are Belgium, the Netherlands, and Luxembourg.

23 BRUSSELS PACT, *supra* note 21.

24 MARINA SALVIN, 451 INTERNATIONAL CONCILIATION: THE NORTH ATLANTIC PACT 393 (1949) (quoting BRUSSELS PACT, *supra* note 7, at art. 4); *see id.* (President Truman, addressing Congress after the signing of the BRUSSELS PACT on Mar. 17, 1948, said, “the determination of the free countries of Europe to protect themselves will be matched by an equal determination on our part to help them do so.”).

25 BRUSSELS PACT, *supra* note 21, at preamble (the preamble pledges “to take such steps as may be held necessary in the event of renewal by Germany of a policy of aggression”).

26 U.N. CHARTER, *supra* note 2, at art. 51.

27 SALVIN, *supra* note 24, at 393.

28 BRUSSELS PACT, *supra* note 21, at 153.

military and other assistance against an armed attack by any source whatsoever.²⁹ Additionally, the Brussels Pact provided its members with a forum to discuss far-reaching defense issues constituting “a threat to peace, in whatever area this threat should arise.”³⁰

On September 28, 1948, the ministers of defense and the chiefs of staff of the five BRUSSELS PACT nations formed a joint military organization for common defense called Uniforce, under the control of Britain’s Field Marshall Montgomery, with headquarters in Fontainbleau, France. Then, on April 8, 1949, these defense ministers and chiefs of staff, under full authority from their respective governments, agreed upon a plan to deflect Soviet military aggression.³¹ Both the United States and Canada were in attendance of the consummation of this plan, but only as observers. However, Uniforce only existed on paper since post-war Europe had little manpower or armaments. “After evaluating their available resources, the BRUSSELS PACT nations, plus Denmark, Norway and Italy, found it necessary to turn to the United States for assistance”³² due to the fact that Uniforce had huge gaps in both manpower and *matériel* which only a military alliance with the United States could fill. In addition, Western Europe needed manpower to create a defensive military machine capable of stopping a Soviet invasion while providing psychological security. In essence, Western Europe saw the placement of American nuclear and conventional forces in its territory as vital to its security.

29 *Id.* art. 4 (if any Member State became the recipient of an armed attack, the parties would, “in accordance with 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”).

30 Salvin, *supra* note 24, at 393.

31 *Id.* at 394 (Uniforce charted lines of defense, calculated each country’s contribution to the army and airforce, and coordinated arms production).

32 *Id.* at 395.

Meanwhile, the United States Senate was keenly interested in the BRUSSELS PACT and passed the VANDENBERG RESOLUTION on June 11, 1948.³³ The Resolution contained a three-part plan designed to both advise President Harry S. Truman and facilitate his participation in working toward international peace under the auspices of the United Nations. The plan provided first, for the “progressive development of regional and other collective arrangements for individual and collective self-defense in accordance with . . . the [U.N.] Charter;”³⁴ second, that the United States should, by constitutional processes, associate with other regional alliances “based on continuous and effective self-help and mutual aid, [which could] affect its national security;”³⁵ and third, that the United States should try to maintain the peace “by making clear its determination to exercise the right of individual or collective self-defense under Article 51 [of the U.N. Charter] should any armed attack occur affecting its national security.”³⁶ By passing the Resolution, the United States determined that an integrated defense alliance protecting the North American region had become “desirable and necessary.”³⁷ By December, 1948, the United States, Canada, and the BRUSSELS PACT nations began negotiating an integrated regional defense alliance which would subsequently become NATO.

As a result of the negotiations, the foreign ministers of twelve nations signed the North Atlantic Treaty on April 4, 1949 in

33 S. Res. 239, 80th Cong., 2d Sess. (1948) (enacted) [hereinafter the Resolution].

34 *Id.*

35 *Id.*

36 SALVIN, *supra* note 24, at 396 (quoting the Resolution, *supra* note 33).

37 *Id.*

Washington, D.C.³⁸ Then in 1951, all military responsibilities exercised by the BRUSSELS PACT transferred over to the NATO alliance.³⁹ The NATO Treaty, establishing NATO as a military alliance for collective defense, is legally anchored in Art. 51 of the U.N. Charter.⁴⁰ As set out in the Treaty, NATO's role is to maintain security, peace and freedom by creating a peacetime alliance for mutual self-defense against armed attacks in either Western Europe or North America. NATO, according to the NATO Treaty's preamble, had been specifically designed to deter aggression by first, "safeguard[ing] the freedom, common heritage and civilization"⁴¹ of the populace; and second, "unit[ing] [the parties'] efforts for collective defense and for the preservation of peace and security."⁴² Therefore, in order for NATO to effectively provide collective defense for its signatories, all member states must agree that an armed attack against one or more parties is an attack against them all.⁴³

38 North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 [hereinafter NATO Treaty] (The twelve original signatories are Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom, and the United States. Turkey and Greece joined NATO in 1952, the Federal Republic of Germany joined in 1955, and Spain joined in 1982.).

39 See *The European Security and Defence Identity: March 1996: The Western European Union* ¶ 2 (visited Jan. 11, 1997) <<http://www.nato.int/docu/facts/fs3.htm>>.

40 Shashi Tharoor, *The Changing Face of Peace-keeping and Peace Enforcement*, 19 FORDHAM INT'L L.J. 408 (1995).

41 SALVIN, *supra* note 24, at 403 (quoting NATO Treaty, *supra* note 38, at preamble).

42 *Id.*

43 Art. 5 of the NATO Treaty provides:
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

The NATO alliance is not a supranational organization;⁴⁴ rather, it is based on voluntary military cooperation among independent sovereign nations. NATO has no independent policy-making capacity and can only act by the unanimous consent of all its member states, even though each member state's delegates only represent their own state's particular point of view. Conversely, this allows each member state to know the positions of its allies. If common ground cannot be reached on a decision facing the member states, those members who cannot agree are free to pursue individual courses of action. In such cases, NATO's solidarity is not necessarily threatened because members are encouraged to consult with one another to guarantee both permanent dialogue and mutual understanding of their respective national policies. Thus, major policy differences between member states can be settled to protect NATO's "common security interests and [to] preserve [its] political solidarity."⁴⁵

armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the [U.N. Charter], 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.

NATO Treaty, *supra* note 38, at art. 5.

44 *Id.*

45 *How Does the NATO Alliance Work?* (visited Dec. 21, 1996) <<http://www.nato.int/welcome/nt-p08.htm>>.

