Mirage of Defense: Reexamining Article Five of the North Atlantic Treaty After the Terrorist Attacks on the United States

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MIRAGE OF DEFENSE: REEXAMINING ARTICLE FIVE OF THE NORTH ATLANTIC TREATY AFTER THE TERRORIST ATTACKS ON THE UNITED STATES

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Abstract: In 1949, twelve nations formed a regional alliance in an effort to counter perceived Soviet expansion, creating the North Atlantic Treaty Organization (NATO). Collective defense—assisting member states under attack by an outside country, as articulated in Article Five of the North Atlantic Treaty—has historically been its core function. Following fifty years of dormancy, Article Five was invoked after the September 11, 2001 terrorist attacks on the United States. This Note discusses the expanding role of Article Five, increasing regionalization challenges, and whether the Treaty’s obligations compel affirmative actions from its members.

INTRODUCTION

Article Five of the North Atlantic Treaty is a collective defense clause that provides member countries with protections against an armed attack.1 For more than fifty years, the mere threat of its power was strong enough to fend off member nations’ potential adversaries.2 Until October 2, 2001, Article Five remained dormant, the world never witnessing its true capabilities.3 However, approximately three weeks after the September 11, 2001 terrorist attack on the United States, the North Atlantic Treaty Organization (NATO) agreed to in-

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voke Article Five for the first time. Surprisingly, its effects have been less than dramatic.

This Note examines the background surrounding the signing of the Treaty and the circumstances that encompassed Article Five's invocation. It focuses on the issues and problems Article Five has encountered over its fifty-year history, including the expanding role of NATO, increasing regionalization challenges and, most significantly, whether the Treaty's obligations compel affirmative action from its members.

I. HISTORICAL CONTEXT

A. Formation of the North Atlantic Treaty Organization

In the spring of 1948, President Truman and his administration held secret talks in Washington, D.C. to discuss the impending enlargement of Soviet power. In the aftermath of World War II, the government in Moscow had "proved unwilling to let its ideology compete freely in the political marketplace." In effect, the Soviet master plan sought to exploit economic dislocation and the war wariness of Europe and the United States. The forcible installation of Communist governments throughout Eastern Europe, territorial demands by the Soviets and their support of guerrilla war in Greece, and regional separatism in Iran appeared to many as the first steps of World War III. Many Western leaders believed the policies of the Union of Soviet Socialist Republics (U.S.S.R.) threatened international stability and peace.

In response to this perceived Soviet expansion, the United States joined a number of regional alliances. The most significant of these occurring on April 4, 1949 with the signing of the North Atlantic Treaty and the subsequent creation of NATO. The North Atlantic Treaty produced a deterrent balance against the Soviet Union: an al-

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4 NATO Formally Invokes Article Enabling Collective Self-Defense, supra note 3.
6 NATO ENLARGEMENT 32 (Ted Galen Carpenter & Barbara Conry eds., 1998).
8 Id.
9 North Atlantic Treaty Organization, supra note 2.
10 Id.
liance of twelve independent nations committed to each other’s defense.12 The original signatories were Belgium, Canada, Denmark, France, the United Kingdom, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, and the United States.13 Since its founding fifty-three years ago, seven additional countries, including Greece, Turkey, Germany, Spain, Hungary, Poland, and the Czech Republic, have acceded to the Treaty, forming the current Alliance of nineteen nations.14

B. The North Atlantic Treaty

The North Atlantic Treaty consists of a preamble and fourteen articles.15 The preamble states the purpose of the Treaty: to promote the common values of its members and to “unite their efforts for collective defense.”16 Collective defense, defined as assisting a member state under attack by an outside country, is its core function.17 This objective is articulated in Article Five of the Treaty, known as the “commitment clause.”18 Article Five states:

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 recognised 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

12 Id.
14 Id.
15 Id.
16 Id.
18 North Atlantic Treaty Organization, supra note 2; Don Cook, Forging The Alliance 204 (1989).
Council has taken the measures necessary to restore and maintain international peace and security.\textsuperscript{19}

