The Western European Union, Yugoslavia, and the (Dis)Integration of the EU, The New Sick Man of Europe

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THE WESTERN EUROPEAN UNION,
YUGOSLAVIA, AND THE
(DIS)INTEGRATION OF THE EU, THE NEW SICK MAN OF EUROPE

William Bradford*

Abstract: This Article examines the historical evolution of the Western European Union (WEU) within the context of its relationship to NATO and to the European Union (EU) in order to explain Europe’s failure to devise and implement collective security measures during the dissolution of Yugoslavia. This Article concludes that, under the limitations of its present legal and political framework, the WEU is not a realistic alternative to NATO in the “post-post-Cold War era” and that continued failure to craft a European defense identity and to meld it to effective European security institutions will prevent the EU from generating cohesive force in international relations and, ultimately, will threaten the project of European integration.

INTRODUCTION

Europe has never existed. It is not the addition of national sovereignties in conclave which creates an entity. One must genuinely create Europe.

—Jean Monnet

The end of the Cold War triggered a remarkable surge in optimism about the future of international relations, with many scholars postulating that collective interventions under the aegis of the United Nations (UN) or regional organizations would be sufficient to root out any remaining sources of global instability. However, no sooner was the existential Soviet threat reduced, and with it the raison d’être for the collective defense of Western Europe, than ethno-hypernationalism, religious hatred, territorial revanchism, and other

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traditional sources of disorder surged to the fore. Deprived of a
common enemy and fully sovereign at long last, Western European
states abandoned tepid attachments to bloc discipline, addressed na­
tional economic and social problems, and advanced the process of
European supranational organization. Although the EU had been
successful in fostering transnational cooperation through the expan­
sion of commerce, the preoccupation of its Member States with inter­
nal affairs, predicated upon a facile assumption that domestic issues
and security are divisible, calls into question the very character, cohe­
siveness, and feasibility of a united Europe.

The fall of Yugoslavia shattered visions of a "New World Order"
and cast a "long dark shadow" over the entire European continent.
While Western Europe had ample collective military capacity and a
sufficiently compelling moral imperative to intervene early in the wars
of secession, and while it is in the European interest to assume re­
sponsibility for the security of its own continent, the failure of the EU
to fulfill either function suggests that development of an independent
European security architecture is fundamentally too immature to con­
tain the spillover effects of ethno-nationalist conflicts in the near­
abroad. If the EU intends to assume the trappings of sovereignty, it
must develop a coherent defense identity and defense institutions to
orchestrate the management of contingencies such as Yugoslavia.
Otherwise, the responsibility for security in the European sphere will
remain the province of an increasingly noncommittal U.S. Thus, the
failure of Western Europeans to develop a European security and de­
fense identity (ESDI) is an obstacle on the royal road not only to
European integration but, more importantly, to international order
and justice.

An independent ESDI requires for its construction a significant
degree of political cohesion that the EU Member States have been
unable or unwilling to fashion. Although the Treaty on European Un­
ion (TEU) was expected to push the EU to define, implement, and

1 See Yutiy Borko, Possible Scenarios for Geopolitical Shifts in Russian-European Relations, in
 Geopolitics in Post-Wall Europe 196, 197 (Ola Tunander et al. eds., 1997).
2 R. J. Barry Jones, The Economic Agenda, in International Politics in Europe: The
3 Christopher Bennett, Yugoslavia's Bloody Collapse I (1995).
5 Barbara Conry, Cato Institute, Policy Analysis No. 239, The Western European Union as NATO's Successor 8 (1995).
unreservedly support a common European foreign and security policy, when progress toward political union collapsed, it was not surprising that the first casualty of the wars of Yugoslav secession was the dutifully nurtured myth of European unity.\(^7\)

Absent coordination of Member States' foreign policies, the EU cannot attain the political union necessary to increase its influence in international relations.\(^8\) However, in order to achieve political union, factual attributes of sovereignty must be mingled voluntarily and national securities subordinated to a larger regional security entity.\(^9\) The EU, internally riven by intractable political conflicts, is less a cohesion-generating institution that transfers sovereignty to a higher level of political organization than a "network that involves the pooling and sharing of sovereignty," the control of which "rests with the national governments acting collectively."\(^10\) Consequently, although the military rivalry among them is consigned to the dustbin of history, in lieu of a common security dilemma, the stubborn and myopic refusal of EU Member States to abandon distinct national military traditions and defense styles in favor of supranational defense institutions and philosophies stymies any attempt to devise functional options other than continued dependence on the U.S. and NATO.\(^11\) Prior to the fall of Yugoslavia, this refusal was not perceived on either side of the Atlantic as detrimental either to the process of European integration or to the establishment of post-Cold War order. Presently, however, the EU is so bound to the U.S.-dominated defense regime and so internally divided that serious questions exist as to whether it ever can become more than a trading club, casually daydreaming about military independence\(^12\) but incapable of policing its own territory, let alone providing for the security of the most vicious neighborhoods of Europe.

While condemnation of Western Europeans for failing to provide for their own security is somewhat unfair because NATO has not so subtly preempted attempts to establish an independent Western ESDI, an era of profound change is settling upon Europe in the aftermath

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\(^7\) John Newhouse, *Europe Adrift* 84 (1997).


\(^9\) Id.


\(^11\) See Buzan, *supra* note 8, at 33.

of the Balkan holocaust. Traces of Yalta, Potsdam, and other early chapters of the Cold War have reemerged in Southeastern Europe, and Western Europeans are being forced to reconsider who they are and what they might become in an era in which all that is certain is that future Bosnias will "be like buses"—"there will always be another coming down the street." As defense budgets dwindle, deficits burgeon, and peace dividends burn away in the domestic political ether, the U.S. will scrutinize intensely the wisdom of maintaining NATO as the primary European security institution. Although Bosnia and Kosovo have made it impossible to conceive of peace enforcement or humanitarian intervention in Europe without a central role for the U.S., and despite the development of a pan-European notion of entitlement to U.S. troops, NATO is expensive and risks drawing the U.S. into military conflicts even when no vital U.S. interests are clearly jeopardized. Moreover, Bosnia demonstrates that, despite its military capacity, the U.S. lacks the political will to positively shape the precarious, *sui generis* transition to post-Communism in Eastern Europe. While replacing NATO with a separatist security institution might prove hazardous for the security of Western Europe, the U.S. has demonstrated the interest if not the leadership, and the EU the intention if not the capacity, to do so. The failure of the UN in Yugoslavia and the erosion of NATO's reliability have underscored the hoary truism that the principle attribute of states—military power—is still the most convertible currency in international relations. Although endowing the EU with the inherent qualities of a state capable of engaging in international relations on par with other states may necessitate alteration of the EU legal and political order, an independent defense capability is *sine qua non* if the EU is to assume responsibility for its own security.

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Nonetheless, the disparity between expectations and reality for the WEU, the heir apparent to NATO, is tremendous. The WEU has failed to articulate even a limited common European role in combating lawlessness or upholding even minimal humanitarian standards in "gray zone" conflicts such as Kosovo, let alone the broader and infinitely more complex mission of the continental defense of Europe. In addition, institutional rivalries between the WEU and NATO, as well as intra-European rivalries, prevent the emergence of a common defense philosophy, a prerequisite to the generation of a functional supranational European defense organization.\textsuperscript{18} Given its storied record of incompetence and incoherence, the WEU is beset with calls for its dissolution or its legal subordination to NATO. Given the importance of an independent European defense institution to the project of European integration and rapprochement with Russia, however, other more temperate and more optimistic voices seek to reinvigorate the WEU by way of incorporation within a revamped legal and political EU framework. While the European movement is a "creature of crisis," drawing inspiration from the Cold War, the Suez Crisis, the oil embargoes of the 1970s, and the turbulence of the 1980s,\textsuperscript{19} the EU, built upon the underlying idea that the nations of Western Europe belong together and should stay together, is jeopardized by the Balkan tragedies: Europe itself may be disintegrating over Yugoslavia.

This Article (1) examines the WEU within the context of its relationship to the EU and NATO in order to provide theoretical explanations for the failure of the EU to devise and implement collective security measures in the Yugoslav wars of secession; and (2) determines whether the WEU represents a realistic alternative to the trans-Atlantic security framework of NATO or, alternatively, whether absent U.S. hegemonic control of European security, the EU can generate the cohesive force in international relations necessary to prevent fratricidal, demoralizing, and destabilizing conflicts from erupting within a European sphere of influence and threatening the European integrative project.


\textsuperscript{19} NEWHOUSE, supra note 7, at 15.

A. The End of the Cold War

With the dramatic fall of the Berlin Wall and the commencement of the Soviet retreat from Eastern Europe in October 1989, the rationale for the shared trans-Atlantic security imperative and the maintenance of the Cold War web of political and economic arrangements diminished overnight. The U.S. addressed the welcome if disconcerting turn in international relations with nebulous calls for some form of pan-European security architecture predicated upon an overlap of NATO and European institutions that would create trans-Atlantic and East-West synergy. However, the decline of Alliance cohesion, as well as the evaporation of the constraints imposed by maintaining a common defense, convinced euphoric Western European politicians that, in the so-called “post-Cold War era,” specific national economic interests need not be sacrificed any longer for the sake of preserving broader security ties through military expenditures. In the fall of 1989, Western Europeans of all political persuasions pushed questions of security and Alliance politics aside in order to concentrate their energies on reaping economic gains through conversion of military resources to the civilian sector and erection of a “common European home” with increased commercial linkages to the East.

The U.S. then found itself faced with the choice of preserving U.S. hegemony in Europe or permitting a pluralist balance of power with a much more limited U.S. role. While proponents of a status quo trans-Atlantic security community contended that mutual trans-Atlantic interests remained unchanged, others suggested that the U.S. had “done its part for democracy, politics, and liberty in Europe” and that, in the post-Cold War multipolar environment, maintaining the


22 Pierre Hassner, The Priority of Constructing Western Europe, in Europe and America Beyond 2000, supra note 20, at 18, 23.


24 Hassner, supra note 22, at 31.
Atlantic Alliance was no longer possible or necessary. This latter position gathered support as 1989 progressed.

Without the Cold War, there simply was no obvious and compelling imperative for close U.S.-Western European security and defense cooperation. Thus, by the end of the year, the U.S. proposed to spur Western European nations into assuming primary responsibility for their own defense, thereby rectifying the free-riding problem the U.S. identified as the source of much of its fiscal deficits. This strategy of "limited liability" directed that, if the U.S. were to participate in NATO operations, particularly those located out-of-area, it would employ principally naval assets and shift the primary ground-force obligation to Western Europe. At the same time, the U.S. considered drastically reducing its forces in Europe in order to pay for extended deterrence and the development of fast sea and air-lift capacities with which to defend the Atlantic Alliance should it prove to be in its narrowly-tailored interests to do so. When Western Europeans countered that NATO obliged them merely to check immediate threats to the territorial integrity and security of the treaty-area but not to protect U.S.-defined interests external to their textual commitment, the image of the trans-Atlantic policy environment of September 1989 was drawn into sharp focus: with both pillars of the Alliance turned inward upon themselves and Central and Eastern Europe cut adrift from their Cold War moorings, it was perhaps foreordained that the Yugoslav request for U.S. aid to salvage its decaying political economy and prevent disintegration of its constituent republics would be flatly rebuffed with the terse but definitive pronouncement that NATO, in the post-Cold War era, would not become involved in "out of area" commitments, particularly those in areas of no strategic

26 See Calleo, supra note 20, at 44.
27 Charles Krupnick, European Security and Defense Cooperation During the Cold War, in Disconcerted Europe: The Search for a New Security Architecture, supra note 21, at 3, 20.
29 Layne, supra note 13, at 95.
significance.\textsuperscript{31} Quietly, Yugoslavia began the long slow descent into barbarity, the extent and depth of which were difficult to foresee.