III. THE NATO TREATY

The NATO Treaty contains fourteen provisions, designed to “promote stability and well-being in the North Atlantic area.”⁴⁶ Article 1 of the NATO Treaty declares NATO’s fidelity to the U.N. Charter by settling any international disturbances according to its dictates, and “refrain[ing] in [its] international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.”⁴⁷ Next, Article 2 recognizes that parties must actively pursue peace, even when there is no war, “by strengthening their free institutions, by bringing about a better understanding”⁴⁸ and by “encourag[ing] economic collaboration”⁴⁹ between member and nonmember states.

The core of the Treaty, Articles 3, 4, and 5, addresses mutual aid among member states.⁵⁰ Article 3, which applies during peacetime to alert NATO’s defense forces to the possibility of an armed attack, provides that “parties, separately and jointly, by means of . . . self-help and mutual aid, will maintain and develop their

46 NATO Treaty, *supra* note 38, at preamble.

47 *Id.* at art. 1.

48 *Id.* at art. 2.

49 *Id.*

50 See SALVIN, *supra* note 24, at 404 (mutual aid is defined as each party’s contribution of such aid “as it reasonably can, consistent with due regard to the requirements of economic health” (quoting Report of the Secretary of State to the President, Apr. 7, 1949, Dep’t of State, *Bulletin* 532 (Apr. 24, 1949))); see also Vaughn A. Carney, *On the Elimination of the NATO Entitlement*, 13 J. INT’L L. BUS. 487 (NATO commitments cost the United States almost half of its defense budget, or \$160 billion per year, whereas Great Britain, France and Germany each spend approximately \$28 billion per year on defense.).

individual and collective capacity to resist armed attack.”⁵¹ If an aggressor, whether or not a member state, threatens a member state but stops short of an armed attack, Article 4 provides for consultation among the aggressor and member states when “the territorial integrity, political independence or security of any of the Parties is threatened.”⁵² Article 5 comes into play if an armed attack occurs, even though it does not guarantee armed protection in the event that a member state is attacked. Each member state individually decides how to assist the attacked party “by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including use of armed force.”⁵³ NATO also responds, under Article 6, to “armed attacks, [as defined in Article 5] on the territory of any of the Parties in Europe or North America . . . or on the vessels or aircraft in this area of any of the parties.”⁵⁴

“Sovereign equality and individual decision”⁵⁵ are also at the center of NATO’s representation and membership provisions. Article 9, which “establish[es] a council, on which each of [the members] shall be represented to consider matters concerning the implementation of this Treaty,”⁵⁶ structures NATO as “an integrated military command organization and a mechanism for collective decision-making.”⁵⁷ Also, under Article 10, “[t]he parties may, by

51 NATO Treaty, *supra* note 38, at art. 3.

52 *Id.* at art. 4.

53 *Id.* at art. 5.

54 *Id.* at art. 6.

55 SALVIN, *supra* note 24, at 402.

56 NATO Treaty, *supra* note 38, at art. 9; Hon. John P. Flaherty & Maureen E. Lally-Green, *The European Union: Where is it Now?*, 34 DUQ. L. REV. 923, 931 (1996).

57 *Id.*

unanimous agreement, invite any other European state in a position to [both] further the principles of this Treaty and to contribute to the security of the North Atlantic area to accede to this Treaty.”⁵⁸ The Treaty then protects member states from any unwanted additions by requiring that each new member be unanimously voted into NATO.

In sum, NATO is designed to maintain the peace and security of the North Atlantic region, and Europe in particular, by protecting it from armed attacks and revolutions. Therefore, by the terms of its provisions, the NATO Treaty represents “an advance intent [by member states] to resist military attack.”⁵⁹ To be able to deter aggression, member states, who had demobilized their armies and reduced operations of other military-related organizations after World War II, needed to be rearmed.⁶⁰ Therefore, in order to preserve peace and stability in the North Atlantic area, NATO, and the United States in particular, rearmed and reindustrialized member states whose territories and economies had been extensively damaged by the Germans in World War II. In this way, NATO, the key element of European defense since its formation, has grown into a powerful and technologically advanced defensive military alliance.⁶¹

58 NATO Treaty, *supra* note 38, at art. 10.

59 SALVIN, *supra* note 24, at 416.

60 See *Origins of the Alliance* (visited Jan. 11, 1997) <<http://www.nato.int/welcome/int-p15.htm>> (after World War II, the Soviet Union maintained its armed forces at full strength, breaching its duty to demobilize under the U.N. Charter).

61 See 1994 Summit of the Council on Security and Cooperation in Europe, 1994 DEP'T OF STATE DISPATCH (Dec. 12, 1994) (While in Budapest, Hungary in 1994, President Bill Clinton stated, “NATO remains the bedrock of security in Europe.”).

IV. THE BEGINNINGS OF THE WEU AS THE DEFENSIVE COMPONENT OF THE EU

During this time, in May, 1948, Western Europe began economically integrating itself into the EEC at the Congress of Europe held in The Hague, Netherlands.⁶² In the area of security, Western European nations thought that despite NATO's benefits, it did not contribute to the nascent idea of European solidarity. So, in 1952, France initiated an integrated Western European defense alliance with the member states of the European Coal and Steel Community and the United Kingdom called the European Defence Community ("EDC"). By May 1953, the EDC Treaty had been signed in Paris, even though it had been universally reproached for "lack[ing] democratic safeguards."⁶³ In late 1952, a second treaty, the European Political Community Treaty ("EPC") had been created by the ministers of ECSC nations. The merger of the parties' armed forces never took place due to the United Kingdom's lack of commitment and France's unwillingness to give up command over its military.⁶⁴ The EDC and EPC's failure to produce an integrated security alliance among its members led to the formation of an

62 CHANGING FUNCTIONS, *supra* note 1, at xiv. For the three treaties leading to the Treaty of Paris and the creation of the EEC, see Treaty Instituting the Benelux Union, Feb. 3, 1958, 381 U.N.T.S. 260; Treaty Establishing the Coal & Steel Community, Apr. 18, 1951, 261 U.N.T.S. 140 [hereinafter ECSC]; and Treaty Establishing the Atomic Energy Community, Mar. 25, 1957, 298 U.N.T.S. 167 [hereinafter Eurotom].