C. Status of NATO and Article Five

1. Pre-September 11, 2001

NATO’s purpose has always been to enhance the stability, well-being, and freedom of its members through a system of collective defense.\textsuperscript{20} The end of the Cold War, the collapse of the U.S.S.R., and the current disarray of the Russian military have called into question the continued importance of a NATO alliance.\textsuperscript{21} Indeed, official NATO doctrine no longer describes Russia as an enemy.\textsuperscript{22} In fact, over the last fifty years, NATO has restructured itself to include peacekeeping and crisis management tasks, undertaken in cooperation with non-member countries and with other international organizations.\textsuperscript{23}

In 1997, Secretary of State Madeleine Albright explained the changing role of NATO while answering the Senate Armed Services Committee’s questions about both NATO’s collective defense role and against whom the modern alliance was defending.\textsuperscript{24} She stated: “The threat is basically . . . the instability within the region which has in fact created two world wars.\textsuperscript{25} But there is also the possibility of an outside threat.\textsuperscript{26} There is a possibility of threats from various parts outside the region, to the south, that we have to guard against.”\textsuperscript{27}

This attention to threats outside the Russian region was further highlighted in April 1999.\textsuperscript{28} At their Summit meeting in Washington, D.C., NATO Heads of State and Government approved the Alliance’s new Strategic Concept, which recognized that the dangers of the Cold War had given way to new opportunities and risks.\textsuperscript{29} These risks included uncertainty and instability in and around the Euro-Atlantic

\begin{itemize}
\item \textsuperscript{19} North Atlantic Treaty, \textit{supra} note 1.
\item \textsuperscript{20} See Gallis, \textit{supra} note 17.
\item \textsuperscript{21} See id.
\item \textsuperscript{22} Id.
\item \textsuperscript{23} NATO: Welcome to NATO, \textit{supra} note 11.
\item \textsuperscript{24} Gallis, \textit{supra} note 17.
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Id. (emphasis added).
\item \textsuperscript{27} Id.
\item \textsuperscript{28} See \textit{The Alliance’s Strategic Concept}, at http://www.nato.int/docu/pr/1999/p99-065e.htm (last visited Nov. 1, 2002).
\item \textsuperscript{29} Id.
\end{itemize}
area and the possibility of regional crises at the periphery of the Alliance, which could evolve rapidly.\textsuperscript{30} NATO recognized that "ethnic and religious rivalries, territorial disputes, inadequate or failed efforts at reform, the abuse of human rights, and the dissolution of states can lead to local and even regional instability."\textsuperscript{31} Treaty members believed that solidarity and cohesion within the Alliance, through daily cooperation in both the political and military spheres, would ensure that no single Ally would be forced to rely upon its own national efforts alone in dealing with basic security challenges.\textsuperscript{32}

Most importantly, the Strategic Concept reaffirmed that Article Five and Article Six\textsuperscript{33} (which defines an armed attack on a member nation) of the North Atlantic Treaty would cover any armed attack on the territory of the Allies, from whatever direction or source.\textsuperscript{34} It recognized that Alliance security interests could be affected by other risks of a wider nature, "including acts of terrorism, sabotage and organized crime, and by the disruption of the flow of vital resources."\textsuperscript{35} With respect to collective defense under Article Five, the NATO members agree that the combined military forces of the Alliance must be capable of deterring any potential aggression against it, of stopping an aggressor's advance as far forward as possible should an attack nevertheless occur, and of ensuring the political independence and territorial integrity of its member states.\textsuperscript{36}


On September 11, 2001, terrorists hijacked four California-bound planes from three airports on the Eastern Seaboard, resulting

\textsuperscript{30} Id.
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} For the purpose of Article Five, an armed attack on one or more of the Parties is deemed to include an armed attack: (1) on the territory of any of the Parties in Europe or North America, on the Algerian Departments of France, on the territory of or on the Islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer; (2) on the forces, vessels, or aircraft of any of the Parties, when in or over these territories or any other area in Europe in which occupation forces of any of the Parties were stationed on the date when the Treaty entered into force or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer. North Atlantic Treaty, supra note 1.
\textsuperscript{34} The Alliance's Strategic Concept, supra note 28.
\textsuperscript{35} Id.
\textsuperscript{36} Id.
in the worst terrorist attack ever on U.S. soil.\textsuperscript{37} The hijackers crashed two of the passenger planes into the World Trade Center in New York, toppling the 110-story twin towers and killing everyone on board the jets and thousands on the ground.\textsuperscript{38} Another passenger plane crashed into the Pentagon outside Washington, D.C., leaving a gaping chasm in the nation’s hub of military power, killing everyone on board the aircraft and more than one hundred on the ground.\textsuperscript{39} Within the hour, a fourth airliner crashed eighty miles southeast of Pittsburgh, killing everyone on board.\textsuperscript{40} In all, 266 people perished in the four planes and more than three thousand others are currently listed as missing and presumed dead.\textsuperscript{41} The American outcry for justice resonated throughout the world and representatives from other NATO nations have similarly condemned the attacks.\textsuperscript{42}