**B. U.S.-EC Transatlantic Declaration**

With collective European security at the crossroads, the 1990s dawned to find the Soviet Union in full retreat, German reunification proceeding apace, and vocal doubts about the continuing U.S. presence in Europe echoing across the continent. However, while European WEU members France and Germany continued efforts to develop within the European Community (EC) a Common Foreign and Security Policy (CFSP) to govern the WEU-coordinated ESDI,\textsuperscript{32} the mainstream Western European position on ESDI tabbed a reformed Alliance as the optimal arrangement.\textsuperscript{33} The WEU, faced yet again with having to choose between playing the traditional role of promoting Atlantic solidarity or becoming a key participant in the process of European integration,\textsuperscript{34} vaguely charted the middle course by making its activities transparent and accessible to those members of the EC not yet members of the WEU in the hopes of broadening membership and functionality while ensuring compatibility with as yet undetermined NATO objectives.\textsuperscript{35} Thus, with its single largest challenge the development of a new consensus in the post-containment era, NATO, as well as every other European interlocking security institution including the WEU and the Conference on Security and Cooperation in Europe (CSCE),\textsuperscript{36} an organization consisting of members of both the Warsaw Pact and NATO and chartered to manage the superpower confrontation, foster détente and democracy, stimulate trade, and monitor human rights,\textsuperscript{37} stood rooted at the sidelines in paralysis as nationalists swept every Yugoslav republican election, armed skirmishes erupted in ethnic Serb towns in Croatia, and authorities from Slovenia and Croatia launched a strident campaign in Western capitals in support of recognition as independent states.


\textsuperscript{36} Connaughton, *supra* note 14, at 189.

\textsuperscript{37} Michael Brenner, *America's European Role*, in *The Cold War Legacy in Europe*, *supra* note 12, at 44, 57.
The Iraqi invasion of Kuwait on August 2, 1990 and the subsequent U.S. deployment of forces to Saudi Arabia triggered a profound re-examination of what had become the primary focus within NATO and the WEU—the out-of-area issue.\(^{38}\) Although NATO Secretary General Manfred Woerner publicly cautioned that the EC should not attempt to "usurp or overtake the alliance military role" by adopting an independent military approach, the WEU Secretary General seemed to indicate, by suggesting that "for want of a foreign and security policy, there is a genuine risk of the community becoming a spectator on the sidelines of history,"\(^{39}\) that the EC and an increasingly incorporated WEU might attempt to manipulate the Kuwait Crisis to forge its own future outside the NATO Charter area. Disorganization, a lack of post-Cold War strategic planning in the European Political Community (EPC) and, above all, inadequate unity of purpose and willingness to employ resources\(^{40}\) proved fatal to such an independent venture, however, as the EC ground to a stalemate over disagreements among France, Germany, and the UK as to whether to pool assets and surrender control over national forces to the U.S.

Thus, on the basis of Article VIII of the modified Brussels Treaty, the WEU convened a August 21, 1990 Paris meeting of defense and foreign ministers where it could extract no more than a soft pledge from members to participate jointly under U.S. operational command in execution of tertiary non-combat missions geared toward enforcement of UN Security Council Resolution 661.\(^{41}\) Moreover, the WEU could not produce even a tacit agreement as to joint organizational ground or air force contributions to the U.S.-led effort. Only the UK provided loyal backing to the U.S., whereas France sent half-hearted support, the Germans provided money, and the rest of the membership "provided excuses."\(^{42}\) Furthermore, even with relatively robust British and French contributions through the WEU, the European forces sent to the Gulf War were so limited in combat capacity and so inadequate even in the defense of specifically European sources of oil...

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\(^{39}\) Christie, supra note 32, at 224.

\(^{40}\) Bark, supra note 25, at 138.

\(^{41}\) Christie, supra note 32, at 224.

that EPC, already damaged by the EC's failure to participate meaningfully in securing the twelve key UN Security Council enabling votes, appeared to have been banished from Western European responses to out-of-area operations even where strategic interests were implicated.

The Europeanists in the WEU called an Inter-Governmental Conference (IGC) in Rome in December 1990 to determine answers to three questions. First, do EC Member States have essential common interests and are they prepared to defend them? Second, are security and defense integral parts of the EC? Third, do EC members have the means to realize their objectives? The Europeanists answered all three questions in the affirmative and concluded that they had been remiss with the Transatlantic Declaration in neglecting to define the precise relationship of the WEU to NATO and, despite significant uncertainty, neglecting to identify specific out-of-area European defense interests that might differ from those of the larger Alliance. Thus, WEU members proposed the generation of a unified command and a realistic and expedient CFSP within the EC to guide a more united European political and military response to future crises based upon the commitment in the Single European Act of 1987 (SEA) which not only laid the groundwork for a full economic union but also provided the legal basis for the development of a political union with common cooperation in foreign and security policy. Europeanists, led naturally by France with the Benelux countries and Spain in tow and Germany intellectually supportive, argued that, despite its woefully inept response to the Gulf crisis, the WEU should become the nucleus of ESDI and subordinate itself only to the European Council prior to its incorporation as the defense arm of an eventual European Union. Further, Europeanists demanded transformation of the WEU functions gradually to a European Union while acquiring the organic operational capability to exercise its right to operate outside the NATO area, an important defining quality of a federal and sovereign EU. Moreover, Europeanists contended that NATO should redefine and confine its function to managing the residual Russian threat rather than attempting to derive a mandate for

43 Goldstein, supra note 12, at 121-22.
44 VAN EEKEN, supra note 4, at 60.
45 Robert D. Hormats, A New Europe: A Renewed Atlantic Link, in EUROPE AND AMERICA BEYOND 2000, supra note 20, at 63, 64.
46 SINGLE EUROPEAN ACT (1987).
47 CHRISTIE, supra note 32, at 208.
Eastern and Central Europe, a region more properly the *domaine réserver* of the WEU, CSCE, and French diplomacy.\(^{48}\)

On the other hand, the Atlanticists, led by the UK and supported by the Netherlands, Italy, Portugal, and Denmark, concerned with national control of armed forces in the defense of their territory but embarrassed by their military weakness, argued that the WEU should remain the European pillar of the U.S.-led NATO umbrella and that EC plans for a CFSP should be confined to "soft" issues such as exports, terrorism, and arms control.\(^{49}\) The delegations were polarized further by the Atlanticist proposal for a WEU Rapid Reaction Force open to all European members of the Alliance and the Europeanist proposal that only those states that were members of both the WEU and the EC join a planned Franco-German Brigade to create a separate "EUROCORPS" at the disposal of the EC.\(^{50}\)

This heated and recurrent Great Debate, raising as it did the existential question as to whether a united Europe would remain merely a customs union with some judicial functions or emerge as a true federal state with independent military capability, assumed religious significance as it lapped over into 1991.\(^{51}\) Ultimately, however, the Atlanticists acceded to Europeanist demands that the WEU become the core element of ESDI only after reasoning that NATO would remain only indirectly associated with the EC\(^{52}\) and would continue to provide a separate forum for the nurturing of Atlanticism and a proven basis for the future of Western European collective security.

In January 1991, EC Member States arrived at a compromise formula that provided that, in the future, the WEU, by taking on primary responsibility for a wide range of out-of-area tasks that affected European security and holding joint meetings with EPC, NATO, and the recently institutionalized CSCE,\(^{53}\) would demonstrate its emergence as the sole legitimate defense realm of European integration and incubator for ESDI capable of drawing reform-minded Eastern European nations into the "common European home" without threatening Russia.\(^{54}\) In essence, through a reduction of institutional

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48 Moens, *supra* note 38, at 37.
49 *Id.*
50 *Id.* at 63.
51 See *id.* at 61.
52 *Id.* at 60.
54 Hormats, *supra* note 45, at 63.
differences and informational costs, the WEU would be better positioned than NATO to accept and execute military missions on behalf of the European Commission (Commission) without reigniting the Cold War. All concerned could rest assured that the WEU was unreservedly committed for the first time to the philosophy of leadership within the European sphere of the Alliance, to the process of European integration, and to the development of the independent force structure, strategic planning, CFSP, and ESDI necessary to resolve future out-of-area crises that threatened the well-being of Europe. However, no sooner did the framing of this compact conclude the Rome IGC than the unholy specter of Yugoslavia emerged from the mists enshrouding the uncertain post-Cold War transition in the Balkans.

II. THE FALL OF YUGOSLAVIA: ACT ONE—BOSNIA

A. Conceived with Haste, Dissolved with Blood

On December 1, 1918, Serbian Prince Regent Alexander created Yugoslavia from the ashes of World War I. However, the union of disparate national and ethnic groups soon proved to have been a “shotgun wedding with a honeymoon as short as the hangover was long,”55 for Alexander and Serbian politicians saw the purpose of the unified Yugoslav state as the unification of all Southern Slavs under the Serbian crown, whereas Croatian and Slovene statesmen envisioned the primary raison d'etat to be the recovery and defense of territories populated by Croatians and Slovenes from the domination of neighboring states such as Italy, Austria, and Hungary.56 Nevertheless, the disciplined communist regime of Marshal Tito reconciled ethnonational groups who had been set upon each other by the Axis powers and granted Macedonians and Bosnians the ethnic recognition that the monarchy had refused them and, thus, gave a more solid foundation to Yugoslavia. However, Tito never fully resolved the ethnonational question, and Yugoslavia, with its eight federal units, twenty-four ethnic affiliations, and three major religions, survived as a very diverse but very fragile federal state.57

While pro-Western republics Croatia and Slovenia, observing the democratic revolutions sweeping Eastern Europe and the Soviet Un-

55 BENNETT, supra note 3, at 33.
57 CHRISTIE, supra note 32, at 239.
ion and sensing the lifting of the threat of Soviet invasion, made a concerted push toward post-communism, staunchly communist and dominant Serbia and its quasi-satellite Montenegro lagged behind in the transition. With the republics marching to the beat of very different socio-political drummers, the complex internal balance of power between federal and republican institutions became increasingly unsuitable to containing the rival agendas of political leaders emerging at the republican level. The weakening of bureaucratic and Communist Party institutions dissolved the glue that joined Yugoslavia’s diverse ethnic groups and peoples, and ethnic grievances returned with malignant fury. The inaction of international financial institutions, tremendous fear and uncertainty, and a heritage of authoritarianism unmitigated by civil society permitted Serbian intellectuals to revamp their ideology by creating new institutions and bestowing fresh legitimacy on Slobodan Milosevic, who vaulted to power by disguising Communism as nationalism and calling for the establishment of a “Greater Serbia” as the sole means to safeguard Serbian ethno-national minorities living outside the republican borders of Serbia.

Yugoslavia, however, simply could not survive the demise of the Communist Party, the loss of national cohesion imposed by the specter of the Soviet threat, and the resurgence of Serbian nationalism. The rise of Milosevic, the cancellation by fiat of Kosovo’s autonomy, and the Serbian refusal to recognize Croatia’s right to assume the rotating Presidency of federal Yugoslavia offered fertile ground for unscrupulous and fanatical republican leaders to launch a bid for sovereignty and self-determination at the ethno-national level. Thus, longstanding Slovenian and Croatian separatism resurfaced when the Parliament of Slovenia declared the right to secede in September 1989, and nationalist parties won republican elections in Croatia and Slovenia in the spring of 1990 that brought intolerant ex-communists to power. In April 1991, all six republican presidents agreed to hold a referendum on whether Yugoslavia should dissolve or reform into a more democratic federation. Forcible attempts to prevent secession, including transborder invasions by the overwhelmingly superior Yugoslav National Army (JNA), failed to overcome ethno-nationalist

59 BENNETT, supra note 3, at 10-11.
61 Woodward, supra note 31, at 217.
state-formation when, on June 25, 1991, Slovenia and Croatia declared independence.

The depth and extent of the ferocious barbarity that stained the Yugoslav Wars of Dissolution (YWD) were difficult to foresee, for notwithstanding popular misperceptions, interethnic enmity is a myth in a region in which the constituent peoples of the former Yugoslavia had little historical contact.62 Although the Balkans historically have been steeped in violence and bloodshed over territory, to the extent any fault lines divided communities, religion was the primary associative structure prior to national state-formation in the early twentieth century.63 Further, although Yugoslavia was an artificial creation, it ultimately was destroyed not by ethnic or religious hatred but by multiple economic, constitutional, and political crises that sullied the federalist system and militarized competing national ideologies that each laid claim to the same territory for their respective ethno-national groups.64 While YWD in some senses can be reductively described as nothing more than a violent but failed attempt to create Greater Serbia65 via an organized program of domestic conflict waged along ethno-cultural lines,66 and while interethnic hatreds now have been rationalized and will permeate relations for generations,67 there simply was no basis for the assertion of Balkanist stereotypes to counsel against intervention to prevent genocide when military intervention could have and would have stopped it.68 YWD, despite the convenience of the Balkanist metaphors, was far from an extended family feud between morally equivalent Southeastern European perpetrators—it was the first challenge to the New World Order and the values which it was in the fitful process of being founded upon.