63 Flaherty & Lally-Green, *supra* note 56, at 933.

64 *History of the WEU*, *supra* note 20, at ¶ 5; CHANGING FUNCTIONS, *supra* note 1, at xiv; see Flaherty & Lally-Green, *supra* note 56, at 933 (parties to the EPC argued that without the United Kingdom as a member, "the EPC would allow a rearmed Germany to be free of political control").

alternative alliance.⁶⁵ In response to the failure of both the EDC and the EPC, British Foreign Secretary Sir Anthony Eden assembled a conference in London from September 28 to October 30, 1954 among Belgium, Canada, the Federal Republic of Germany ("FRD"), France, Italy, Luxembourg, the Netherlands, the United Kingdom and the United States; this conference resulted in large scale revisions to the Brussels Pact.⁶⁶ The conference produced the Paris Agreements,⁶⁷ signed on October 23, 1954, which modified the Brussels Pact by establishing the WEU, with Italy and, most notably, the FRD joining as members.

V. THE WEU TREATY

Besides creating a defensive military alliance comprised only of European nations, the WEU Treaty initially provided for close economic, social and cultural cooperation among its members.⁶⁸ According to Article 1, the parties "will so organise and co-ordinate their economic activities as to produce the best possible results,"⁶⁹

65 Both the EDC and EPC treaties failed when tensions loosened after the death of Stalin and the end of the Korean War. *See Id.*

66 *See CHANGING FUNCTIONS, supra* note 1, at xiv (Brussels Pact nations invited both Italy and the FRD to become parties to the treaty at this conference, setting the stage for the FRD's postwar re-emergence as a participant in Western Europe's continuing integration).

67 Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, Oct. 23, 1954, 211 U.N.T.S. 342 [hereinafter WEU Treaty] (signed by Belgium, France, FRD, Italy, Luxembourg, the Netherlands and the United Kingdom).

68 *See CHANGING FUNCTIONS, supra* note 1, at xv (as stated in the preamble, the WEU Treaty's stated purpose had been "to promote unity and to encourage the integration of Europe").

69 WEU Treaty, *supra* note 67, at art. I

while providing that this cooperation “shall not involve any duplication of, or prejudice to, the work of other economic organisations in which the [parties] are or may be represented.”⁷⁰ However, because of Western Europe’s growing participation in the EEC and its wider, more extensive scope of economic activities, the WEU, in 1970, had to abandon its role in the economic, social and cultural integration of Europe to concentrate solely on European defense.⁷¹

The WEU protects its members against attacks from nations outside the alliance, as well as securing internal stability through its parties’ commitment to form a cohesive Western European defensive organization. Regardless of the source of attack, Article V of the WEU Treaty, provides:

If any of the . . . Parties should be the object of an armed attack in Europe, the other . . . 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.⁷²

In comparison with NATO, which is authorized to take whatever action it deems necessary in the event of an armed attack, “the WEU commitment to assist the party that is the object of an armed attack is [both] automatic and obligatory.”⁷³

70 *Id.*

71 The WEU officially ended its economic, social and cultural activities when the United Kingdom began membership negotiations with the EEC in 1970. See CHANGING FUNCTIONS, *supra* note 1, at xv.

72 WEU Treaty, *supra* note 67, at art. V.

73 3 *History of the WEU*, 3.2 *Establishment* ¶ 3 (visited Dec. 21, 1996) <<http://www.helsinki.fi/valtttdk/hayrinen/weu.html>>.

Additionally, under Article VII of the WEU Treaty, parties are forbidden to take part in any defensive military alliance directed against any other member of the WEU.⁷⁴ Article VIII provides parties with a forum for consultation by requesting that “the Council . . . be immediately convened in order to permit them to consult with regard to any situation which may arise.”⁷⁵ This means that the mere presence of a situation possibly causing a threat to the peace may result in consultations, if any party so requests. Also, Article VIII protects beyond the boundaries of its member states since consultations could take place on actions “out of [the WEU’s geographical] area.”⁷⁶ Next, Article VIII provides that “[t]he Council shall decide by unanimous vote questions for which no other voting procedure has been or may be agreed.”⁷⁷ Article X stresses the importance of peacefully settling disputes with nations inside and outside the alliance,⁷⁸ and discusses the International Court of Justice’s role in resolving disputes.⁷⁹ In Article XII, members may

74 WEU Treaty, *supra* note 67, at art. VII (“None of the High Contracting Parties will conclude any alliance or participate in any coalition directed against any other of the High Contracting Parties.”).

75 WEU Treaty, *supra* note 67, at art. VII (The main organ of the WEU, the Council, “consider[s] matters concerning the execution of [the WEU] Treaty, its Protocols and their Annexes.”).

76 *Id.* at art. VIII (“the Council shall be convened . . . to consult . . . in whatever area this threat should arise”); see CHANGING FUNCTIONS, *supra* note 1, at xvi.

77 WEU Treaty, *supra* note 67, at art. VIII.

78 *Id.* at art. X (parties must endeavor “to settle disputes only by peaceful means”).

79 *Id.* (“The High Contracting Parties will . . . settle all disputes falling within the scope of Article 36, paragraph 2, of the Statute of the International Court of Justice, by referring them to the Court,” however, “the High Contracting Parties

cease being a party to the WEU only after fifty years of membership, whereas the NATO alliance may last indefinitely.⁸⁰ Lastly, the WEU Treaty is then completed by four implementing protocols and their respective annexes.⁸¹

VI. REACTIVATING THE WEU UNDER THE MAASTRICHT TREATY

For the next thirty years the WEU did not have the opportunity to fully develop into a defensive organization due to NATO's superior ability in managing Western Europe's security issues. Nevertheless, the WEU did play two minor roles; it helped solve a French/German territory dispute over the Saar region by giving it back to the FRG, and when French president Charles DeGaulle opposed the United Kingdom's attempt to join the EEC because of its close alliance with the United States, the WEU served as the sole consultative forum, serving the EEC and the United

will submit to conciliation all disputes outside the scope of Article 36, paragraph 2, of the Statute of the International Court of Justice.”).

80 Because the WEU Treaty simply modified the Brussels Pact, signed in 1948, the first possible opportunity to denounce the WEU would be in 1998. However, if the WEU Treaty, signed in 1954, is seen as creating a separate organization, parties could not denounce their membership until 2004. To denounce membership in the WEU, a party must give notice to the Belgian government one year in advance. *See id.* at xvii; SALVIN, *supra* note 24, at 402; *Jane's Defence Weekly: Interview with Sir Dudley Smith, President of the Assembly of the WEU* ¶ 10 (visited Jan. 11, 1997) <<http://www.thomson.com/janes/960327.html>> (the Brussels Pact of 1948, valid for fifty years, means the WEU could be renewed or disbanded in 1998).