3. Post-September 11: NATO’s Response

On September 12, 2001 the North Atlantic Council reconvened in response to the attacks perpetrated against the United States.\textsuperscript{43} The Council agreed that if it was determined that this attack was directed from abroad against the United States, it would be regarded as an action covered by Article Five of the NATO Treaty.\textsuperscript{44} A statement issued by the Council stated:

The commitment to collective self-defence embodied in the Washington Treaty [the NATO Treaty] was first entered into in circumstances very different from those that exist now,
but it remains no less valid and no less essential today, in a world subject to the scourge of international terrorism. When the Heads of State and Government of NATO met in Washington in 1999, they paid tribute to the success of the Alliance in ensuring the freedom of its members during the Cold War and in making possible a Europe that was whole and free. But they also recognised the existence of a wide variety of risks to security, some of them quite unlike those that had called NATO into existence. More specifically, they condemned terrorism as a serious threat to peace and stability and reaffirmed their determination to combat it in accordance with their commitments to one another, their international commitments and national legislation.\footnote{Statement by the North Atlantic Council, NATO Press Release, supra note 43.}

On October 2, in a classified briefing, U.S. officials presented to NATO “clear and compelling” evidence establishing that Osama bin Laden and his reputed terrorist organization, al-Qaeda, were responsible for the September 11 attacks on the United States.\footnote{NATO Ready for Terror War, CNN.com, Oct. 4, 2001, at http://www.cnn.com/2001/WORLD/europe/10/04/ret.nato.support/index.html.} The U.S. presentation was not a forensic legal case, but rather was entirely oral and “descriptive.”\footnote{NATO Accepts Case Outlining Role of bin Laden in U.S. Terror Attacks; bin Laden Guarded by Afghan Rulers, FACTS ON FILE WORLD NEWS DIGEST, Oct. 2, 2001, at A1.} It addressed the results of the continued investigation and established the link between Osama bin Laden, al-Qaeda, and the terrorist attack.\footnote{Id.; NATO Ready for Terror War, supra note 46.} After receiving this evidence, NATO determined that the United States had fulfilled its obligation to show that the source of the attacks was overseas and, for the first time in its fifty-two year history, invoked Article Five.\footnote{NATO Formally Invokes Article Enabling Collective Self-Defense, supra note 3.}

After NATO invokes Article Five, each Ally must then consider what assistance it should and will provide.\footnote{What is Article 5?, supra note 3.} In practice, there are consultations among the Allies, and the North Atlantic Council will decide any collective action taken by NATO.\footnote{Id.} The North Atlantic Council, comprised of ambassadors from each of the member countries, stands at the top of the Alliance’s pecking order and determines the policy direction through consensus.\footnote{NATO Command—Who’s in Charge?, at http://www.europeaninternet.com/central/europe/special/nato/natochar.html (last visited Nov. 1, 2002).} The United States can also per-
form independent actions, consistent with its rights and obligations under the United Nations Charter.\textsuperscript{53} Allies can provide any form of assistance they deem necessary to respond to the situation.\textsuperscript{54} "This assistance is not necessarily military and depends on the material resources of each country."\textsuperscript{55} Each individual member determines how it will contribute and confers with other members, bearing in mind that the ultimate aim is "to restore and maintain the security of the North Atlantic area."\textsuperscript{56}