B. EC to the Rescue: “Europe’s Finest Hour”

Emboldened by the positive results of the Rome IGC and eager to flex its recently acquired political muscle in advance of the upcoming June NATO summit, the European Parliament, on March 13,

62 See Bennett, supra note 3, at 6.
64 Paukovich, supra note 56, at ix.
65 Bennet, supra note 3, at 238.
66 Kondev, supra note 63, at ix.
68 van Eekeleen, supra note 4, at 172.
1991, declared the "right of the constituent republics and autonomous provinces of Yugoslavia . . . freely to determine their own future in a peaceful and democratic manner and on the basis of recognized international and internal borders." In response, the U.S., issued its Baker 5 Point Plan of April 16, 1991 that insisted that an integrated and strengthened Atlantic Alliance remain the primary avenue for consultation and the forum for agreement on all policies bearing on the security and defense commitments of its members, regardless of whether such policies originated in the WEU. Further, the Baker 5 Points Plan called upon the WEU to minimize the potential for intra-NATO divisiveness by increasing inter-institutional transparency through opening the WEU deliberations to all European members of NATO. Differences between the WEU ambitions and the boundaries the U.S. placed upon their realization were resolved with the Copenhagen Communiqué in May 1991 when the WEU accepted the Baker 5 Points Plan as the basis for further discussions at the NATO summit and, in turn, the U.S. granted tacit approval of an expanded WEU role in managing the threats in Central and Eastern Europe where it was more appropriate for Europe to be involved than NATO. While to speak of a European role outside Europe by May 1991 was merely to speak of the contribution Europe could make to the execution of U.S. strategy, when the June 1991 decision to hold a referendum on whether Yugoslavia should dissolve or reform into a more democratic federation triggered serious intercommunal violence, the central question within the Alliance became whether this was the sort of specifically "European" problem the solution of which the U.S. would defer to Europe and grant the NATO imprimatur for WEU intervention.

Accordingly, at the June 1991 NATO Summit, the U.S. indicated that, although the ideal state of affairs in Yugoslavia was a unitary state, it was incumbent upon the Yugoslavs to resolve what was essentially an intractable internal conflict. If potentially costly external intervention was indicated, the U.S., with UN concurrence, stressed that, given Yugoslav rejection of recent U.S. initiatives, the increased

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70 *Conry*, *supra* note 5, at 5.
71 Van Eekelehen, *supra* note 4, at 93.

73 Van Eekelehen, *supra* note 4, at 140–141.
likelihood of success attendant to multilateralism, and the greater economic and political influence of the EC relative to the several Yugoslav parties, the EC simultaneously should negotiate a peaceful end to the conflict, advance a CFSP and ESDI, and assume some of the financial burden for Western security by implementing a regional approach to peripheral conflicts. Thus, when U.S. Secretary of State James Baker warned of the "dangers of disintegration" and stressed that the U.S. would not recognize secessionist republics during his visit to Belgrade on June 21, an optimistic Europeanist majority in the EC saw in his words a U.S.-authorized mandate for a substantially incorporated WEU to press ahead as the principle international collective security organization in post-Cold War Eastern and Central Europe. In short order, EC diplomats marched off to Slovenia in June 1991 proclaiming in Churchillian fashion the dawning of "Europe's finest hour."

1. Brioni Accords: Failure of EC Economic Policy Instruments

Although the June 27, 1991 Luxembourg European Council Summit (Luxembourg) confirmed the "complementary" approach to Western European security established in the Baker 5 Point Plan and appeared to prepare the path toward a CFSP as to the resolution of the Yugoslav crisis, the dogged, continued pursuit by European powers of narrow national goals in the battle for Atlanticist or Europeanist primacy drove EC members into contending camps that ultimately yielded a policy vacuum. Although all Western Europeans were of the mind that foreign policy differences on the Balkans ought not interfere with the upcoming Maastricht Summit, so underdeveloped was Western European thinking relative to CFSP and ESDI that, after the CSCE predictably failed to secure the cessation of hostilities and withdrawal of Yugoslav federal forces from Slovenia, the EC was caught

75 Woodward, supra note 30, at 227.
76 DINAN, supra note 33, at 496.
78 See van EekeLEN, supra note 4, at 97.
79 Anthony Forster, The European Community and Western European Union, in DISCONCERTED EUROPE: THE SEARCH FOR A NEW SECURITY ARCHITECTURE, supra note 21, at 48, 60.
80 OLIVER RAMSBOTHAM & Tom Woodhouse, HUMANITARIAN INTERVENTION IN CONTEMPORARY CONFLICT 171 (1996).
unprepared. Not only did the EC package of economic sticks fail to secure significant concessions, but with the EC-brokered Brioni Accords of July 3 (Brioni) Slovenia and Croatia were required to halt their drives for independence for ninety days\(^81\) and permit unarmed EC observers into their national territories to observe the operations of the JNA as it went on to launch a full-scale invasion of Croatia.\(^82\)

Although at first blush Brioni permitted the Europeanists to trumpet EC credentials in security and defense, particularly in the diplomatic and peacekeeping venues, a more sober analysis reveals that the EC had foisted Brioni upon the victims of Serb aggression merely to dampen internal dissension and keep the train of European integration from derailing by giving the Serbs carte blanche.\(^83\) Although public opinion in France, the UK, Germany, and Italy—the dominant four members of the EC and the WEU—strongly supported intervention to oppose "Serbian aggression,"\(^84\) and although the pooled military capacity of France and the UK alone was more than adequate to accomplish this mission, an obdurate stubbornness and unwillingness to resolve disagreements over recognition, the application of military force, and the future of European integration and the role of CFSP and ESDI within it doomed a collective Western European response. Western Europeans migrated into opposing blocs with the UK and France leaning toward support for a united Yugoslavia but themselves uncertain as to intervention and a reunified Germany diametrically opposed in its support for Croatian and Slovenian independence.\(^85\) Coupled with the EC institutional requirement of unanimity for decisions trenching upon foreign affairs and defense,\(^86\) this initial policy divergence magnified longstanding internecine feuds and renationalized foreign and security policies, thereby proving fatal to European collective security measures.\(^87\)

\(^81\) Woodward, supra note 30, at 210.

\(^82\) BENNETT, supra note 3, at 160.


\(^86\) Baer, supra note 84, at 312.

\(^87\) Sophia Clement, Introduction, in THE ISSUES RAISED BY BOSNIA AND THE TRANSATLANTIC DEBATE, supra note 74, at 1, 3.
2. CFSP: Victim to the Great Debate

The neutralist vision of the UK led Britain to channel its activity through multilateral institutions such as CSCE and the UN while containing unsustainable or rash policy actions by other EC members. Convinced that in the developing civil war no party had a monopoly on virtue or villainy and that European intervention would be ineffective without U.S. involvement\textsuperscript{88} while offering Russia an opportunity of revanchement,\textsuperscript{89} the UK demanded that EC and WEU Member States be given free rein to vigorously defend vital national interests\textsuperscript{90} rather than be drawn into collective Western European recognition of impending republican declarations of independence.\textsuperscript{91} Similarly, although France opposed the Serb policy of ethnic cleansing, justice was subordinate, and "the use of ... WEU was what was important, not the purpose for which it might be used."\textsuperscript{92}

By contrast, Germany drew upon the common Catholic heritage of Bavaria with the two Yugoslav republics, the influence of the substantial number of Croatian émigrés in Germany,\textsuperscript{93} German hegemonistic interests in Mitteleuropa, and outrage at Serb atrocities\textsuperscript{94} in attempting to shape the direction of the CFSP of the EC even to the point of further fanning the flames of the war. In an open challenge to French and British leadership in early August, Germany broke ranks and deployed its economic might to convert undecided Italy and the Benelux to its position that Serb aggression across international borders was responsible for the war and that recognition of the breakaway republics was \textit{sine qua non} to its termination.\textsuperscript{95} These actions augured ill for those who believed that achievement of a CFSP would flow naturally from economic integration. Notwithstanding the potency of German moral leadership, with only the UK and France among the entire WEU and EC contingent possessed of the capacity to project military force well beyond their borders into the Balkans, and neither the UK nor France willing to do so in support of the in-

\textsuperscript{88} JAMES GOW, TRiumph of the Lack of Will: International Diplomacy and the Yugoslav War 175–78 (1997).
\textsuperscript{89} MICHAEL MANDELBAUM, THE DAWN OF PEACE IN EUROPE 31 (1996).
\textsuperscript{90} Forster, \textit{supra} note 79, at 62.
\textsuperscript{91} Mandelbaum, \textit{supra} note 89, at 30.
\textsuperscript{92} GOW, \textit{supra} note 88, at 158.
\textsuperscript{93} Mandelbaum, \textit{supra} note 89, at 30.
\textsuperscript{94} GOW, \textit{supra} note 88, at 168.
\textsuperscript{95} Newhouse, \textit{supra} note 7, at 82.
dependence of Croatia and Slovenia, Europe, by August 1991, was slipping into the torpor of policy paralysis.

C. Mulling over the "Euro-Options"

1. Military Intervention

The European Council convened the European Community Peace Conference on September 7, 1991 (Peace Conference) in the Hague to develop a unified and holistic approach to the Yugoslav crisis, to request that the WEU examine military options in the expectation that the members of the EC and the WEU ultimately would resolve their teleological differences as to precisely what to do with Yugoslavia, and in anticipation that the UN Security Council would provide the legal basis for armed intervention. In the first serious plenary discussion on September 12, WEU members rejected peace enforcement in Croatia on the dogmatic grounds that, despite the post-World War II evolution of the doctrine of humanitarian intervention, even the stationing of peacekeepers on Croatian soil would require the consent of the Serbian and federal governments that for obvious reasons could not be secured.96 However, the delegates agreed in theory to consider permissive entry for peacekeeping purposes provided the UN and the CSCE issued a clear mandate and devised robust rules of engagement for force-protection purposes.

The following four proposals dominated the increasingly heated discussions over the next two weeks: (1) a WEU battalion of fewer than 1,000 troops would provide logistical support to unarmed EC monitors observing a cease-fire; (2) a WEU regiment of 3,000-5,000 troops would escort and protect EC monitors; (3) a WEU brigade of 10,000 troops would support EC monitors in a variety of functions; and (4) a WEU division of 20,000 troops would implement an expanded peacekeeping option.

These debates sullied the prospects for a WEU role in Yugoslavia, as arguments over whether anything productive could be accomplished and whether the commitment would prove open-ended laid a transparent veneer over the eternal Atlanticist-Europeanist divide. Whereas France was keen to send a large combat-ready force and thus opted for something between options (3) and (4), it refused to act

until a firm cease-fire was holding on the ground.97 The UK, preferring to operate through NATO as it believed a force of at least corps strength would be needed to conduct heavy combat operations in mountainous terrain, argued for option (1) in an attempt to undercut the WEU altogether.98 While the Benelux countries and Greece lacked sufficient forces and Spain and the Netherlands sufficient experience to participate meaningfully and thus elected option (2) as a reasonable half-measure, participation by Italy, which was willing to support option (3) but preferred option (2), was ruled out completely as objectionable to Serbia. Although Germany argued cogently for the viability of full-scale intervention as the sole method capable of ending the war,99 its constitution forbade its participation outside the NATO treaty-area.100

Although all WEU members could agree that their organization should dispatch a monitoring force to isolate the sources of conflict and ensure an orderly transitional process without influencing the outcome,101 ultimately the fear of casualties, Soviet denunciation of any planned Western intervention, and a continuing and fundamental inability to synchronize a CFSP led to the failure to task the WEU even to the support of EC-planned humanitarian relief operations. Unable by late September 1991 to fulfill even a minimalist role in advancing the cause of European security and defense, the WEU could not hope to accomplish more than the provision of largely symbolic assistance to the implementation of future UN resolutions.102 In its first serious post-Cold War foreign policy endeavor, United Europe, despite collective possession of the overwhelming military capacity to forcibly and decisively intervene to prevent genocide,103 “thanks to the curious alchemy of German leadership, Italian support for it, British

98 Forster, supra note 79, at 62.
101 Weller, supra note 96, at 575.
limitation of it, [and] French ambition . . . [created an] alloy of common foreign policy . . . inescapably less than gold.”