81 *See* Protocol Modifying and Completing the Brussels Treaty (Oct. 23, 1954); Protocol No. II on Forces of Western European Union (Oct. 23, 1954); Protocol No. III on the Control of Armaments (Oct. 23, 1954); and Protocol No. IV on the Agency of Western European Union for the Control of Armaments (Oct. 23, 1954), *reprinted in* CHANGING FUNCTIONS, *supra* note 1, at 1-38.

Kingdom. However, from 1973 until its rehabilitation in the 1980's, the WEU entered its "somnolent years"⁸² and ceased functioning.

Then in February, 1984, French foreign minister Claude Cheysson, at French President François Mitterrand's suggestion, distributed a memorandum recommending that the WEU be reactivated. In response, two meetings took place with the hope of reviving the WEU as a strong European arm of NATO.⁸³ The first meeting of the WEU Ministerial Council in eleven years convened, in Paris, France on June 12, 1984, and subsequently voted to reanimate the WEU.⁸⁴ Then, at the second meeting in Rome, Italy from October 26 to 27, 1984, the Council formally reactivated the WEU in the Rome Declaration seeking "to make better use of the WEU framework in order to increase cooperation between Member

82 3 *Origins: 3.4 The Quiet Years: 1955-1984* ¶ 13 (visited Dec. 21, 1996) <<http://www.helsinki.fi/valtttdk/hayrinen/weu.html>>; see *id.* at ¶ 14 (Between 1973 and its reactivation, no ministerial meetings took place. Between 1974 and 1977, German Foreign Minister Walter Scheel stated that all WEU meetings should be canceled altogether.).

83 See 3 *Origins: 3.5 The Reactivation* ¶ 4 (visited Dec. 21, 1996) <<http://www.helsinki.fi/valtttdk/hayrinen/weu.html>>; see also *id.* at ¶¶ 1, 2, 3.

84 The Council, the main governing body of the WEU, is based on Article VIII of the WEU Treaty. The Council's job is "to consider matters concerning the execution of this Treaty and of its Protocols and their Annexes." The Council's decisions are made by unanimous vote, and, while the WEU Treaty is legally binding under international law, "the decisions of the Council are binding in a political sense only." See CHANGING FUNCTIONS, *supra* note 1, at xix-xx.

States in the field of security policy to encourage consensus.”⁸⁵ Under Article 8 of the Rome Declaration, members are encouraged to coordinate their views on “the specific conditions of security in Europe,” particularly on matters of “defence, arms control and disarmament.”⁸⁶ Article 8 also allows members to “also consider the implications for Europe of crises in other regions of the world.”⁸⁷

The first meeting of the reactivated WEU took place in Bonn, FRD on April 22 to 23, 1985, where members in the Bonn Communiqué reaffirmed their commitment to the proposals set out in the Rome Declaration.⁸⁸ Then in 1986, the EEC signed the SEA, affirming a legal basis for integrated political cooperation. Thereafter, on October 26 to 27, 1987, defense ministers from the WEU member states convened in The Hague, Netherlands, to adopt the “Platform on European Security Interests,”⁸⁹ declaring the WEU as the provider of a strong European “defense identity.”⁹⁰

85 *Id.* at xix; see CHANGING FUNCTIONS, *supra* note 1, at xviii (The WEU had been reactivated for three reasons: first, in 1981, France and the FRD, by establishing the failed Genscher-Colombo initiative “to place security and defence issues under the umbrella of the EPC to strengthen the European pillar of NATO,” necessarily put the WEU back on their agendas, since the FRD wished to change those provisions of the WEU Treaty which discriminated against its armaments industry; second, Europe began to reconsider the NATO alliance after the United States first planned, in 1979, to deploy American missiles in Europe, thereafter attempting to deploy a nuclear missile system in outer space called the Strategic Defense Initiative or “Star Wars” over the European landmass; and third, Europe needed a separate defensive alliance to “achieve a true security political dimension.”).

86 3 *Origins: 3.5 The Reactivation*, *supra* note 82, at ¶ 6.

87 *Id.*

88 See *id.* at ¶ 8.

89 *Id.* at ¶ 17.

90 *Id.*

The SEA had envisioned future security cooperation within the EEC, “[invoking] the cooperation of each Member State in handling security issues required a legal foundation.”⁹¹ After months of apprehension, the EEC signed the Treaty on European Union in Maastricht on February 7, 1992, thereby establishing the European Union (“EU”).⁹² The EU is not a new legal entity; rather, “[it] is founded on three existing communities which remain legal entities in their own right and continue to fulfill their different responsibilities.”⁹³ The Maastricht Treaty is composed of three separate, but linked communities or pillars: the first pillar providing for an economic and monetary union, the second pillar outlining a common foreign and security policy, and the third pillar detailing cooperation in the areas of justice and home affairs.

Title V of the Maastricht Treaty regulates and gives legal effect to the second pillar by providing that a “common foreign and security policy is hereby established.”⁹⁴ In creating the second pillar, the EU's primary purpose had been” to assert its identity on the international scene, in particular through the implementation of a common foreign and defence policy, which might in time lead to a common defence.”⁹⁵ Under the wording of this provision, it is understood that the EU's common foreign and security policy does not yet incorporate defense issues. Procedurally, the common foreign

91 Elliot, *supra* note 15, at 614.

92 TREATY ON EUROPEAN UNION, Feb. 7, 1992 O.J. © 224) 1 (1992), [1992] 1 C.M.L.R. 573 (1992) [hereinafter Maastricht Treaty] (the Maastricht Treaty went into force on November 1, 1993); *see id.* at tit. 1, art. A (“[b]y this Treaty, the High Contracting Parties establish themselves a European Union”).

93 Kirschner, *supra* note 10, at 242.

94 Maastricht Treaty, *supra* note 92, at art. J.

95 *Id.* at art. B.

and security policy is to be debated in the Council,⁹⁶ the Commission is to perform any associated work,⁹⁷ while the European Parliament may question, consult and make suggestions to the Council.⁹⁸ Under Article C, both the Commission and the Council are also jointly responsible for "ensuring the consistency of all foreign policy measures taken by the [EU] in the context of its . . . security . . . policy."⁹⁹ However, the European Court of Justice has not been given jurisdiction over the EU's second pillar.¹⁰⁰ Article J.1, under Title V, sets out the objectives of the common foreign and security policy:

96 *Id.* at art. J.8.