To implement security objectives and strategic principles, the Allied forces are continuously adapting to provide capabilities to protect peace and manage crises.\textsuperscript{57} NATO does not possess independent armed forces of its own.\textsuperscript{58} Most forces available to NATO remain under full national command and control until they are assigned by the member countries to undertake particular assignments.\textsuperscript{59} The role of NATO’s political and military structures is to provide the advance planning required to enable national forces to accomplish these tasks and establish the organizational arrangements needed for their joint command, control, training, and exercising.\textsuperscript{60}

By early October, NATO had followed up its expressions of solidarity with some concrete assistance.\textsuperscript{61} The most visible support was the deployment of Airborne Warning and Control System Aircraft (AWACS) to the United States.\textsuperscript{62} These NATO planes were U.S.-built, specially equipped Boeing 707s, and were part of NATO’s arsenal of 24 AWACS based in Geilenkirchen, Germany, and Waddington, England.\textsuperscript{63} Along with seventy-four U.S. NATO personnel, crewmembers from eleven other countries—including fifty-five from Germany, twenty-two from Canada, eleven from Belgium and eleven from Italy—were deployed to the United States.\textsuperscript{64} Additionally, NATO Secretary-General George Robertson announced eight measures including

\textsuperscript{53} What is Article 5? supra note 3.
\textsuperscript{54} See North Atlantic Treaty, supra note 1.
\textsuperscript{55} What is Article 5?, supra note 3.
\textsuperscript{56} Id.
\textsuperscript{57} NATO’s Strategy And Force Structure, at http://www.europeaninternet.com/central_europe/special/nato/natostru.html (last visited Nov. 1, 2002).
\textsuperscript{59} Id.
\textsuperscript{60} Id.
\textsuperscript{61} See NATO Aircraft Guard U.S. Skies, supra note 5.
\textsuperscript{62} Id.
\textsuperscript{63} Id.
\textsuperscript{64} Id.
over-flight clearance for military aircraft, access to ports and airfields, increased intelligence sharing, and the deployment of NATO naval forces in the eastern Mediterranean.\(^{65}\)

II. DISCUSSION

A. Does Article Five Create Any Affirmative Obligations?

When Article Five is invoked, the Allies are obliged to assist each other by taking forward, individually and in concert with other Allies, such action as deemed necessary.\(^{66}\) Each Ally is individually responsible for determining what it deems necessary to fulfill its Article Five obligation.\(^{67}\) This raises the issue: if member nations have the ability to determine their own involvement, does any obligation really exist?\(^{68}\) The NATO Charter is a framework for very broad cooperation among its members.\(^{69}\) Not only does the charter provide for a military alliance to prevent or repel aggression, but also for "joint action in political, economic, and social fields."\(^{70}\) However, because there are no specific obligations written into the Treaty, it remains uncertain whether Article Five is militarily functional or if, instead, the threat of military action might only serve to encourage economic activity and a sense of safety.\(^{71}\)

To determine the implications and obligations on member nations, examining the designs of the framers is crucial.\(^{72}\) In 1949, the crafting of Article Five involved the most "far-reaching Senate decision on United States foreign policy since the founding of the Republic."\(^{73}\) The original drafting and wording of Article Five included multiple rounds of negotiations, political discussions, and open debates.\(^{74}\) During the drafting period, two existing treaties were examined and discussed as possible models: the Rio Treaty\(^ {75}\) and the Brussels


\(^{66}\) What is Article 5?, supra note 3.

\(^{67}\) Id.

\(^{68}\) See id.

\(^{69}\) MUNRO MACCLOSKEY, PACTS FOR PEACE 53 (1967).

\(^{70}\) Id.

\(^{71}\) See id.

\(^{72}\) See COOK, supra note 18.

\(^{73}\) Id.

\(^{74}\) Id.

\(^{75}\) Id. at 205. An armed attack by any state against a Party shall be considered as an attack against all the Parties, and, consequently, each Party undertakes to assist in meeting
The major difference between the two potential models was the Rio pact’s undertaking to “assist in meeting the attack,” without using the word “military,” and the Brussels Treaty’s pledge to “afford the party so attacked all the military and other aid and assistance in their power.” Both models were considered deficient; therefore, neither could be wholly incorporated. Neither model appropriately defined the commitment the United States wanted to undertake—the Brussels model went too far, and the Rio model did not go far enough. Drafters wanted to avoid any treaty wording that might seem to constrain their action merely to “meeting the attack.” Additionally, they did not feel that all countries should be expected to give military aid in the event of an attack. Iceland, for example, maintained no military forces but offered a valuable base.

