

CONFLICT PREVENTION AND CRISIS MANAGEMENT
THE ROLE OF NATO

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I. TASK OF NATO TODAY

1. Historical background

Shortly after the Second World War five Western European countries -Belgium, France, Luxembourg, the Netherlands and the United Kingdom determined to develop a common defense system and to strengthen the ties between them to resist the growing threat posed by the USSR¹. Soon, however, these countries realized, that this could be achieved only if the United States and Canada were tied in this defense system. In April, 1949 the Washington Treaty eventually brought into being an alliance of independent countries. Thus, NATO was established as an inter-governmental organization providing a forum in which member states could consult together on any issues they might choose to discuss and take decisions on political and military matters affecting their security.² During the following forty years NATO performed well on its main task of dealing with the danger of attack from the East. Then, the unraveling of the communist regimes in Eastern Europe signaled the end of the nightmare of the East-West conflict. Hopes for an ever more united Europe free of serious conflicts were disappointed. The cold war was unable to resolve numerous conflicts, whose roots sometimes go back to the centuries, but instead merely froze them.³ Former Yugoslavia and the Caucasus region are vivid examples of reemerging nationalism. Although these particular conflicts do not seem to directly affect the security of NATO members or of the Western European region as a whole the threat of conflict spread in the age of nuclear arms requires ways to cope with such conflicts. The security of Greek territory could easily draw a NATO member into the Yugoslavia conflict, for instance. Military power seems to be an invaluable source of stability and security and the only means to maintain or enforce peace. Until now the UN has been unable to directly enforce Security Council resolutions with troops of its own. Consequently, the UN relies on the security systems of lower level- regional

1 NATO Handbook (1992), p. 14 f

2 NATO Handbook (1992), p. 11.

3 NEUHOLD, *Konflikte und Konfliktreglung im neuen Europa* (1993), p. 2.

organizations to reach their objectives. Regarding NATO's relationship with the UN, CSCE and WEU several questions have arisen. At the same time, although there is no doubt about the commitment of each organization to deal with these conflicts difficulties arise over the methods to be used, and more particularly the question of command and control. For a better understanding of what NATO's tasks look like and what limits are placed on them, the legal basis of the organization needs a closer look.

2. *Legal foundations*

The Washington Treaty with all of its legal implications of varying dimensions, is the one constant element and one of the criteria to measure the efficiency of the organization. If this criterion is neglected, expectations might be established toward the organization which are not in line with the legal dimension of the founding treaty.⁴

The Washington Treaty is limited to enunciating the guiding principle of mutual assistance and setting up central organs, while the details of military cooperation were left to be worked out in supplementary agreements or through trial and error.⁵ Article 5 of the Treaty, which lays down the principle of mutual assistance, is couched in terms similar to those used in Article 3 (1) of the Rio Inter-American Treaty.⁶ Article 3 of the North Atlantic Treaty further sets forth that parties "will maintain and develop their individual and collective capacity to resist armed attack." Article 9 provides for the creation of some central organs.⁷ These innocuous clauses have brought into being NATO, which has evolved over the years into a sophisticated military alliance with a vast structure.⁸ The allied nations have established an efficient defensive strategy which relies on a joint high command, joint planning and joint training of troops. Article 11 of the Treaty has always been viewed as a protective clause, leaving it to each of the allied governments whether or not to take political or even military action while determining for themselves if an armed attack in the sense of Article 6 is present. However, the integration of allied forces in a close knit defensive network, the establishment of multinational forces particularly on the former Eastern bloc border states, as well as the multinational

⁴ IPSEN, *Volkerrechtliche Problem des Nordatlantikvertrages*, (1978), p. 435 (in:).

⁵ DINSTEIN, *Exceptions to the Prohibition, Collective Self Defense*, (1988), p. 240.

⁶ *ibid.*

⁷ *ibid.*

⁸ D.W.BOWETT. *The Law of International Institutions*, (1984), p. 180-185.

standing naval forces have ensured that the guarantees of the Treaty have never been seriously tested to date. Mutual assistance treaties and treaties of guarantee containing binding clauses committing countries to take certain actions have proven to be too inflexible to efficiently cope with changing political challenges and were eventually responsible for forcing countries into WW I. Thus, the modern alliance is no longer the classical alliance of rigid treaty formulations, rather the alliance of identical and complementary interests⁹ whose efficiency is determined more through the congruence of interests than through Treaty duties. As far as the relationship of NATO members to the UN is concerned Article 7 ensures that the rights and duties of member states in the context of the UN Charter are not touched. At the same time Article 8 guarantees that international involvement of NATO members will not interfere with their duties in the context of the NATO Treaty.