97 *Id.* at art. J.9.

98 *Id.* at art. J.7.

99 Dr. Hans-Joachim Glaesner, *Formulation of Objectives and Decision-Making Procedure in the European Union*, 18 FORDHAM INT'L L.J. 765, 766 (1995); see Maastricht Treaty, *supra* note 92, at art. C. "The Union shall in particular ensure the consistency of its external activities as a whole in the context of its . . . security . . . polic[y]. The Council and the Commission shall be responsible for ensuring such consistency. They shall ensure the implementation of these policies, each in accordance with its respective powers." See also Kirschner, *supra* note 10, at 243 ("Article 228a" of the Treaty of Rome, as amended by the Maastricht Treaty, "is designed to guarantee consistency between the common positions or joint actions adopted in the field of the common foreign or security policy and the measures of the EC concerning economic relations with third countries.").

100 The EU cannot make its decisions binding with regards to the second pillar of The Maastricht Treaty. "While the European Court of Justice has jurisdiction to enforce decisions made by the Communities in the first pillar, its jurisdiction does not extend to decisions involving matters in the second pillar." See Dieter Kugelman, *The Maastricht Treaty and the Design of a European Federal State*, 8 TEMP. INT'L & COMP. L.J. 335, 345 (1994) (construing Maastricht Treaty, *supra* note 92, at art. L); see also Kirschner, *supra* note 10, at 243.

- (1) to safeguard the common values, fundamental interests and independence of the Union;
- (2) to strengthen the security of the Union and its Member States in all ways;
- (3) to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;
- (4) to promote international cooperation; and
- (5) to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.¹⁰¹

Article J.1(4) also declares that “Member States shall support the Union's external and security policy actively and unreservedly in a spirit of . . . solidarity,”¹⁰² and “shall refrain from any action contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.”¹⁰³ Members are thus required to “actively and unreservedly”¹⁰⁴ maintain the EU's security and defense policies, while avoiding participation in any activity contrary to its interests.

101 Maastricht Treaty, *supra* note 92, at art. J.1.

102 *Id.*

103 *Id.*

104 Elliot, *supra* note 15, at 345.

Article J.2(1) creates a consultative forum for matters concerning the common foreign and security policy "to ensure that [members'] combined influence is exerted as effectively as possible by means of concerted and convergent action."¹⁰⁵ Next, Article J.2 grants the Council the power to "define a common position,"¹⁰⁶ after which "Member States shall ensure that their national policies conform to the common positions."¹⁰⁷ Lastly, Article J.2 requires members to "coordinate"¹⁰⁸ and "uphold [the EU's] common positions [in] international organizations and at international conferences,"¹⁰⁹ regardless of whether or not they are participants.¹¹⁰ In accordance with Article J.2's provisions, Article J.3(4) then provides that "[j]oint actions shall commit the Member States in the positions they adopt and in the conduct of their activity."¹¹¹ Therefore, if the Council votes unanimously on the necessity of a joint military action, the decision is binding on member states.¹¹²

105 Maastricht Treaty, *supra* note 92, at art. J.2.

106 *Id.*; I.A.1-2 EUROPEAN UNION LAW GUIDE: I. TREATIES & BASIC DOCUMENTS 9 (Philip Raworth ed., 1994) [hereinafter LAW GUIDE]. See Maastricht Treaty, *supra* note 92, at art. J.8(2) ("The Council shall take the decisions necessary for defining and implementing the common foreign and security policy . . . It shall ensure the unity, consistency and effectiveness of action by the Union.").

107 *Id.*

108 Maastricht Treaty, *supra* note 92, at art. J.2.

109 *Id.*

110 *Id.*

111 *Id.* at art. J.3(4).

112 See Glaesner, *supra* note 99, at 780; see also Council Decision of 6 Dec. 1993, art. 17, 1993 O.J. (L 304) 1. The Council is authorized to make all common foreign and security policy decisions regarding common positions and joint action

Despite the provisions set out in Title V, an effective security policy could not be created without any "means for implementation."¹¹³ According to Article 30 of the SEA, if the EEC could achieve "closer cooperation in the field of security,"¹¹⁴ either NATO or the WEU would be chosen to carry out the EU's common foreign and security policy. Which defensive alliance did the EU select to implement its second pillar? The EU, in Article J.4(2), chose the WEU "to elaborate and implement decisions and actions of the Union which have defence implications."¹¹⁵ However, Article J.4, which considers the WEU to be an "integral part of the Union,"¹¹⁶

under Articles J.2(2), J.8(2) and J.3(1). However, these decisions do not have the proper form to be granted binding legal effect under Article 189 of the Treaty of Rome, which only gives Community issues binding effect. Decisions formulated under the second pillar of the Maastricht Treaty are treated differently, falling under Article 17 of the Council's Rules of Procedure of 6 Dec. 1993. Because these decisions cannot be given binding effect under Article 189, Article J.2 imposes a duty on member states "to ensure that their national policies conform with the common positions [of the Community.]"

113 Elliot, *supra* note 15, at 615.

114 Maastricht Treaty, *supra* note 92, at art. J.4(2); see Maxine Mead, Book Note, 19 MD. J. INT'L & TRADE 325 (1995) (reviewing TED GALEN CARPENTER, BEYOND NATO: STAYING OUT OF EUROPE'S WARS (1994)) (the EU adopted the WEU as its "defense component"); see also Elliot, *supra* note 15, at 615-16. Another contender for the position had been the Conference on Security and Cooperation in Europe, now the Organization for Security and Cooperation in Europe ("OSCE"). Created by the Helsinki Act, the EU did not choose the OSCE because of its cumbersome voting system: all fifty-four members, who have an equal vote (*i.e.*, "San Marino and Malta can together outvote France"), must reach a consensus before any action can be taken.