“Not since the ratification of the Constitution of the United States have so many men spent so much time drafting and debating so few words.” However, these semantics played an important role in gaining both British and Senate approval. The British felt that the new Treaty should make plain beyond any misunderstanding that military action would be employed if trouble occurred, and the Senate wanted assurances that the new Treaty would not circumvent its power. American framers did not want any implication that there would be an automatic commitment and, therefore, sought to minimize the importance of the word “military” in the pledge of mutual assistance. The drafters encountered numerous arguments and stalemates over the specific language. As negotiations over phraseology deteriorated, President Truman secretly intervened and devised a

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76 Id. If any Party should be the object of an armed attack in the area covered by the Treaty, the other Parties will, in accordance with the provision of Article Fifty-one of the Charter, afford the Party so attacked all the military and other aid and assistance in their power. Id.
77 Cook, supra note 18, at 205.
78 See id.
79 See id.
80 Id. at 206.
81 Id.
82 Cook, supra note 18, at 206.
83 Id. at 204.
84 See id. at 213.
85 See id.
86 Id.
87 See Cook, supra note 18, at 209.
phrasing that appeased both the British and the Senate. Instead of using the word "military" in Article Five, the substitute wording "including the use of armed forces," was to be separated by commas from the words "such action." This change in punctuation and semantics gave the British the language they requested while enabling senatorial minds to conclude that there was no automatic commitment to the use of force that would usurp senatorial or constitutional practice.

In 1949, at the signing of the North Atlantic Treaty, member expectations were very different from the attitudes and expectations of modern times. At the time of inception, NATO's largest enemies were Russia and the spread of communism. America recognized that Russia would most likely focus its aggressions on European countries, which might put strains on U.S. military forces. Before the Treaty was signed, Norwegian Foreign Minister Halvard Lange stressed Norway's need for prompt military assistance from the United States as a reassurance against a growing onslaught of Soviet threats and domestic Communist agitation. Secretary of State Dean Acheson stated publicly that future demands for American military help would exceed supplies and that, in general, there would have to be priorities "where the U.S. has commitments or interests." At the time, the United States assumed that any NATO military support needed would be in Europe, and therefore wanted to leave its military commitments intentionally vague. Because the invocation of Article Five followed an attack on the United States and not Europe, this vagueness may haunt those who advocated for it most strongly.

The Senate Foreign Relations Committee report recommended three conditions that must occur prior to U.S. involvement:

First, U.S. contributions to collective defense "must supplement, rather than replace, the efforts of the other participants on their behalf." Second, a President must follow

88 Id. at 213–14.
89 Id. at 213.
90 Id.
91 See McNamara, supra note 7.
92 See generally id.
93 See Cook, supra note 18, at 216.
94 Id.
95 Id. at 217.
96 See id.
97 See id.
"constitutional processes" for the U.S. to become involved in any security arrangement or conflict. . . . Third, for the U.S. to fulfill a collective defense commitment, U.S. national interests must clearly be affected.98

B. The Fall of the U.S.S.R.

Some observers believe that the importance of Article Five in the absence of a Russian threat is reduced, at least temporarily.99 As the Cold War came to a close and the Soviet Union collapsed, some called for an end to the NATO Alliance that had played an essential role in countering Soviet military power for the previous forty years.100 Others, impressed with the enduring need for transatlantic security cooperation, called upon NATO to adopt new missions, beyond its traditional role of territorial defense, aimed at meeting new security challenges.101 Since the early 1990s, NATO has begun to adopt "new missions," such as crisis management and peacekeeping, known as "non-Article Five missions."102 Critics express concern over the growing importance of non-Article Five missions, citing that this is making the Alliance more of a collective security than a collective defense alliance.103 A collective security organization resolves disputes among its members, whereas a collective defense organization assists a member state under attack by an outside country.104 Because the North Atlantic Treaty contains no provisions that allow its members to participate in peacekeeping non-Article Five operations, some feel that the collective defense role has been clouded.105

Another issue critics feel could undermine the viability of Article Five is the problem of "regionalization" within NATO: countries in one region of the Alliance are concerned about dangers inherent in their geographic neighborhoods that may not directly affect Allies in other regions.106 This has created new issues that bring into question

98 Id.
99 Gallis, supra note 17.
101 Id.
102 Gallis, supra note 17.
103 See id.
104 Id.
105 See id.
106 See id.
the support for Article Five. For example, when Turkey agreed to lend its bases as a staging area for air strikes during the Persian Gulf War, Turkish officials indicated that they might invoke Article Five if Iraq retaliated. Members of the German Bundestag, who were critical of the United States' involvement, voiced their opinion pronouncing that "a missile attack on Turkish territory would not require a NATO response" because the United States had acted provocatively.