With Europe agreeing as to Yugoslavia only that it would “not have its people killed there,” in exasperation the UK and France aborted all efforts in the WEU and removed the issue from the glaringly otiose EC to the UN, seeking to motivate Western Europeans to some form of visible collective action by way of a mandate for interposition based on the July Final Communiqué of the G-7 London Summit that promised a more efficient and effective UN peacekeeping role in future crises. However, within the UN forum the bitterly divided EC members could agree on nothing more than a general and complete embargo on deliveries of weapons and military equipment to Yugoslavia on September 25, 1991 with UN Security Council Resolution 713, and the aspirational quest toward “assertive multilateralism” began its “lingering death” as repeated rounds of UN Security Council resolutions failed to halt the war. In its Five Points of September 26, 1991, the WEU handed the mess back to an embarrassed EC and concluded the following: (1) the Yugoslav conflict should be resolved in the Peace Conference, but the WEU would have no role; (2) the decision whether and how to deploy military force was for the WEU to make but only with the approval of the EC; (3) the WEU would continue to determine its own national burden-sharing and financial arrangements; (4) implementation of UN Security Council Resolution 713 required further study as to possible contribution by the WEU; and (5) the problem of what to do once the republics declared independence was for the EC.

In dismayed response to the structural fatigue and imminent collapse of its European pillar, NATO grimly established the Allied Strategic Concept at its Rome Summit of November 7–8, 1991 to preserve ESDI by strictly delimiting the boundaries within which it might independently operate. As President Bush made painfully clear, the U.S., although prepared to tolerate the WEU as the European pillar of the Alliance, no longer could afford to entertain the unreliable and inept WEU as a viable alternative to NATO. Thus, while the WEU could

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104 Gow & Freedman, supra note 100, at 130.
105 CHRISTIE, supra note 32, at 242.
107 See Woodward, supra note 30, at 222–23.
108 ANDREATTA, supra note 106, at 3.
109 VAN EKELEN, supra note 4, at 148.
participate in the assessment of new risks and threats and make a symbolic European contribution to the Four Core Functions of NATO, deterrence, defense against attack on any member, provision of a foundation for a stable security environment in Europe based on democratic institutions and peaceful resolution of conflicts, and preserving the strategic balance in Europe,110 internal fractures within the WEU had relegated the European pillar of the Alliance to the sidelines of the epic Balkan struggle that was to transpire.

2. Diplomatic Resolution

a. Recognition

Following the NATO Rome Summit and the political castration of the WEU, the EC made a last-ditch effort to effect a compromise that would allow it to influence the course of the conflict in Yugoslavia. Of the three reliable weapons in the European repertoire originally available to address Yugoslavia—economic sanctions, political employment of public opinion, and diplomatic recognition—only one had survived unscathed by the political disasters of the previous months.111 By December 1991, a coalescing majority in the EC accepted the German argument that EC recognition of Croatia and Slovenia would uphold the moral principle of self-determination, pressure the Serbs to accept negotiated peace talks, and accord the EC a continuing role in the management of the conflict. Although the official EC line tracked closely the deeply flawed U.S. position that recognition would be premature prior to a comprehensive and negotiated political settlement and only would make the crisis more intractable, on December 17, the EC stated that while no Yugoslav republic would be recognized prior to January 15, 1992, the Badinter Commission, an EC Council-created judicial body, immediately would accept applications and make adjudications on the basis of the principles in the newly published “European Community Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union.”112

Pressured to intervene by the U.S. in order to forestall the expected EC recognition of Croatia and Slovenia and obviate the inevitable subsequent calls for forcible NATO intervention across territo-

110 See Moens, supra note 38, at 26.
112 Id. at 252.
rial borders, the CSCE obediently attempted to intercept EC recognition without interfering with the respective positions of its equally divided members. However, with the boundary between human rights and security in Europe effaced in an era where ethnic nationalism, mistreatment of minorities, and resurgent racism were the principle security threats, and mesmerized as it was by the inability to square its fear of territorial disintegration with the principle of self-determination of peoples, CSCE could accomplish nothing more than the issuance of “toothless platitudes” and “cloying bromides such as security is indivisible.” Although “CSCE cannot be blamed for not ‘solving’ what is arguably the most difficult problem in international politics (national rights v. state sovereignty),” in failing to square the contending principles of international law, CSCE and subsequently the EC unwittingly ushered in the next, more vicious phase of the conflict: on January 15, 1992, the Badinter Commission provided the legal and political framework for the post-Cold War transition from a single federal Yugoslavia to several independent states in holding that Slovenia and Croatia were independent subjects of international law against which there could be and had been an illegal use of cross-border force.

b. Partition Plan #1: Carrington-Cutiliero

Although EC recognition of Croatia and Slovenia provided the legal instrument that at last terminated the political existence of the long-moribund federal Yugoslavia and aided UN mediator Cyrus Vance in negotiating the cease-fire in Croatia in UN Security Council Resolution 727, the utter inability of the EC to capitalize upon recognition and cease-fire and otherwise influence the tragic course of post-June 1991 events was a serious blow to the confidence of Western Europeans. In February 1992, Chief Negotiator Jose Cutiliero and Chairman Lord Carrington introduced a comprehensive peace plan that struck a balance between the Bosnian Muslim and U.S. insistence

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113 See Anstis, supra note 85, at 108-09.
114 Id. at 88.
115 Id. at 105.
116 Moens & Anstis, supra note 97, at 231.
117 Gow, supra note 88, at 69-70.
118 See id. at 74-75.
119 NEWHOUSE, supra note 7, at 20-21.
on justice and a unitary state¹²⁰ and Croatian and Serb insistence on the equitable division of the unraveling former Yugoslav republic into three ethnic states. The plan called for the ethnic division of Bosnia into seven to ten largely autonomous cantons based on near-absolute ethnic majorities under a loose central government, urged the UN Security Council to reduce economic resources available to Serbia via a total trade embargo, induced NATO enforcement of the peace with air and naval power and raised the taboo issue of the autonomous areas of Yugoslavia including Kosovo.¹²¹ Although EC efforts to foist the Carrington-Cutiliero Plan succeeded in securing Serbian and Croatian agreement to UN Security Council Resolution 743, Serb refusal to negotiate further in good faith despite gentle Russian prodding and a joint UN-EC ultimatum doomed EC negotiations.¹²² Even as nearly fifteen thousand of their troops marched off to serve in a United Nations Protection Force (UNPROFOR),¹²³ and Bosnia erupted following the March Bosnian declaration of independence, Europeans paid little attention to the implications of the drawn-out defeat of the Carrington-Cutiliero plan in which their political leaders were so invested.

c. Ostrich Politics: Turning Inward

With Yugoslavia having so cruelly defied its peacemaking endeavors, the EC temporarily disengaged from the Balkans to reevaluate the meaning of collective European security and reassess foreseeable future threats. Beset by economic stagnation and the difficult conversion from collective industrial to private individualized service economies,¹²⁴ an increasingly diverse and reideologized EC¹²⁵ jettisoned the predominant fixation on collective trans-Atlantic security in favor of the more urgent economic rivalry emanating from NAFTA and the Pacific Rim. Without exception, members of the WEU and the EC reduced base force structures, trimmed military budgets by more than fifty percent,¹²⁶ and for the moment, consigned thoughts

¹²¹ Id. at 190.
¹²³ DINAN, supra note 33, at 494.
¹²⁴ See id. at 275–76.
¹²⁵ See id.
¹²⁶ Id. at 1.
of a European Army along with intervention of any sort in Yugoslavia to the ashcan of Western European intellectual history.

The Treaty of Rome did not encompass the thorny issues of defense, security, or foreign policy, as the Community was not to be constituted solely by formal treaties but rather to be located within a wider political environment in which popular aspiration to political integration and even union with common foreign and defense policies would occur as part of an evolutionary process. While a general consensus considered it prudent to enhance the roles and responsibilities of the WEU, the cyclical call for independent eurocapabilities in security issued yet again by the French-led Europeanists struck many observers as devoid of substantive merit at a time when no evident common interests could be found to underpin a separate defense identity that only would undermine the trans-Atlantic link while creating conflicts with European antifederalists. As France, Spain and, to a lesser extent, Germany intended in bringing security discussions within the Maastricht process, staunch Atlanticist opposition from the UK and Italy, coupled with constructive minimalist abstention by Ireland and Denmark and indifference by Belgium, threatened to deny the Commission the opportunity to place its bureaucratic hands around European security. Similarly, Euroskeptics, who saw in the rapid broadening and deepening of the EC an effort by Eurosocialists to strip away vestigial national sovereignties and currencies and re-socialize Europe via the backdoor of the Commission, lobbied against inclusion of security issues in the negotiations. Only the Maastricht Compromise, a declaration appended in December 1991, as Title V, “Provisions on a Common Foreign and Security Policy,” to the agreement concluded by the EC as a precursor to the 1992 negotiations on the TEU, preserved a place for collective Western European security in TEU.

With Title V, Article J, TEU enumerated the broad objectives of the EC to

safeguard the common values, fundamental interests and independence of the Union; to strengthen the security of

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127 See Salmon, supra note 111, at 223.
131 See Duignan & Gann, supra note 42, at 53–54.
132 Bark, supra note 25, at 28.
the Union and its Member States in all ways; 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; to promote international cooperation; and to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.\(^\text{133}\)

Although to these ends TEU purported to expand the coordination of foreign policy by permitting the European Council to set guidelines enabling the Council of Ministers to take foreign policy decisions on matters that should be subject to joint action on a qualified majority rather than a unanimity basis,\(^\text{134}\) under Article J.3.6 Member States retained the right to take independent foreign policy measures in cases of urgent and imperative need arising from changed circumstances when the Council had failed to act. Despite evidence of the newfound EC commitment to a CFSP in TEU Articles J.1.1 and J.1.4, by permitting Member States to subjectively define urgency and imperative need as well as changed circumstances, it was nearly indisputable that TEU effectively had withdrawn formalized foreign policy cooperation, particularly with respect to the more complex issues of security policy, from the integrative efforts of the EU.

Furthermore, although TEU ended the taboo of the EC's failure to discuss defense and thus raised high expectations for the emergence of an official ESDI, Article J.4 executed little more than a brief sketch of this fundamental element of European integration. Although it referred to the "eventual framing of a common defense policy which might address all questions of foreign and security policy" and "in time might lead to a common defense," Article J.4.1, in making allowances for the specific character of Member States' security and defense policies and restricting cooperation to only those subissues upon which unanimity could be reached, effectively withdrew CFSP and ESDI from the project of European integration.\(^\text{135}\) Moreover, although Article J.7.1 stressed that the EC would foster closer institutional relations with and even consider incorporation of the WEU, in providing merely that Member States accept "in accordance

\(^{133}\) Treaty on European Union, art. J.5.

\(^{134}\) Id. art. J.3.1–2.

\(^{135}\) Id.
with their respective constitutional requirements" the European Council's recommendation that the WEU help elaborate and implement EC defense-related foreign policy decisions as the European defense arm,\textsuperscript{136} not only was the WEU denied a long-awaited permanent mandate, but the perennial Europeanist dream that the WEU become an alternate defense organization died along with any clear and exclusive WEU military function more significant than the formulation of policy under the shadow of the European Council.\textsuperscript{137}

EC members, as a practical matter, still were unwilling to collectively slip from the U.S. protective embrace,\textsuperscript{138} and the WEU with no timetable for EU incorporation\textsuperscript{139} and dependent on the NATO force pool,\textsuperscript{140} still was nothing more than the most efficient means to strengthen the European pillar of the Atlantic Alliance,\textsuperscript{141} demonstrate the Atlanticist commitment to burden sharing in NATO,\textsuperscript{142} and determine the appropriate division of labor between the pillars of the Alliance.\textsuperscript{143} With not even the most dedicated Europeanists willing to sever the security link to the U.S., NATO remained the institution of choice for the EC, and the progressive development of the WEU as its defense arm in TEU functioned as a pareto-optimal trans-Atlantic compromise consequently amenable even to the French delegation.\textsuperscript{144}

In sum, TEU properly could be described as a victory for Atlanticism and European antifederalism, a frank acknowledgement of the primacy of NATO in security and defense, and the death knell for perennial but overblown attempts to launch an ESDI on the hot air generated by endemic national policy differences.\textsuperscript{145} In subsequent months, the WEU shifted its civilian secretariat from London to Brussels in order to be closer to both European institutions and to NATO and invited Denmark, Greece, and Ireland to accede or become observers and non-EC members Norway, Iceland, and Turkey to become associate members.