3. NATO options

With regard to the legal design and the evolving practice of the past years, NATO does have several options to deal with different levels of crisis or conflict situations. The most important instrument in making the organization work is a highly sophisticated system of information sharing and consultation. On the basis of thorough information gathered by collective early warning systems and each member country intelligence services, there are five different circles for formal political consultation: (Council, Political Affairs Committee, working groups of regional experts, ad hoc working groups or special consultation groups and the Consulting Committee for Atlantic Policy. Within this framework these groups can do the following:¹⁰ Exchange views with or without analysis, announce measures or decisions to be taken, announce measures with the goal of getting a comment or support from the allies, or carry out discussions with the goal of reaching consensus on political action or measures to be implemented uniformly by all allies, or consultation with the goal of a collective decision on further measures.

In times of crisis or imminent conflict, these mechanisms would have to be backed by a formal decision of the Council. According to Article 4, these measures lead into a more active phase without delay. These methods at the core of the organization can be followed by military action if necessary.

⁹ KNUT IPSEN, *Volkerrechtliche Problem des Nordatlantikvertrages* (1978), p. 438.

¹⁰ ROSE, *Political consultation in the alliance*, in: NATO Brief, 1/1983.

II. ANALYSIS OF LEGAL RESTRICTIONS ON NATO ACTIONS.

I. *Regional restrictions*

Under the pressure of a constant military threat from the Warsaw Pact, commitments described in Article 5 have been the predominating factor for the past 40 years. During these years Article 6 served as a regional restriction to NATO activities. At first, the US referred to it to keep out of European colonial policy, later the Europeans used Article 6 to turn down American demands for participation in the Vietnam War. However, with the Soviet invasion in Afghanistan NATO members developed a three-step plan for out of area conflicts, relying on Article 2 of the Treaty which describes NATO's commitment to world peace and international stability. With regard to this development NATO governments coordinated their troop deployment in order to support individual members or groups of members in reacting to "out of area threats" during the Iran/Irak war and the invasion of Kuwait. With regard to Article 6 and former NATO practice, the question arises as to when and under which conditions the Treaty permits out of area actions.

2. *NATO as a regional organization*

With the implementation of no-fly zones over Bosnia-Hercegovina in accordance with a Security Council resolution 813, NATO has proven its readiness for out-of area actions. Although none of the member countries has opposed this, it is not quite clear whether NATO acted as a regional organization in terms of Articles 52 ff of the UN Charter, or whether the Security Council mandate was a direct request to all 16 individual member states to act in terms of Art. 48 of the Charter.

UN Secretary General Boutros Ghali defined the term "regional organization" rather broadly in his Agenda for Peace and the Security Council Resolution 787 regarded NATO maritime operations in the Mediterranean Sea as actions under Chapter VIII of the Charter. However, regional organizations have peace keeping authority only towards their members and only within their regional borders.¹¹ Furthermore they are not entitled to peace enforcement actions according to Art. 53 I UN Charter. Only the Security Council can take or order such action. Thus, NATO without a Security Council mandate NATO could only send "peace

¹¹ HUMMER/SCHWEITZER, Art. 52, § 34 in: SIMMA, (ed.), CHARTA DER VEREINTEN NATIONEN, (1991), p. 673.

keeping troops", which requires the consent of the parties in conflict and thus does not an enforcement action.

As of yet the question has not been crucial since the Security Council orders more missions than it has volunteers. The term regional organization could imply, however, that the Security Council has a right to ask NATO troops to take actions according to Chapter VIII of the UN Charter. At the same time this would mean that NATO could not take military action without a UN mandate other than in the case of immediate attack. There is no doubt among NATO members that although Article 5 of the Treaty supports the priority of the UN in global security issues the UN has no right to commit NATO troops. Controversy remains, however, on the question whether it is possible for NATO to take military action without a Security Council mandate. Different points of view can be identified. On one hand, it is argued that confirmation by the NATO Treaty of UN Charter primacy does not in any way allow for UN mandated use of force by NATO either among its members or outside NATO territory. The treaty commitment to solve international conflicts by peaceful means does not entitle any use of force. Conflict resolution using force is, according to UN Charter Article 24 and Article 42, the monopoly of the Security Council alone. Other than for collective self defense in defense of its members, NATO, acting as regional arrangement, would only be justified in using force under a Security Council mandate.¹²

A reason for considering NATO as a regional arrangement acting under control and command of the Security Council is apart from the primacy of the UN in questions involving the use of force in international conflicts ,the fact that NATO decisions are subject to a unanimous vote which for instance does not allow to exclude a possible aggressor in case of an internal conflict. Additionally, there is no consensus on the specific provisions for a case of collective self defense according to Art. 51.

A contradictory position argues that, in addition to carrying out UN Mandates, individual members of NATO are free to take peace-keeping actions anywhere with or without a UN mandate.¹³

In favor of the second position it is argued that the Security Council has been inoperable due to the political situation for most of the past forty years. If such a

¹² R. PERNICE *Die Sicherung des Weltfriedens durch Regionale Organisationene und die Vereinten Nationen*, (1972), p. 115 ff.