C. The Significance of Who Rallied and Who Did Not

After the September 11 attacks on the United States, a NATO source said that Secretary-General Robertson had called for the invocation of Article Five for two reasons—to express political solidarity with the United States and to convey a message to terrorists that "we are prepared to face you collectively." As of October 24, 2001, Britain had been actively participating, flying bombing missions and offering troops, and France and Germany stood ready. NATO denies that other countries are less committed; however, analysts articulate that "some NATO countries quietly disagree—arguing behind closed doors that the conflict in Afghanistan is too far away." Afghanistan is a long way outside the NATO area and probably "too far outside to be acceptable to a number of countries inside the alliance." Experts have suggested that while military forces from NATO countries will almost certainly be involved in the coalition gathering behind the United States, it is looking less and less likely that action will be under a NATO banner. Defense experts have also stated that the United States wants to control the military campaign, unconstrained by the consensus needed in NATO decision-making. If this is the case, Article Five appears to be beneficial, or at least useful, only to countries that have a small, non-existent or ineffective military.

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107 See Gallis, supra note 17
108 Id.
109 Id.
112 Id.
114 Id.
115 'Difficult Territory' for NATO, supra note 111.
D. U.S. Paternalism: Does the United States Want NATO'S Support?

Publicly, President George W. Bush has stated that the United States is grateful for NATO's support and that "together, we're building a very strong coalition against terror, and NATO is the cornerstone of that coalition."116 Contrary to this statement, however, is the United States' failure to make specific requests for support from NATO.117 In fact, there has been growing frustration over the United States' seeming indifference to international offers for military support.118 One possible reason for the United States' failure to make specific requests may relate to control of the operation.119 If the United States does not ask for outside assistance, it retains total control of the operation; if, however, the United States asks NATO or other countries to provide substantial support, the United States might be obligated to cede some of that control.120

III. Analysis

A. Historical Debate Comes Full Circle

The debate over semantics that arose prior to the inception of the North Atlantic Treaty has the potential to haunt member nations.121 During drafting, the United States—expecting that NATO would be a protection against Russian encroachment in Europe—explicitly stated that it did not want any language included that would insinuate automatic military commitment upon invocation of Article Five.122 Drafters declined to follow the examples set forth by prior treaties; instead, they wanted to show that strong force would meet any attack, while, at the same time, limiting member nations' automatic commitments.123

116 NATO Aircraft Guard U.S. Skies, supra note 5.

117 Stephen Castle & Andrew Grice, Campaign Against Terrorism: Policy—Blair Will Urge Bush to Accept Europe's Help, The INDEPENDENT, Nov. 6, 2001, at 6; see 'Difficult Territory' for NATO, supra note 111.

118 Stephen Castle & Andrew Grice, Campaign Against Terrorism: Policy—Blair Will Urge Bush to Accept Europe's Help, The INDEPENDENT, Nov. 6, 2001, at 6; see 'Difficult Territory' for NATO, supra note 111.

119 See 'Difficult Territory' for NATO, supra note 111.

120 See id.

121 See id.

122 See id.

123 See id.
In theory, this both provides a powerful defense and demonstrates respect to individual nations’ constitutions.124 In practice, however, a member nation is under no obligation to employ its military or provide other assistance.125 The Treaty’s language, "such action as it deems necessary," leaves too much discretion in the hands of member nations.126 The drafters’ decision to exclude specific obligations has the potential to backfire. For instance, if each member nation decides to only provide a minimal level of assistance, or worse, none at all, then Article Five is not viable. While this has not been a substantial factor in America’s efforts to track the al-Qaeda network, an attack on a smaller or militarily weaker member of NATO might yield different results.127

For example, if the Netherlands were attacked instead of the United States, the number of troops fighting the War on Terrorism would be significantly smaller.128 First, the Netherlands do not possess the same military faculties as the United States. Second, before the United States or any other member of NATO provided assistance, it would calculate whether its own national interest is clearly affected.129 If each nation decided either that it did not have the capacity to “lend” military support or that its national interest is not clearly affected, only a minimal level of assistance would be provided.130 In such a situation, an armed attack against one nation would not really be considered an attack against all nations.