\textsuperscript{137} Phillippe Manin, The Treaty of Amsterdam, 4 COLUM. J. EUR. L. 1, 17 (1998).

\textsuperscript{138} See Salmon, supra note 111, at 248.

\textsuperscript{139} See Rees, supra note 34, at 53.

\textsuperscript{140} Birch, supra note 18, at 10.

\textsuperscript{141} Dinan, supra note 33, at 486.

\textsuperscript{142} Rees, supra note 34, at 52.

\textsuperscript{143} Dinan, supra note 33, at 486.

\textsuperscript{144} Forster, supra note 79, at 70.

\textsuperscript{145} See id. at 64.
With the EC preoccupied by Maastricht and tentative after its egregious fumbling of the Croatian and Slovenian crises, the political situation in the triethnic republic of Bosnia-Herzegovina devolved into open ethnic conflict, with the Serb plurality supported by the Yugoslav federal government and the JNA. CSCE briefly reassumed diplomatic center stage on March 24, 1992 with the Helsinki-II meetings wherein Yugoslavia, consisting of Serbia and Montenegro, argued against CSCE’s considering the reaffirmation of EC recognition of Croatia and Slovenia as well as Macedonia and Bosnia-Herzegovina.\textsuperscript{146} Whereas Yugoslavia traditionally had been a visible patron of minority politics in European and global security institutions, in the CSCE forum it now claimed recognition would “prejudge the outcome” of the upcoming EC-sponsored London Peace Conference.\textsuperscript{147} Although UN Secretary General Perez de Cuellar indicated that the situation in Bosnia precluded interposition of a UN peacekeeping force and admonished that recognition of Bosnia would provoke Yugoslavia and widen the war, the EC nevertheless recognized Bosnia on April 6. Similarly undaunted by the pusillanimous postulations of the UN, on May 12 CSCE acted decisively to suspend Yugoslavia\textsuperscript{148} after its finding of “clear, gross, and uncorrected violations of CSCE commitments” by the JNA sparked a Yugoslav veto on the basis of a “consensus minus one” formula that allowed a single member to block collective action.\textsuperscript{149} Although discussions in the summer of 1992 moved toward assignment of regional crisis management roles and fixed interrelationships of the UN, CSCE, NATO and the WEU, although NATO agreed to “support, on a case-by-case basis . . . peacekeeping activities under the responsibility of the CSCE . . . by making available Alliance resources and expertise,”\textsuperscript{150} and while WEU members offered to assign troops to the WEU under NATO command for combat missions in \textit{ultima ratio},\textsuperscript{151} the unwieldy and supernumerary CSCE could not summon the collective political will from its fifty-two member governments to reconcile divergent interests, draw up procedures for peacekeeping, and commit to military intervention.\textsuperscript{152} Thus, the lack

\textsuperscript{146} Heracleides, \textit{supra} note 53, at 43.
\textsuperscript{147} Id.
\textsuperscript{148} Van EekeLEN, \textit{supra} note 4, at 142–43.
\textsuperscript{149} Heracleides, \textit{supra} note 53, at 84.
\textsuperscript{150} Van EekeLEN, \textit{supra} note 4, at 151.
\textsuperscript{152} Christie, \textit{supra} note 32, at 229.
of remaining policy instruments with which to condition Yugoslav behavior robbed CSCE of the interlocking institutional framework of any capacity to affect the deteriorating environment in Bosnia.

The WEU is seeking to add a detailed operational capacity to the political foundation of TEU Title V and to clarify its ambiguous role as defense arm of the EU and European pillar of NATO. It adopted the Petersberg Declaration on Yugoslavia of June 19, 1992 (Petersberg) that pledged its members to “support, on a case-by-case basis and in accordance with our procedures, the effective implementation of conflict-prevention and crisis-management measures, including peacekeeping activities of the CSCE or the United Nations Security Council.” By committing its members to Petersberg, the WEU began the process of creating forces answerable to WEU (FAWEU) and in so doing took several giant leaps down the road to an ESDI. Further, although NATO primacy under Article V of the modified Brussels Treaty and the obligation to consult with the Alliance to preserve complementarity were clearly acknowledged, Petersberg attempted to strengthen the operational role of the WEU by permitting the WEU Council, in accordance with Article 48 of the UN Charter and in support of relevant UN Security Council resolutions, to deploy appropriate double-hatted FAWEU “by land, sea or air” at echelons up to corps level for peacekeeping, humanitarian relief, and rescue operations in crises involving European security. Now touting itself as the sole regional organization linked to both the EC and NATO capable of conducting low-intensity conflict operations in the European theater and despite its lack of a Supreme Commander or peacetime headquarters, the WEU established a “Forum of Consultation” with Central and Eastern European states now interested in EU membership and began to prioritize areas that, on the basis of geographic proximity and economic and political importance to the EU, should be considered in terms of future WEU intervention.

153 WEU SECRETARIAT-GENERAL, supra note 128, at 10-11.
154 See DINAN, supra note 33, at 487.
155 VAN EEKEN, supra note 4, at 127.
156 WEU SECRETARIAT-GENERAL, supra note 128, at 9.
157 Forster, supra note 79, at 68.
D. Abdication of European Responsibility

1. The WEU and UNPROFOR in “Support” of UN Humanitarian Relief

With the U.S. unwilling to commit to a major foreign policy initiative, and with the EC reasonably convinced after Petersberg that it finally had the operational capability and the enhanced foreign policy necessary, the Bosnian morass became the test case for the New World European Order. Although rumors of genocide, mass rape, and systematic torture appeared in the investigations of both the UN High Commissioner for Refugees and human rights groups, politically-motivated parties on both sides of the Atlantic countered reports of bestiality with cavalier suggestions that the peoples of the Balkans were fated, either by history or genetics, to engage in barbarous intercommunal conduct. European governments balked at publicly conceptualizing the situation as genocide or lifting the arms embargo and shrank from their earlier stand against Serb truculence for the more comfortable political shelter of dispassionate neutrality and UN overall supervision. Although the EC stressed the importance of establishing a security zone in and around Sarajevo and declared that WEU would be prepared “within the bounds of its possibilities” to contribute to implementation of all UN Article 48 actions, and although the WEU had abundant capabilities to quickly break the encirclement of Sarajevo and save an estimated one hundred thousand lives, the EC and the WEU simply resolved to extend collective action no further than the territory of the former Yugoslavia and entanglement under the political cover of the UN. Accordingly, on July 10, a special session of the WEU Council of Ministers approved the novel but decidedly minimalist and minatory Article 48 missions Operation MARITIME MONITOR and SHARP VIGILANCE.

Via its capitulation, the EC abdicated its role in Yugoslavia and withdrew to attend to internal political triage. In turn, the UN grudgingly assumed responsibility for the mounting crisis. By July 1992,

158 van Eekeleen, supra note 4, at 130.
159 Id.
160 van Eekeleen, supra note 4, at 152.
162 See van Eekeleen, supra note 4, at 142.
163 Bennett, supra note 3, at 153.
164 See Berdal, supra note 122, at 229.
however, the UN passed the next of what amounted to more than seventy Security Council resolutions that went unenforced as regional organizations, Member States, and the lightly-equipped and poorly-armed UNPROFOR peacekeepers stood idly.\textsuperscript{165} The situation in Bosnia became dichotomized while there was a humanitarian problem the UN could influence, there also was a desperate military problem without a military solution given the lack of political will to impose one.\textsuperscript{166} Although pressure for intervention increased temporarily after the August 1992 revelations of indisputable evidence of concentration camps in Banja Luka and Prijedor struck hard at the conscience of the West, no one was stouthearted enough to do anything more about it. On August 24, Lord Carrington resigned in disgust in favor of Lord Owen, and the EC dropped the Carrington-Cutiliero partition plan and yielded all decisional authority to the August 26, 1992 joint EC-UN London International Conference on the Former Yugoslavia (London) led by Cyrus Vance and Lord Owen.

2. Partition Plan \#2: The Shame of Vance-Owen

Although its delegates talked tough in its opening session by affirming the territorial independence of Bosnia and recognizing the legal right of self-defense, London devolved rapidly into a glorified photo opportunity.\textsuperscript{167} So diverse were delegates in beliefs and objectives that no positive statesmanship emerged to fashion anything more enduring than a vacuous and ephemeral agreement requiring Serb leaders to place heavy weapons under UN “supervision” interpreted in its original etymological sense (UN monitors were permitted to look at Serb artillery pieces every day while they were fired at civilian targets),\textsuperscript{168} allow free passage of humanitarian relief, prevent river traffic up the Danube, adhere to a no-fly zone, and restart the stalled Carrington-Cutiliero plan (now renamed Vance-Owen) in the Bosnian Serb Parliament. Moreover, although the WEU took the London principles seriously and convened an extraordinary ministerial meeting on August 28 to discuss their implementation with a proposed 5,000-troop WEU contribution to strengthen UNPROFOR un-


\textsuperscript{166} See Noel Malcolm, Bosnia: A Short History 245–46 (1994).


\textsuperscript{168} Malcolm, supra note 166, at 246.
nder the upcoming UN Security Council Resolution 776,169 not only were the London principles and the Vance-Owen plan ignored as soon as public outrage died down,170 but the joint EC-UN negotiating team of Vance and Owen began to treat the Serbs not as barbaric aggressors but as one of “three warring factions” to be treated as an equal partner with equally valid claims and grievances and, by November, gradually shelved all threats of military force.171 Worse, when Bosnian Muslim and Croat leaders objected to the subsequent drafts of plans that would reward Serb aggression and, by granting full legislative, judicial, and executive powers to the cantons, make it impossible to believe that Muslims could ever return to Serb-ruled regions,172 NATO and EC diplomats branded them with calumnious epithets such as “deal-breakers” and “sore losers as if genocide were some kind of ethnic football game.”173 EC refusal, fueled by British and French obduracy and an unshakeable Franco-Anglo commitment to Vance-Owen, prevented NATO implementation of the U.S. proposal to remove European peacekeepers from UNPROFOR, lift the UN arms embargo, and bomb in support of the Bosnian Muslims. In rewarding aggression and sacrificing all pretext to justice and legal legitimacy, EC rejectionism in the autumn of 1992 constituted the first major diplomatic turning point, the catalyst for intensified Serb butchery, and the swan song of any effective EC participation in the resolution of the genocidal wars in Yugoslavia.174

In due course, on November 3, 1992, the Bosnian Serb Parliament rejected in large measure the Vance-Owen Plan and withdrew from the First Geneva Ministerial Talks,175 believing it could achieve total victory on the field of battle without recourse to Vance-Owen.176 Following the Second Geneva Ministerial Talks of December 1992, where the West utterly capitulated to the Bosnian Serb leadership and departed with no expectations of future negotiation, the military focus shifted from NATO and the WEU to UNPROFOR, with the objective of the establishment of safe areas that proved impotent to protect

169 VAN EERKELLEN, supra note 4, at 160–61.
170 BENNETT, supra note 3, at 193.
171 MALCOLM, supra note 166, at 246.
172 See id. at 247.
175 Atiyas, supra note 120, at 193.
176 MALCOLM, supra note 166, at 250.
refugees and consciences equally. Reacting to the carnage that followed the willful abandonment of the last diplomatic efforts in 1992, CSCE at its Stockholm Meeting could only issue an anguished but hollow plea for the end to the war in Bosnia and the maintenance of its sovereignty and territorial integrity.177

3. Heavy Lies the Head: The Frustrating Search for a Successor

By the end of 1992, those on both sides of the Atlantic who believed Bosnia and Western credibility could be saved only if the U.S. would reassert its role were encouraged when the outgoing Bush Administration named Milosevic, Bosnian Serb President Radovan Karadzic, and Bosnian Serb General Ratko Mladic war criminals178 and warned Serbia that the U.S. would intervene if Serbia violated the autonomy of Kosovo by force. However, President-elect Clinton and his nominees for post on his foreign policy team soon dashed hopes for U.S. intervention in Bosnia. In December 1992, Clinton not only contemplated total U.S. withdrawal of military forces from Europe179 but also determined that any U.S. intervention, the extent of which would be limited to humanitarian assistance, would require explicit UN Security Council authorization. Clinton also concluded, in the absence of an international consensus on what precisely to do with Bosnia, a peripheral U.S. interest,180 that it was now more proper for the U.S. to cure its domestic ills and abandon its over-assertive role as world leader and gendarme.181

Consequently, the EC and its foreign policy and security institutions, rather than the U.S. and NATO, were ordained by the Clinton Administration as the appropriate fora for locating and incubating all political and military solutions to the crisis despite the previous record of European failure.182 However, with the WEU ready to perform so-called humanitarian "Petersberg tasks" in Bosnia and thereby fulfill its role as the European pillar of the Alliance, the participants in the December Ministerial Meeting of the North Atlantic Council in Brussels did not feel pressed to even mention Yugoslavia as one of the po-

178 See Bennett, supra note 3, at 203.
179 Van Eekeen, supra note 4, at 291.
180 Hulsman, supra note 174, at 58.
181 XHudo, supra note 6, at 1–2.
182 See Hulsman, supra note 174, at 118–19.
tential areas being considered for either NATO or WEU peacekeeping.