¹³ SLOCOMBE, *The Future of NATO*, in: AMERIKA AMERIKA (7/1993), p. 2.

situation recurs, sixteen sovereign states should in case of massive interferences with their security interests or violations of human rights be able to act in accordance with An. 51 of the Charter. In particular it has to be considered that currently two of the permanent members of the Security Council are not democratic states. Parliamentary democracies should not concede their inherent right of self defense for themselves or others.¹⁴

As of yet a solution based on the necessary consensus of NATO governments has not been achieved. However, it has become quite clear that member states do want to take more responsibility in general security issues and cooperate closely with other existing organizations like the CSCE, WEU and UN. In view of the interaction with these different organizations it appears to be more fitting to regard NATO not as a regional organization operating solely under the umbrella of the UN in these issues but to look at NATO as a group of sovereign states that can but is not obligated to accept Security Council requests according to Art. 42, 48 UN Charter. Since all NATO members belong to the UN, Article 103 promulgates that in the event of a conflict between obligations assumed by UN members under the Charter and other international agreements their Charter obligations shall prevail. Thus, operations involving the use of force need at least the consent of the General Assembly under a Uniting for Peace Resolution. To assure that NATO can adequately respond to a crisis situation involving the use of force support of the other institutions should be assured. If for one or another reason the Security Council again becomes frozen by veto, a request by the CSCE within the area of Europe as suggested by a minority opinion does not give the legal basis to solve the problem. In such a case the General Assembly with its Uniting for Peace resolution would provide for the only legal justification. All NATO actions of this type including those which are carried out by an individual or a group of member states remain subject to review by the international legal community. In the field of peace making there can be no competing regional system - universalism (as represented by the UN) will always retain its priority.¹⁵

¹⁴ RUHLE, *Wohin darf die NATO?* in: NEUE ZÜRCHER ZEITUNG, (Aug. 2, 1993).

¹⁵ KIMMINICH, *Strengthening the World Order, Universalism. vs. Regionalism*, (1990), p. 37-47.

III. ADJUSTMENT OF NATO'S TASK TO CURRENT POLITICAL DEVELOPMENTS

1. *NATO members*

One of the possible threats to regional security is the falling back of former Eastern Bloc states from a process of democratic reform to the former totalitarian system. A continuation of this democratization is vital for the stability of the eastern European region as well as for arms reduction and cuts in the defense budgets of NATO members.

NATO has reacted to this challenge by creating the North Atlantic Cooperation Council which offers former opponents the option of consultation and cooperation without guarantees for security. For various reasons these guarantees in the form of regular membership or additional treaties have not yet been made.

As far as security guarantees short of full membership are concerned, history has taught caution. Bilateral or multilateral mutual assistance treaties face the problem that, as a rule a State is willing to employ force in aid of another country only if such conduct is consonant with its vital interests as perceived at the time of action, rather than in the past when the treaty was signed.¹⁶ In any case, they do not seem to be the key to security in the concerned areas.

One of NATO's chief historic accomplishments has been the unification of historic enemies in Western Europe under one umbrella to assure peace. Transference of this assimilation to the Pan-European level would involve integration of Eastern European countries into the NATO structure, possibly starting with the Visegrad Four (Poland, Hungary, Slovakia, and the Czechs). Such an integration, however, can currently only be viewed as a long term goal worth striving for. Any admission of former East bloc countries to NATO would need to be preceded by a sorting out of rivalries amongst each other. The conflict of Greece and Turkey over Cyprus and the Icelandic Fishery conflict have shown that the NATO Secretary General has not been able to settle disputes informally among member states. Consequently in practice the treaty does not seem to ensure that internal conflicts can satisfactorily be solved through Art. 1-4.¹⁷ If the efficiency of the Alliance is not to be sacrificed, then applicant states must convince members of their internal stability and a promising relationship with their neighbors. Prior to admission NATO must also dispel Russia's suspicions and fears and convince Boris

¹⁶ DINSTEN, *War, Aggression and Self Defense*, Cambridge (1988), p. 238.

¹⁷ IPSEN, JoR 21 (1972), S. 11 f.

Yeltsin, who himself had once requested NATO membership, that the Alliance's eastward expansion presents no threat to Russia's security and territory.¹⁸ For the time being, the strive towards NATO membership can help eastern European countries to advance their reform process and democratization and reach their security goals.

2. The future role of NATO

As long as the UN does not have forces of its own to implement its resolutions it must rely on other organizations for support. As far as military forces are concerned NATO is currently the only organization that is capable of executing large scale operations. NATO possesses the multilateral staff as well as political and military cooperation to provide for a flexible and efficient reaction to today's challenges.¹⁹ As shown above, NATO troops can operate either under a UN mandate, possibly under a General Assembly Resolution and in close cooperation with the CSCE and other organizations like the WEU to contain new threats like the spreading of nuclear arms or the recurring of regional conflicts.

¹⁸ EUROPAISCHE SICHERHEIT, Vol. 2, No. 28, July 1993, p. 47.

¹⁹ STEPHEN OXMAN, "NATO mus im Gesrлуift bleiben", in: AMERIKA DIENST 33, (1993) p.

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