115 *Id.*

116 Maastricht Treaty, *supra* note 92, at art. J.4; CHANGING FUNCTIONS, *supra* note 1, at xxv; see Elliot, *supra* note 15, at 617 n.84 (On March 7, 1991, while speaking at the International Institute for Strategic Studies in London, former Commission President Jacques Delors said, "If we are to create a European Union,

does not suggest it is a member of the EU; unless circumstances change, the WEU will continue to be a "legally independent international organization."¹¹⁷ The Maastricht Treaty also avoids including language naming the WEU as a common military force; instead, the WEU's role is simply to formulate policy, which must then be submitted for approval to the Council.¹¹⁸

VII. THE DUAL ROLES OF THE WEU AND NATO IN EUROPEAN DEFENSE

The decision to select the WEU over NATO involved a careful compromise between those favoring the established military strength of the Atlantic alliance and those emphasizing the necessity of a Europe-only defense organization. Ultimately, the EU selected the WEU because NATO, whose membership includes both the United States and Canada, "doesn't . . . allow Europe exclusively to make its own decisions."¹¹⁹ In spite of this selection, careful consideration is granted to NATO in Article J.4(4), which provides:

a lengthy process must be set in motion to allow integration of the WEU . . . into the Community." (quoting Europe Documents, No. 1699, at 7 (Mar. 13, 1991)).

117 *Id.*

118 See Maastricht Treaty, *supra* note 92, at art. J.4(1) ("The common foreign and security policy shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, *which might in time lead to a common defence.*") (italics added); cf. Stuart E. Eizenstat, *U.S. Relations with the European Union and the Changing Europe*, 9 EMORY INT'L L. REV. 1, 16 (1995) ("The EU could enunciate a [defense] plan, but does not have sufficient capabilities or military cohesion to effectuate it.").

119 Elliot, *supra* note 15, at 617; Carney, *supra* note 50, at 489 (because the United States is NATO's largest contributor, "[s]upreme [c]ommand of NATO forces would . . . remain with the U.S. military.").

the policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States under the North Atlantic Treaty and *be compatible with the common security and defence policy established within that framework*. (emphasis added).¹²⁰

Article J.4(4) assumes agreement between policy and implementation decisions made by NATO and the WEU. This means that “the obligations of Member States under [NATO] will not conflict with their obligations under the [EU's] common foreign and security policy.”¹²¹

In addition to Title V, the common foreign and security policy consists of two declarations, concurrently signed with and annexed to the Maastricht Treaty, which further the WEU's responsibilities. First, in Article 2 of the *Declaration of the role of WEU and its relations with the European Union and with the Atlantic Alliance*,¹²²

120 Maastricht Treaty, *supra* note 92, at art. J.4(4); *cf. id.* at art. J.4(5) (two or more member states are permitted to pursue closer cooperation within the framework of the WEU or NATO, if plans are “compatible with the common security and defense policy established within that framework.”).

121 LAW GUIDE, *supra* note 106, at 9; see *The European Security and Defence Identity: NATO-WEU Cooperation* ¶ 1 (visited Jan. 11, 1997) <<http://www.nato.int/docu/facts/fs3.htm>>. The Council of the WEU first formally met with NATO at NATO Headquarters on May 21, 1992 to discuss the relationship between both alliances and “ways of strengthening practical cooperation as well as establishing closer working ties between them.” The Secretary General of the WEU now regularly attends NATO's ministerial meetings, and NATO's secretary general regularly attends those of the WEU.

122 Declaration on the role of WEU and its relations with the European Union and with the Atlantic Alliance, Dec. 10, 1991, *reprinted in* CHANGING FUNCTIONS, *supra* note 1, at 131 [hereinafter Maastricht Declaration 1].

the Council approved a two-part vision of the WEU's role within the EU: the WEU will become the defense unit of the EU; and, as such, the WEU will be the "European pillar"¹²³ of NATO. In other words, the WEU will now be the "defense bridge"¹²⁴ between the EU and NATO. To carry out this policy, the WEU will "formulate [a] common European defence policy and carry forward its concrete implementation through the further development of its own operational role."¹²⁵ Furthermore, the WEU will be pursuing both its and NATO's common interests by "introducing joint positions . . . into the process of consultation in [NATO] which will remain the essential forum for consultation among its members."¹²⁶ Lastly, the *Declaration of the role* gives the WEU authority to "formulate common European defence policy and carry forward its concrete implementation through further development of its own operational role."¹²⁷ Because the *Declaration of the role's* goal is to develop the

123 CHANGING FUNCTIONS, *supra* note 1, at xxiv; Maastricht Declaration 1, *supra* note 122, at art 2.

124 LAW GUIDE, *supra* note 106, at 9; see *The European Security and Defence Identity: NATO's European Pillar* ¶ 1 (visited Jan. 11, 1997) <<http://www.nato.int/docu/facts/fs3.htm>> (NATO has declared that it "stand[s] ready to make collective assets of the Alliance available, on the basis of consultations in the North Atlantic Council, for WEU operations undertaken by the European Allies in pursuit of their common Foreign and Security Policy.").

125 Maastricht Declaration 1, *supra* note 122, at art. 2.

126 *Id.* at art. B.4; see *The European Security and Defence Identity: NATO's European Pillar*, *supra* note 39, at ¶ 2 (To further cooperation with the WEU, NATO has endorsed creating Combined Joint Task Forces ("CJTFs"), whose function is to "[develop] separable but not separate military capabilities for use by both [alliances].").

127 Maastricht Declaration 1, *supra* note 122, at art. 2.

WEU as the "defence component of the [EU],"¹²⁸ its goal is to be ready, at the Council's request, "to elaborate and implement decisions and actions of the Union which have defence implications."¹²⁹

Second, the WEU adopted the *Declaration on relations between WEU and the other European States*.¹³⁰ This *Declaration on relations* invites non-member European States to join the WEU, either as a full member or an observer. NATO members who had not joined the WEU could also be admitted as associate members.¹³¹

VIII. FURTHER DECLARATIONS DEFINING THE ROLE OF THE WEU

Since the Maastricht Treaty and Declarations established the common foreign and security policy, the EU has adopted, among many, two declarations which specifically enlarge the scope of the WEU's activities. First, the EU adopted the *Petersberg Declaration*

128 *Id.* at art. A.3; see *The European Security and Defence Identity: Common European Defence Policy* ¶ 3 (visited Jan. 11, 1997) <<http://www.nato.int/docu/facts/fs3.htm>>. At the NATO meeting in Noordwijk, Netherlands in May of 1995, NATO ministers took note of the initiative of Italy, Spain and France to create both a land force (EUROFOR) and a naval force (EUROMARFOR). Membership in these forces is open to all WEU parties, and the forces would be "answerable to the WEU." These forces could then be employed within NATO's framework.

129 *Id.*

130 Declaration on relations between WEU and the other European States, Dec. 10, 1991, reprinted in CHANGING FUNCTIONS, *supra* note 1, at 135 [hereinafter Maastricht Declaration 2].