January 1993 dawned with TEU transforming the EC into the fifteen-member EU, a higher stage of political and economic integration. Although the addition of neutrals Austria, Finland, and Sweden introduced potential monetary and geostrategic resources with which to assist development of an EU CFSP, by downplaying the military dimension of foreign policy and emphasizing economic and cooperative approaches to security in its stead, the enigmatic Euroneutrals placed a stumbling block in the path of the post-Petersberg development of ESDI and of the WEU as EU defense arm and further complicated the elusive search for an EU role in Yugoslavia. With four of its fifteen members now controlling a bloc of fourteen votes and needing only twenty-six votes to defeat security-oriented resolutions on qualified majority voting, the as-yet inexperienced European Council was unable to effect the constructive abstention necessary for the Euroneutrals to avoid military commitments violative of their neutrality while at the same time permitting development of the WEU as the ESDI of the EU. By 1993, Western politicians, obsessed with popular opinion polls indicating compassion fatigue and frightened by the domestic consequences of a military disaster in Bosnia, were decidedly uneager to articulate innovative or bold military options to the Bosnian crisis. Although the U.S. forswore unilateral intervention that in its opinion “would kill the peace process and . . . undermine the partnership we are trying to build with Russia over broad areas,” the strongly pro-EU and pro-WEU U.S. intimated privately that it might be willing, quietly, “to tip the balance” in Europe under certain circumstances. With this in mind, the UK and France, motivated by the revelations of additional Serb atrocities and the desire to reassert leadership of the increasingly irrelevant and noncommittal EU, were willing to commit ground forces to secure Bosnian Serb acceptance of

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184 Elliot, supra note 136, at 631.
185 DINAN, supra note 33, at 84.
186 See Gow, supra note 88, at 306.
187 HULSMAN, supra note 174, at 106.
Vance-Owen provided the U.S. engaged its forces as well. However, the Clinton Administration was too hamstrung by economic difficulties and a perceived absence of compelling strategic interests to attempt to rally public support for intervention beyond the lift-and-strike proposal the Europeans rejected.188

In a final effort to salvage the historic political and military viability of an Atlantic Alliance, the WEU Council opened a headquarters in Brussels in January to facilitate increased NATO cooperation and involvement in Yugoslavia. However, only after the February 22 UN Security Council Resolution 808 established the International Criminal Tribunal for the Former Yugoslavia (ICTFY) and dormant peace talks resumed in New York in March, did the U.S. reluctantly permit NATO to agree in principle in April to begin enforcement of the no-fly zone in conjunction with the UN Secretary General and UNPROFOR. Although the WEU Council of Ministers approved WEU enforcement of the total economic embargo on Yugoslavia, the European pillar of the Alliance was for the first time more stalwart than its North American cousin. Although even the traditionally reluctant members of the WEU had few reservations about plans for Petersberg operations clearly ratified by the UN and the WEU framework,189 the U.S., by failing to honor its promise to lead enforcement of the no-fly zone, refusing to ratchet up the military pressure beyond sporadic enforcement of the arms embargo and economic sanctions via introduction of U.S. ground combat forces,190 and taking political refuge behind EU skirts and Vance-Owen while inexplicably abjuring overwhelming U.S. primacy in NATO and the UN,191 allowed the recalcitrant Bosnian Serb leadership to drag its political feet through the spring and yielded the second major diplomatic turning point of the war. On May 6, 1993, the Bosnian Serb Assembly triumphantly rejected the conditional acceptance given four days previously by Radovan Karadzic of the Vance-Owen plan.

With the EU and its institutions exposed to such an ignominious and exhausting political defeat, it was evident that the exhortations contained in SEA and TEU on CFSP and ESDI lacked any real relevance in their application to first-order problems such as Yugoslavia. The UK, France, and Germany effectively abandoned the EU and the

189 Van Eekele, supra note 4, at 163.
190 Gow, supra note 88, at 307.
WEU to join efforts with the U.S. and Russia in the belief that the road to peace in Bosnia and fulfillment of their ambitions as middle powers ran not through institutional multilateralism but through Great Power diplomacy linked to NATO. The WEU concluded that if it had any remaining role at all it would be the performance of tertiary tasks not falling under UNPROFOR and not being performed by NATO. The WEU Council of Ministers glumly turned to planning protection of UN safe areas for Muslim refugees and to planning for the protection of the EU administration preparing to assist the government of the hinterland city of Mostar as part of an anticipated U.S.-led Muslim-Croat Federation Agreement then in the process of negotiation.

Despite the fresh framework the five-power grouping afforded for reconsideration of options and objectives, the U.S. maintained its minimalist approach in refusing to deploy U.S. ground troops and squandering opportunities to exploit the contribution Russian influence with the Serbs might have yielded. Although on May 19 the Bosnian Muslims and Croats agreed to establish an interim government and carry out Vance-Owen, U.S. refusal to engage ground combat forces depleted all residual energies and creativity the West could muster. On May 22, NATO signed the Bosnian death warrant when its foreign ministers initialed the Washington Plan that abandoned consideration of air strikes and permanently shelved Vance-Owen in favor of relocation of Muslim refugees to UN safe zones (Sarajevo, Tuzla, Zepa, Gorazde, Bihac, and Srebrenica) protected not by the WEU but by the 33,000-strong UNPROFOR, whose mandate would be to yield ground in the face of Serb aggression and return fire against attackers only if UNPROFOR, but not the Muslim refugees, came under attack. Upon learning of the Washington Plan, President Izetbegovic made this piercing statement:

If the international community is not ready to defend the principles which it itself has proclaimed as its foundations, let it say so openly, both to the people of Bosnia and to the

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192 Hulsmans, supra note 174, at 124-27.
193 Van Eekelen, supra note 4, at 168.
194 Id. at 152.
195 See Hulsmans, supra note 174, at 122-23.
196 Atiyas, supra note 120, at 193.
197 Malcolm, supra note 166, at 250.
people of the world. Let it proclaim a new code of behavior in which force will be the first and the last argument.\textsuperscript{198}

Although the U.S. threatened to bomb Bosnian Serb forces, to protect UNPROFOR humanitarian relief convoys, to destroy Bosnian Serb heavy weapons and supply dumps, and to arm the vastly outgunned Bosnian Muslims, it never honored any of these proposals.\textsuperscript{199} Even after the May 27 North Atlantic Assembly Report warned that the theory of multilateral interlocking institutions as the key to pan-European security is either "sheer nonsense or fundamentally premature" given institutional rivalries and the underdevelopment of the EU and the WEU\textsuperscript{200} and "may have even contributed directly to policy paralysis by inviting dilution of responsibility"\textsuperscript{201} by allowing politicians to hide in bureaucracies to resist the onslaught of awkward questions,\textsuperscript{202} the Clinton Administration reflexively devolved its responsibilities and continued to neglect an examination of the possibilities, consequences, and necessities of unilateral action.\textsuperscript{203} Arguing in June that there was simply no way to "unscramble the ethnic omelette and put all ethnic minorities on the 'right' side of the border,"\textsuperscript{204} the U.S. stood aside as British and French quasiness damaged U.S.-EU and U.S.-UN relations\textsuperscript{205} as well as the Anglo-U.S. special relationship.\textsuperscript{206}

5. Shocked into Service: Exeunt WEU and the EU; Enter NATO and the Contact Group

NATO, now the only military force capable of ending the war, succumbed to the demand of UN Secretary General Boutrous-Ghali that NATO airstrikes authorized under UN Security Council Resolution 836 not only be carried out in coordination with the UN through the North Atlantic Council but also that the political authority to initiate any request for air strikes rested with him (the so-called "double-trigger" requirement). Not only was NATO anxious to appear to be doing much while leaving the onus for its own failure in the hands of

\textsuperscript{198} \textit{Id.} at 251.
\textsuperscript{199} \textsc{Haass}, \textit{supra} note 60, at 40.
\textsuperscript{200} \textsc{See} Moens \& Anstis, \textit{supra} note 21, at ix.
\textsuperscript{201} Moens \& Anstis, \textit{supra} note 97, at 235.
\textsuperscript{202} \textsc{Paul Cornish}, \textit{European Security}, 72 \textsc{Int'l Aff.} 751, 762 (1997).
\textsuperscript{203} \textsc{Xhudo}, \textit{supra} note 6, at 114.
\textsuperscript{204} \textsc{Duignan} \& \textsc{Gann}, \textit{supra} note 42, at 177.
\textsuperscript{205} \textsc{Gow}, \textit{supra} note 88, at 220.
\textsuperscript{206} \textsc{Krupnick}, \textit{supra} note 27, at 14-15.
the UN,\textsuperscript{207} but despite the proliferation of UN Security Council Resolutions under U.S. (mis)direction of the Alliance, WEU governments felt compelled to interpret these resolutions narrowly and defer to the UN.\textsuperscript{208}

By the end of 1993, with a quarter million dead and four million refugees, the WEU Assembly concluded that not only had the development of CFSP and ESDI been irreparably compromised, but the very viability of European aspirations to unity also had been sorely tested by the progression of the war in the Balkans.\textsuperscript{209}

The January 12, 1994 NATO Summit in Brussels convened, and the first order of business, rediscovery of a role for NATO in a new European security system, required investiture of additional political and military capabilities in the Western Europeans.\textsuperscript{210} While maintaining that it would be foolish for the WEU to duplicate or compete with NATO in an era of limited resources, the Alliance agreed that the WEU was the clearest demonstration of the will of the EU to strengthen the European pillar to balance NATO and simultaneously pursue ESDI. Consequently, the Alliance elected to give full support to the development of ESDI within the WEU, with the EU the main linkage to NATO. Although NATO proper would respond to major crises within the Article 5 geographic area of the Washington Treaty, the Western Europeans would develop ESDI and foster relations with Partnership for Peace states while preparing to respond to lower-intensity non-Article 5 missions. Under the resulting Combined Joint Task Force (CJTF) formula, NATO assets and multinational task-tailored forces would be made available upon a request stemming either from the EU or from the WEU that was approved by all sixteen members of the North Atlantic Council. Although Secretary General Manfred Worner had made it clear in 1993 that non-Article 5 missions were not to be the exclusive preserve of the WEU and that NATO might be required to assume “hard” missions with warfighting potential,\textsuperscript{211} with CJTF, NATO and the WEU believed they had found an appropriate division of labor.