If, however, specific military obligations were written into the Treaty, member countries, including the United States, would be assured that the necessary assistance would be provided. The stipulated obligations could remain broad yet provide at least minimal requirements in the event of an attack. Such explicit obligations would also serve as a substitute for the pronounced enthusiasm and unity that existed between member nations at the time of the North Atlantic Treaty’s inception.131

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124 See generally id.
125 See generally id. at 212.
126 See generally Cook, supra note 18.
128 See id.
129 See Gallis, supra note 17.
130 See generally id.
131 See generally McNamara, supra note 7.
B. When Can We Appraise the Strength of Article Five?

The invocation of Article Five following the September 11, 2001 attacks on the United States does not adequately display NATO member countries' obligations for two reasons. First, the United States has intentionally chosen not to request military support from NATO. The United States does not want to relinquish the control it has over the military operations taken as a consequence of the September 11, 2001 attacks and fears that NATO's involvement might take away some of that power. Second, the United States has the largest and most advanced military force in the world, indicating that the assistance of other NATO nations may not be necessary to counter the terrorist attacks. The true test of Article Five's power will occur when a NATO member that does not have the facilities or capabilities to respond in such an aggressive fashion is attacked.

C. Collective Defense—Not Collective Security

NATO is a military alliance whose function is to deter and fight wars, not merely an association for political cooperation. With the end of the Cold War and a lack of a clear adversary, the NATO Alliance has searched for a purpose. This purpose has expanded deep into the realm of a collective security organization. While it appears that the two should be able to co-exist, combining the two functions creates problems.

"Collective security is designed to be inclusive; any country can join, and any country, even a member, can become an enemy that must then be disciplined by other members." Alliances, however, are very different. Unlike collective security systems, alliances are exclusive because they have a particular enemy in mind. To maintain its role as a collective defense organization, NATO should cease

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132 See NATO One Part of Anti-Terror Force, supra note 113.
133 See id.
134 See id.; 'Difficult Territory' for NATO, supra note 111.
135 See Budget of the United States Government, Fiscal Year 1998, supra note 127.
137 Id.
138 See id.
139 See id.
140 See id.
141 HANDBOOK FOR CONGRESS, supra note 136, supra note 136.
its role as a collective security organization, which forces constant re-interpretation of its treaty; rather, it should face squarely the necessity of formally defining itself in today’s world, as opposed to the world it faced in 1949.143

Some argue that because the Atlantic Council provides strategic direction for NATO’s military arm and the North Atlantic Council in turn receives its guidance from the member states, logically the North Atlantic Council may reinterpret its treaty in any manner it chooses.144 While there is some legitimacy to this argument, it is not complete.145 As one study suggests, most European Allies simply have neither the inclination nor the means to conduct such collective security operations.146

In the next Strategic Concept, member nations should consider separating the seemingly dual roles of the North Atlantic Treaty. The charter should retain its collective defense function and specifically determine the roles member nations are expected to play in the event of an Article Five invocation. To eliminate the problem of collective security missions interfering with the strength of Article Five and to dampen the disinterest of member nations’ involvement, such a function should be kept separate from this Treaty.

**CONCLUSION**

Article Five of the North Atlantic Treaty is a collective defense clause created for the protection of all member nations. Unfortunately, nations lacking a sizeable military force may find themselves without assistance if no specific member obligations are written into the Treaty. Such obligations would ensure that all nations would be protected and an attack on one nation would truly be considered an attack on all nations. Additionally, the strength of Article Five should not be clouded by a collective security function. Such a function should be either separated within the Treaty or incorporated into an entirely separate treaty.

144 *Id.* at 93.
145 See *id.*
146 *Id.* at 90–91.