131 See CHANGING FUNCTIONS, *supra* note 1, at xxv; see also WEU Treaty, *supra* note 67, at art. XI ("The High Contracting Parties may, by agreement, invite any other State to accede to the present Treaty on conditions to be agreed upon between them and the State so invited."); see generally EC: *Europe Documents: No. 1781 -- WEU Ministerial Council, 19 June in Petersberg (Bonn)*, Reuter Textline Agence Europe, June 23, 1992, available in LEXIS, Eurcom Library, TxTec File (EU members invited to join WEU).

on June 19, 1992 during a meeting of the WEU Council of Ministers of Foreign Affairs and Defence in Bonn, Germany.¹³² The *Petersberg Declaration*, in part one, points out that as the WEU “develops its Maastricht Treaty,” it will be able to assist the U.N. and the OSCE in implementing “conflict-prevention and crisis-management measures, including peacekeeping activities.”¹³³ This would require the WEU to have a stronger operational role. Part two, in Article 4, then sanctions the use of WEU military units for “humanitarian and rescue tasks [and] peace-keeping tasks.”¹³⁴ The military units will be taken from “the forces of WEU member states, including forces with NATO missions,” while the “planning and execution of these tasks will . . . ensure the collective defence of the Allies.”¹³⁵ In other words, armed forces from WEU member states will be acting under the authority of the WEU when performing these tasks. However, “participation in specific operations will remain a sovereign decision of member States in accordance with national constitutions.”¹³⁶

132 See generally *Germany: WEU Meeting of 19 June Opens Up Concrete Prospects in Direction of Common Defense Policy*, Reuters Textline Agence Europe, June 20, 1992, available in LEXIS, Eurcom Library, TxTec File.

133 Petersberg Declaration, June 19, 1992, reprinted in CHANGING FUNCTIONS, *supra* note 1, at 137.

134 *Id.* at 142; see *Portugal: WEU Council in Lisbon Decides to Strengthen Operational Capabilities*, Reuter Textline Agence Europe, May 16, 1995, available in LEXIS, Eurcom Library, TxTec File (“Eurofor and Euromarfor will be declared forces available to WEU . . .”).

135 Petersberg Declaration, *supra* note 133, at 142 (arts. 5 and 6); see *British Presidency of the Western European Union: WEU's Operational Role* ¶ 4 (visited Jan. 11, 1997) <<http://tlingit.elmail.co.uk2000/weu/briefingnote.html>>.

136 Petersberg Declaration, *supra* note 133, at 142 (arts. 2 and 3); see *Germany: Van Eekelen Welcomes Constitutional Court's Decision on Peace-Keeping Operations*, Reuter Textline Agence Europe, July 15, 1994, available in LEXIS, Eurcom Library, TxTec File (Petersberg Declaration also states that

Lastly, the third part of the *Petersberg Declaration* presents two new forms of WEU membership: associate membership and observership. The "rights and duties"¹³⁷ of both new forms of membership are enumerated in the *Petersberg Declaration*.

Second, the *Kirchberg Declaration*,¹³⁸ adopted on May 9, 1994, grew out of the WEU's ministerial meeting on June 19, 1992 in Bonn, Germany, which included representatives from Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland and Romania. The WEU defense ministers and the Eastern European countries in attendance agreed on certain measures designed to benefit both sides. The meeting established two levels of consultation, both called the WEU Forum on Consultation: an annual meeting between the foreign and defense ministers and a bi-annual meeting between the WEU Permanent Council and the ambassadors of the states represented at the meeting. Also, a Counsellors' Group had been created, convening three to four times yearly to plan for Forum on Consultation meetings and "to hold detailed exchanges of views."¹³⁹ By establishing both Forums on Consultation, the WEU has obtained closer ties with the former communist countries without necessarily providing them with full membership opportunities.¹⁴⁰

participation in specific operations will remain a sovereign decision of WEU Member States in accordance with their national constitutions).

137 See *Petersberg Declaration*, *supra* note 133, at 144-46 (art. B).

138 *Kirchberg Declaration*, May 9, 1994, *reprinted in* CHANGING FUNCTIONS, *supra* note 1, at 191.

139 CHANGING FUNCTIONS, *supra* note 1, at xxvii (the WEU Forum on Consultation can be thought of as the counterpart of NATO's Partnership for Peace).

140 See *Kirchberg Declaration*, *supra* note 138, at 199 (status as an associate partner does not entail any changes to the WEU Treaty).

The *Kirchberg Declaration*, named after the Kirchberg Building in Luxembourg, introduced associate partnerships, a new form of membership specifically created for the former communist countries. Associate partners “do not have the rights and duties based on Article V of the Brussels [Pact] and cannot veto any Council decision, but some influence on the decision-making process is to be expected.”¹⁴¹ However, associate partners may affiliate themselves with decisions made by member states concerning missions such as “humanitarian and rescue tasks, peacekeeping tasks, tasks of combat forces in crisis management including peacekeeping.”¹⁴² When the WEU decides that an associate partner “[joins] such WEU operation by committing forces, [it] will have the same obligations as other participants, as well as the right of involvement in the command structures and in the Council's subsequent decision-making process.”¹⁴³ Nevertheless, associate partners are required to attend and participate in bi-weekly meetings of the Council, but they are proscribed from “block[ing] a decision that is the subject of consensus among the member states.”¹⁴⁴ In response to the WEU's invitation, Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and the Czech Republic have become associate partners.¹⁴⁵

141 *Id.*

142 *Id.* at 199-200 (art. 2); see *Luxembourg: Status of “Associate Partner” Does Not Compete with NATO's PFP-WEU Council President*, Reuter Textline Agency Europe, May 11, 1994, available in LEXIS, Eurcom Library, TxTec File (associate partners' role in peacekeeping missions would not interfere with NATO's Partnership for Peace missions).

143 Kirchberg Declaration, *supra* note 138, at 200 (art. 2).

144 *Id.* at 199 (art. 1).