The EU, briefly recharged by the Brussels Summit Accord, attempted to seize the opportunity to reenter the diplomatic fray by pressuring the Bosnian Muslim-led government into accepting a re-

\textsuperscript{207} Duke, \textit{supra} note 130, at 354.
\textsuperscript{208} Van Eekeleen, \textit{supra} note 4, at 166.
\textsuperscript{209} Forster, \textit{supra} note 79, at 63.
\textsuperscript{210} Hulsman, \textit{supra} note 174, at 118.
\textsuperscript{211} Cornish, \textit{supra} note 202, at 763.
packaged version of Vance-Owen that even independent observers considered tantamount to complete capitulation, the dismemberment of the Bosnian state, and the dispossession of two million Muslims.\footnote{Laura Silber & Alan Little, Yugoslavia: Death of a Nation 309 (1995).} However, though shepherded closer to Bosnian Serb acceptance by EU efforts, the Bosnian partition fell to the ground along with Bosnian Serb mortar rounds in the Sarajevo Central Market in February 1994.\footnote{Atiyas, \textit{supra} note 120, at 197–98.} Reluctantly, the U.S. launched unilateral air strikes under the NATO-UN fig leaf against Bosnian Serb positions, brokered an agreement between Bosnian Croats and Muslims to end their year-long war, and issued a ten-day NATO “fly and die” ultimatum to the Bosnian Serbs that drew no serious Russian protest. When the North Atlantic Council of Ministers called a February 7 meeting, the WEU ignored the summons, claiming a lack of resources.\footnote{Sel’Dinan, \textit{supra} note 33, at 495.} From this point forward, the EU was out of the picture, and the Contact Group of the U.S., Russia, the UK, France, and Germany were the only players in the international peace process.\footnote{Gow, \textit{supra} note 88, at 156.} 

The WEU attempted to salvage itself in its Permanent Council on May 8, 1994, claiming that, as enlargement had brought together all the states involved in creation of ESDI,\footnote{Sre’Dinan, \textit{supra} note 33, at 487.} the WEU was the only way to draw Central and Eastern European republics closer to the EU without Russia’s having to fear for its own security.\footnote{Jean-Marie Caro, \textit{Towards Association of the Countries of Central Europe with the Western European Union, in Western European Union’s View on the Security of Central and Eastern European Countries} 27, 35 (Regina Wasowicz ed., 1994).} However, although the WEU now controlled FAWEU and, thus, had some operational capacity,\footnote{Van Eekele, \textit{supra} note 4, at 206.} the Euroneutrals, by insisting on classes of membership in which certain states might opt out of peacekeeping or peace enforcement operations,\footnote{Stephen J. Blank, \textit{U.S. Policy in the Balkans: A Hobson’s Choice} 4 (1995).} nipped any WEU progress in the bud. Moreover, when the North Atlantic Council reiterated in June that NATO-WEU collaboration would be developed in strict accordance with “transparency and complementarity” on the basis of the CJTF concept, increasing NATO predominance led to the renationalizing of FAWEU.\footnote{See Duke, \textit{supra} note 102, at 175–80.} Over the course of the next six months, the EU and the WEU withdrew into a political shell to observe as UN safe zones were

\footnote{Laura Silber & Alan Little, Yugoslavia: Death of a Nation 309 (1995).}

\footnote{Atiyas, \textit{supra} note 120, at 197–98.}

\footnote{Sel’Dinan, \textit{supra} note 33, at 495.}

\footnote{Gow, \textit{supra} note 88, at 156.}

\footnote{Sre’Dinan, \textit{supra} note 33, at 487.}

\footnote{Jean-Marie Caro, \textit{Towards Association of the Countries of Central Europe with the Western European Union, in Western European Union’s View on the Security of Central and Eastern European Countries} 27, 35 (Regina Wasowicz ed., 1994).}

\footnote{Van Eekele, \textit{supra} note 4, at 206.}


\footnote{See Duke, \textit{supra} note 102, at 175–80.}
overrun for lack of NATO or UNPROFOR defense, and the Contact Group produced nothing more just than a generous 51-49 partition, the refusal of which by the Bosnian Serbs froze diplomatic progress for the remainder of the year. Despite the British and French acknowledgement in September that the U.S. plan of lift-and-strike was necessary, the Clinton Administration,

having ebbed and flowed in arguments with its Allies on the arms embargo question, pulled back from the brink when finally forced to confront the real implications of withdrawal, lift and strike, and renewed its efforts to engineer an acceptable settlement. This was ... the ultimate example of uncertainty and incoherence in policy which characterized the Administration. ... The President provided no steady leadership ... within the government, to the American people, or internationally. ... [The Clinton] Administration, ... facing grave difficulties in adjusting to the post-Cold War world ... damag[ed] ... the U.S. ... and ... its relations with other countries. ... [L]ack of preparation, internal confusion, ... uncertain and fluctuating policy and the [at best] self-deception involved in making promises which were either untenable or which there was no intention of honoring [caused] disillusionment and a lack of confidence both at home and in the world.221

In November, the trans-Atlantic partnership sustained additional battering when the U.S. gave the order through NATO to cease implementing the arms embargo on Croatia and Bosnia. Convinced this order would cause the conflict to escalate, impose grave risks on civilians and relief workers in field, necessitate the withdrawal of UNPROFOR II, and undermine chances for a negotiated settlement through the Contact Group,222 the WEU considered the U.S.-EU relationship constructively severed by U.S. actions.

With the assumption of office by a Republican U.S. Congress in January 1995, the eternal burden sharing debate reignited at a most inopportune time for the Atlantic Alliance.223 Although Germany had agreed to the formation of a joint German-Dutch corps as part of FAWEU,224 and Greece had accepted membership, the WEU had been

221 Gow, supra note 88, at 220–22.
222 Van Eeckelen, supra note 4, at 176.
224 Newhouse, supra note 7, at 219.
totally circumscribed by NATO.\textsuperscript{225} Western Europeans, realizing they might have to face tough security decisions alone,\textsuperscript{226} could only view the failing WEU administration of Mostar as a costly disappointment and embarrassing symbol of continuing European ineptitude.\textsuperscript{227} After Bosnian Serbs ignored the UN order to withdraw their artillery from the exclusion zone surrounding Sarajevo in May and took additional UNPROFOR hostages, European morale plummeted, fingers were pointed, and talk of withdrawal circulated within despondent European capitals. Either international cohesion that included the increasingly obstructive Russians or the will of the West was required to end the war. If it was to be the will of the West, it was clear that NATO (i.e., the U.S.) would have to move quickly or engage its forces on the ground in combat operations.

The world watched as the resulting two-week U.S. bombing campaign, unchecked by decidedly anti-reformist Russian efforts in the UN Security Council, rapidly and decisively ended the war in Bosnia and easily curbed fears of regional war in Europe.\textsuperscript{228} A October 12 cease-fire produced peace talks at Wright Patterson Air Force Base in Dayton, Ohio that led to an agreement signed in Paris on December 14.

\textbf{E. Reflections in the Aftermath}

\textbf{1. Dayton: The Dishonorable “Peace”}

The Dayton Agreement on Bosnia-Herzegovina (Dayton) illustrated that the Western European ability to formulate and implement a CFSP still was far too meager in the absence of U.S. leadership and even, on occasions, unilateralism.\textsuperscript{229} However, Dayton produced little more than a realpolitik cessation of hostilities that served principally to reduce U.S.-EU tensions by placing U.S. troops on the ground.\textsuperscript{230} Dayton dodged the choice between peace and justice entirely by offering up a partition plan the likes of which the French and the British

\begin{footnotesize}
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\item \textsuperscript{225} Dinan, supra note 33, at 496.
\item \textsuperscript{226} Conry, supra note 5, at 9–10.
\item \textsuperscript{227} See Dinan, supra note 33, at 495.
\item \textsuperscript{228} Hulsmann, supra note 174, at 169.
\item \textsuperscript{229} Lidger Kuhnhardt, \textit{On Germany, Turkey, and the United States}, in \textit{Reflections on Europe}, supra note 25, at 93, 114.
\item \textsuperscript{230} Jonathan Eyal, \textit{“Ten Commandments” to Cleanse the Guilt of Bosnia}, \textit{World Today}, Nov. 1996, at 300.
\end{itemize}
\end{footnotesize}
had championed since the beginning of the war.\textsuperscript{231} While peace delayed is preferable to peace denied, the cessation of hostilities was unaccompanied by justice and came at the price of Russian troops and Russian influence creeping back into the Balkans.\textsuperscript{232} With Dayton, the West almost was assured of repeating its mistakes in Kosovo, Albania, Macedonia, or the next territory for which Serbian nationalism developed a post-Communist appetite.\textsuperscript{233}

The brief U.S. bombing campaign of August revealed that a unified Alliance with a legitimate European pillar under the direction of competent U.S. leadership could have employed effective military force to prevent the war in the first place. The tragedy of Bosnia illustrates that a reactive regional organizational approach to conflict management led by an internally divided, timid organization is predestined to failure. Furthermore, the absence of a credible warfighting capability in the EU made deterrence and intervention impossible irrespective of whether a CFSP on Bosnia had emerged.\textsuperscript{234} The self-paralysis of the EU killed the moderate Europeanist progress of ESDI and the WEU and, while it bolstered the Atlanticist idea of WEU as European pillar of NATO and defense arm of EU rather than more ambitious nucleus of the European Army, European failures in Bosnia subjected ESDI to limited evolution in the context of the U.S. veto in the North Atlantic Council.\textsuperscript{235} More importantly, this raised sobering questions as to whether and to what extent the U.S. could remain involved in collective security in Western Europe and what, if any, role the EU should play in NATO.\textsuperscript{236}

2. Rebuilding the European Pillar

So piqued was French interest in NATO that many WEU members questioned how serious France was about the WEU. In building on the 1993 Franco-German agreement that spelled out the conditions under which EUROCORPS could serve NATO, France effectively already had ended the military rivalry between NATO and the WEU. However, by joining the NATO Military Committee and placing

\textsuperscript{231} Manelbaum, \textit{supra} note 89, at 35.
\textsuperscript{232} Silber & Little, \textit{supra} note 212, at 317.
\textsuperscript{233} Eyal, \textit{supra} note 230, at 302.
\textsuperscript{235} Dinan, \textit{supra} note 33, at 84.
\textsuperscript{236} Gow, \textit{supra} note 88, at 320.
its troops in the troop monitoring and implementation force (IFOR) under NATO command in December 1995, France accelerated the "NATOization" of the WEU.\textsuperscript{237} Nevertheless, in building on its Common Concept on European Security of November 1995, the WEU stressed the need not only for closer relationships with NATO but also for the independent intelligence and airlift capacity necessary to enable the assumption of unique and primary responsibilities for Central and Eastern Europe. As the WEU Council indicated, "[i]n the present strategic environment, Europe's security is not confined to security in Europe. Europe has acquired the capability to make its own contribution to a just and peaceful world order."\textsuperscript{238}

Still, both pillars of the Alliance were consumed with preserving the fiction of some parallel Europe-boosting process following the completion and ratification of the CJTF concept in June 1996 with the Berlin Communiqué (Berlin) at the NATO Berlin meetings. Berlin made it clear that the U.S. would not allow itself to be marginalized in the European security realm: while Berlin urged development of ESDI and agreed that future missions would require more flexible plans and a greater contribution from European politico-military command structures to address both Article V and non-Article V missions, NATO insisted upon a single multinational command structure subordinate to the North Atlantic Council and by requiring that ESDI evolve within the CJTF concept, demanded that the Europeans create militarily coherent and effective forces to relieve the burden on the U.S.\textsuperscript{239}

So ordered, the WEU turned away from its technical muddling and diligently bent to actualizing its operational capabilities. By autumn, while it still was not ready for "hard" combat missions and still controlled no standing forces,\textsuperscript{240} the WEU could boast of six national contributions to multinational organic ground (EUROCORPS and EUROFOR Rapid Deployment Forces), naval (EUROMARFOR and UK-Netherlands Amphibious Forces),\textsuperscript{241} and air (EURO AIR GROUP)\textsuperscript{242} units available to WEU-led Petersberg tasks and to NATO

\textsuperscript{237} Hulsmans, supra note 174, at 177.
\textsuperscript{238} WEU Secretariat-General, supra note 128, at 24.
\textsuperscript{239} Cornish, supra note 202, at 760.
\textsuperscript{240} WEU Secretariat-General, supra note 128, at 11.
\textsuperscript{241} Id. at 11–12.
\textsuperscript{242} Christian Franck, Belgium: The Importance of Foreign Policy to European Political Union, in THE ACTORS IN EUROPE'S FOREIGN POLICY 151, 163 (Christopher Hill ed., 1996).
under the double-hatting concept. Although the WEU continued to build a defense planning cell, satellite interpretation center, crisis situations center, and security studies program to close the technology gap and enhance its future potential for independent planning and analysis, the European pillar of NATO appeared to have settled into and, more importantly, accepted its limited role as such. By the end of the year, the debates within the European pillar centered upon whether the follow-on-force to IFOR, the stabilization force (SFOR), would become a more European force along the lines of the CJTF and whether the EU quest to act consistently and coherently in international relations could ever overcome the clash of foreign policy cultures. However, the EU 1996–1997 Intergovernmental Conference, originally convened March 29, 1996 to revise Maastricht in order to resolve problems with CFSP and ESDI, elected instead to subsume development of foreign and security policy in favor of more general discussions as to the broadening and deepening of the union.