145 See *id.* at 199; see also *Eastern Europe: Kirchberg Declaration 9 May 1994*, Reuter Textline SCAD, Sept. 30, 1994, available in LEXIS, Eurcom Library,

IX. THE WEU'S INVOLVEMENT IN PEACEKEEPING OPERATIONS IN EUROPE

After taking charge of the EU's common foreign and security policy, the WEU began its new role by declaring its "willingness to help ensure effective implementation of [U.N.] Security Council resolutions relating to the conflict in the former Yugoslavia."¹⁴⁶ On July 10, 1992, in cooperation with and under the supervision of NATO, the WEU began sending naval forces to the Adriatic Sea to monitor an embargo against Montenegro and Serbia. By June 8, 1993, NATO and the WEU established a joint naval operation in the Adriatic Sea called Operation Sharp Guard, to enforce compliance with U.N. Security Council sanctions raised against Montenegro and Serbia.¹⁴⁷ The WEU is involved in two other operations in the former Yugoslavia, which also help enforce U.N. Security Council sanctions. First, in "Operation Danube," under the auspices of the OSCE, the WEU provides logistical support by enforcing an embargo against the former Yugoslavia.¹⁴⁸ For this operation, the WEU has been able to maintain close cooperation with the riparian states of Bulgaria, Romania and Hungary, who are its associate partners, "through the

TxTec File (nine Eastern European countries become associate partners of the WEU: Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia & Czech Republic); *Quarterly Report: Magreb No. 19 (Part 4 of 5)*, 1995 Janet Matthews Information Servs.-Quest Economics Database, MEED Quarterly Report-Magreb, Sept. 1995, LEXIS, Eurcom Library, TxTec File (because of the success of the Kirchberg Declaration, the WEU would like to develop and expand its dialogue on security issues to Egypt and other non-WEU member Mediterranean states).

146 CHANGING FUNCTIONS, *supra* note 1, at xxviii.

147 *British Presidency*, *supra* note 135, at ¶ 5.

148 *The WEU and the Yugoslav Conflict* (visited Dec. 22, 1996) <<http://www.nato.int/ifor/weu/weuphoto.htm>>.

organization of a police and customs operation.”¹⁴⁹ Second, the WEU has been helping the EU administer the town of Mostar by creating a Unified Police Force, “manned jointly by Croats and Muslims of Bosnia-Herzegovian and police officers sent out by WEU countries.”¹⁵⁰

X. CONCLUSION

What is the EU’s future agenda for the WEU? According to a 1996 European Parliament resolution discussing relations between the EU, WEU and NATO, the next step “is to pave the way for full integration of the WEU into the EU after the expiry of the WEU Treaty.”¹⁵¹ Merging the WEU into the EU implies the end of an independent WEU, with the EU taking over control of all collective defense matters and tasks. Nonetheless, numerous obstacles will need to be eliminated before integration will be feasible. Integration problems will probably arise from those EU members, such as Ireland and Denmark, who, as WEU observers, may need to become full members. Integration problems may also surface from the fact that states now acceding to the EU must accept the Maastricht Treaty’s common foreign and security policy provisions. In other words, the concept of *acquis communautaire*,¹⁵² which means that “states

149 *Id.* (Operation Danube’s Coordination and Support Center is located in Calafat, Romania. A total of 300 police and customs officers and 11 boats actively patrol the Danube).

150 *Id.*

151 CHANGING FUNCTIONS, *supra* note 1, at xxix.

152 *See* Maastricht Treaty, *supra* note 92, at art. B (One of the EU’s objectives is “to maintain in full the *acquis communautaire* and build on it with a view to considering . . . to what extent the policies and forms of cooperation introduced by this Treaty need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.”); *see also id.* at art. C (“The

acceding to the EU accede to the entire Union, including all laws and provisions of the Union, and are not free to pick and choose which aspects they wish to adhere to and which they wish to ignore,"¹⁵³ now extends to all three pillars of the Maastricht Treaty. Most importantly, the WEU will need to become a fully operational military alliance as quickly as possible to attain its goal of providing a common foreign and security policy for the EU.¹⁵⁴

Since the tearing down of the Berlin Wall and the subsequent collapse of communism in both the Soviet Union and its Eastern European allies, the threat of a communist invasion, NATO's *raison d'être*, no longer exists. Is NATO still a viable alliance now that Europe is no longer threatened by its principal adversary, the Soviet Union? Despite the fact that the Cold War has ended, it is reasonable to keep in place a strong multinational security alliance which is equipped to respond to future security challenges. NATO's

Union shall be served by a single constitutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*.”); *id.* at art. O (Article O has been interpreted as extending *acquis communautaire* to the EU as a whole).

153 Elliot, *supra* note 15, at 604; *see id.* at 619 (In the Commission's 1992 report, *Europe and the Challenge of Enlargement*, it expressly expanded the definition of *acquis communautaire* to include “the contents, principles and political objectives of the . . . Maastricht Treaty.”); *see also id.* at 620 (Former Commission President Jacques Delors said, “new members will have to accept the *acquis communautaire* . . . the whole Union Treaty and nothing but the Union Treaty.”).

154 See *The WEU and the European Common Foreign and Security Policy* 12 (visited January 11, 1997) <<http://sunsite.sut.ac.jp/arch/academic/history/marshall/military/a-weu/051093>>. While speaking at the Institut Royal Supérieur de Défense in Brussels, Belgium on Oct. 5, 1993, Sir Dudley Smith, President of the WEU Assembly said, “I believe that we are still some way from fully implementing a common European foreign and security policy, let alone the ‘eventual framing’ of a common European defence policy with all that that implies.”

consultative machinery, provided for in Article 5 of the Treaty, fosters cooperation among member states, creating a necessary forum for solving international security issues as they arise.¹⁵⁵ In fact, the United States has been the most adamant voice among member states for not only keeping NATO alive, but also for expanding its membership to include the former Soviet Union's Eastern European allies. The United States' interest in retaining the NATO alliance is to keep its European allies and preserve its power and influence over Europe, whereas the Eastern Europeans view NATO membership as beneficial in two ways: first, "they fear that Russia may attempt to regain its lost territory and status, and desire the military security NATO could provide;" and second, "NATO membership is a probable 'in' to later inclusion in the West European economic system."¹⁵⁶ The language of Article 10 of the Treaty, which refers to any European state, does not by its terms limit membership only to Western Europe. Therefore, according to Article 10, if an Eastern European state wishes to join NATO, it must simply be able to further the Treaty's principles, and contribute to the security of the North Atlantic region.¹⁵⁷

155 See generally Geoffrey Smith, *Global Paradigms: The Impact of Cultures on Trade and Diplomacy: The Political and Security Dimensions: The Classical Paradigm Revisited: "Trans-Atlantic Relations in Turmoil: NATO and the Future of Europe,"* 3 TULSA J. COMP. & INT'L L. 115 (1995).

156 Mead, *supra* note 114, at 325.

157 NATO Treaty, *supra* note 38, at art. 10 (a European state must fulfill both factors to be considered for NATO membership).