Although, in January 1997, the U.S. proclaimed that it must remain an engaged continental power in order to preserve European stability, U.S. troops in Europe numbered fewer than one hundred thousand, their lowest strength post-World War II, and the European Commission now “resembl[ed] Amnesty International, with the Swedes and Finns joining the other moralists, the Dutch and the Danes.” Further, although the U.S. foreign policy establishment claimed that NATO was the “necessary vehicle enabling the United States to play its role as world power,” the intellectual force of the neoisolationist arguments of many U.S. observers who began to chip away at the axiomatic meta-importance of the Alliance. If NATO was to serve any useful post-Cold War purpose and survive the calls by a sizable segment of the U.S. for its elimination, its European pillar

243 Warren Christopher, U.S. Dep't of State, Dispatch Vol. 6, NATO Alliance Advances the Goal of European Integration 912 (1995).
244 See Philip H. Gordon, Does the WEU Have a Role?, 20 Wash. U. L.Q. 125, 125–26 (1997).
245 See Woodward, supra note 74, at 50.
246 Kavanagh, supra note 77, at 353.
247 See Bark, supra note 25, at 25.
248 See id. at 40.
249 Id. at 20.
250 Newhouse, supra note 7, at 295.
251 Kuhnhart, supra note 229, at 114.
252 Newhouse, supra note 7, at 213.
simply had to be able to secure a U.S.-brokered peace in the center of its own continent with its own ample resources.

Even for adherents to the opposing multilateral institutional theory that the most important post-Bosnian project was building a European pillar at the continental level inclusive of the former Warsaw Pact states, Russia presented vehement objections to the expansion of NATO into the gray zone between Germany and the former Soviet frontiers. Although Alliance advocates claimed that the proposed NATO enlargement was geared toward preventing future Bosnias and not directed against Russia, Russians made the meritorious counterarguments that OSCE (as CSCE has been renamed), a much more diverse and inclusive organization, could soothe ethnic tensions and facilitate reconstruction in a far less threatening fashion. As one commentator reminded the expansionists within the Alliance coterie, “NATO is not some kind of all-purpose talk-shop; it is the most powerful military alliance the world has ever seen. Its expansion eastwards must mean a substantial shift in the balance of power with unmistakable military implications.” Consequently, in early 1997, not only was a rudderless and near-leaderless NATO struggling to find a raison d’etre, but the proposed enlargement of its European pillar was still little more than a paper facade. On the expansionist course it had set in reaction to Bosnia and the failure of its European pillar, NATO seemed inexorably committed to drawing its members into one.

3. Treaty of Amsterdam

Lukewarm European efforts to address the vacuum of purpose and power in collective Western security, however, fell short once again. When Europeanist France and Germany, despite acknowledging NATO primacy, renewed their intermittent efforts at the June 16–17 Amsterdam Summit to merge the WEU and the EU, not only did the UK, Denmark, Portugal, the Netherlands, the Euroneutrals, and the observers join to block Italian and Belgian support of a

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253 Henry S. Rowen, The Uncertain Future of the Atlantic Alliance, in Reflections on Europe, supra note 25, at 125, 143.
255 Bark, supra note 25, at 41.
256 Conry, supra note 5, at 13.
257 Birch, supra note 18, at 3.
258 Dinan, supra note 33, at 487.
259 Van Eekele, supra note 4, at 61.
phased integration of a reinforced WEU replete with mechanisms to permit full participation by neutrals with a threatened veto, but the Franco-German proposal also fostered the conclusion that while a United Europe had gone far in the economic dimension, the failure of the EU to make significant progress in foreign policy and defense might generate sufficient mistrust to yield U.S. disengagement and strand Western Europe on the shoals of insecurity and unmanageable change.

By July 1997, the WEU had traveled only slightly further down the road toward self-discovery than it had prior to SEA or TEU as evidenced by its “Declaration on the Role of WEU and its Relations with the EU and the Atlantic Alliance”:

WEU is an integral part of the development of the European Union, providing the Union with access to an operational capability, notably in the context of the Petersberg tasks, and is an essential element of the development of the European Security and Defense Identity within the Atlantic Alliance. When the Union avails itself of WEU, WEU will elaborate and implement decisions and actions of the EU which have defense implications. Cooperation between WEU and NATO will continue to evolve, also taking account of the adaptation of the Alliance. WEU will develop its role as the politico-military body for crisis management, contribute to the progressive framing of a common defense policy and carry forward its concrete implementation through the further development of its own operational role.

Nevertheless, the discharge of the WEU responsibility to be the Western European crisis manager outside the territorial area covered by the Washington Treaty, as evidenced by Bosnia, remained grossly inadequate, and the WEU had complicated the policy vacuum by ceding all serious contemplation of collective defense to national governments and to the political institutions of the EU. Demands that the WEU be allowed to die in peace mounted. However, determined to remedy the problem and definitively actualize the institutional position of the WEU in the hope of complementing the EU with a range of economic, political, diplomatic, and military responses

260 Id. at 275.
261 Id. at 273–74.
262 Id. at 327.
for the management of future crises, the European Council pressed the issue in Amsterdam and, after a difficult several months of negotiations, nominally denatured the policy dispute with the signing of the Treaty of Amsterdam of October 2, 1997 (Amsterdam). While some might argue that, as a result of the lessons of Yugoslavia, Amsterdam was a successful attempt to integrate the WEU and EU, under closer inspection it is plain that Amsterdam failed to even attempt to reach a consensus on the relationship between the WEU and EU, as members still could opt out from participation in a CFSP action on the claim of a vital interest in Article J.13.2 and, in so doing, end the process of deliberation.263

Although Amsterdam substituted an entirely new Title V for TEU Title V, by retaining the unanimity provision for “important” foreign policy decisions in Article J.13.2 and thereby failing to transfer competence from the individual Member States to the EU,264 Amsterdam instead transformed into convenient legal cover the hortatory phrases of TEU encouraging Member States to cooperate in foreign and security policies. Amsterdam did not confer legal personality on the EU and, thus, may require separate ratification by each member to any agreement concluded by the European Council.265 Despite differentiating the WEU membership by adding Eastern and Central European associates and partners and stimulating a richer post-Bosnia discussion, by abdicating responsibility for induction of Western European cooperation in foreign and security policies to the rancorous environment of the WEU Assembly and by missing the opportunity to seriously address the thorny issue of incorporation of the WEU, Amsterdam offered little hope for substantial near-term progress either in the evolution of CFSP as a pillar of the EU or in the maturation of the WEU as defense arm of the EU.266

4. NATO: Out-of-Area or Out of Business

By the beginning of 1998, NATO faced mounting obstacles that threatened to derail its SFOR mission. NATO nonetheless sought to prove that it was still the abiding symbol of Western unity and deter-

263 See Manin, supra note 137, at 17.
266 Id.
mination\textsuperscript{267} and that, given another Bosnia, it would act decisively and quickly.\textsuperscript{268} Not only did Russia indicate that it would remain in Bosnia after SFOR, thereby presaging an attempt to restore the Balkans to the historic Russian sphere-of-influence, but the WEU also was under heavy and sustained Russian criticism of its efforts to draw Central and Eastern European states into affiliation with the EU and its institutions.\textsuperscript{269}

The U.S., convinced that the fumbling Europeans would never remain in Bosnia should it terminate its participation in SFOR and certain that chaos would ensue in Bosnia in the absence of Western forces to counter the Russian presence,\textsuperscript{270} but still floundering with no coherent out-of-area policy to address looming crises in Poland, Moldova, and Hungary,\textsuperscript{271} ceased discussing deadlines for SFOR altogether and scaled back expectations for NATO expansion. Meanwhile, the Western Europeans, still with no functional CFSP and still unable to resolve pressing post-Cold War questions of how to adjudicate competing claims to sovereignty and self-determination within the internal boundaries of a multiethnic state, fell asleep on the watch as Kosovo, now the worst minority problem in Europe, tumbled into anarchy.

III. The Fall of Yugoslavia: Act Two—Kosovo

A. Bosnia Redux: Humanitarian Crisis, UN Paralysis, WEU Exclusion, Russian Intrusion, NATO Confusion

1. Breaking Promises: The Abrogation of Kosovar Territorial Autonomy

The territory of Kosovo is the cradle of the Serbian church, the birthplace of the medieval Serbian nation, and legally a province of the modern nation-state of Serbia following its 1913 cession from the Ottoman Empire. However, shifts in demographic patterns altered the political balance and, by the outbreak of World War I, ethnic Serbs were a minority in Kosovo, while Kosovar Albanian Muslims were a disenfranchised, subjugated majority. Although the Tito-era Yugoslav

\textsuperscript{267} MANDELBAUM, supra note 89, at viii.
\textsuperscript{268} Id. at 42.
\textsuperscript{269} See Robert Conquest, On Russia: Economics \& Politics, Heritage \& Tradition, in REFLECTIONS ON EUROPE, supra note 25, at 45, 70–71.
\textsuperscript{270} REES, supra note 34, at 137.
\textsuperscript{271} DUKE, supra note 130, at 170.
Federal Constitution endowed the Kosovar Albanians with collective territorial autonomy in recognition of their majority status and their vociferous claim to nationhood, following the death of Tito an increasingly radicalized Serb minority progressively stripped non-Serbs of their national rights, convincing restive Kosovar Albanians that their rights as a people could never be secured under Serbian rule and that their autonomy must be parlayed into statehood. In the late 1980s, a series of increasingly repressive measures by the Yugoslav federal government of President Slobodan Milosevic sparked labor strikes and violent popular demonstrations to which Yugoslavia responded with the February 27, 1989 declaration of a “state of emergency,” imposition of martial law and, via an action illegal even under the Yugoslav federal constitution, the March 23, 1990 abrogation of the autonomy of Kosovo.

As Yugoslavia moved to nip Kosovar Albanian nationalism in the bud, the situation in Kosovo swiftly deteriorated. When Yugoslav actions in support of the Bosnian Serbs in Bosnia and Croatia threatened to spark pan-Balkan war, President Bush warned in December 1992 that the U.S. would be prepared to use military force against the Serbs, suggesting that the inviolability of Kosovo as part of Serbia proper could not be presumed where the U.S. and its Western allies prodded into intervention. The Clinton Administration issued a similar warning in March 1993 following the Yugoslav eviction of the CSCE mission in response to the condemnation of “Serb oppression” of the Kosovar Albanians by that organization. Although international attention shifted to Bosnia for the next several years, by 1996 Kosovo once again was the foremost item on the Balkan agenda of Western collective security managers. On March 30 of that year, former U.S. Ambassador Warren Zimmerman endorsed the partition of Kosovo. In August, the U.S. Congress passed a resolution championing “self-determination” for Kosovo and calling for the appointment of a U.S. envoy to the province, underscoring the evolution of U.S. political support for a negotiated settlement to include the possibility of partition and independence. However, in response to the Yugoslav suppression of province-wide popular demonstrations and acts of civil

273 Id.
274 Id. at 463.
275 Id.
disobedience, the West offered nothing more forceful by way of protest against Yugoslav conduct than the statement by U.S. Envoy to the Balkans Robert Gelbrand, simultaneously accusing Serb authorities of responsibility for the violence and rejecting independence for Kosovo and the demand from the EU that Yugoslavia restore provincial autonomy.\textsuperscript{276} In February 1998, the long-suffering Kosovar Albanians seized the opportunity to lecture the international community in the unwelcome lesson that autonomy and human rights are meaningful only in states that respect the rule-of-law by voting for independence\textsuperscript{277} and calling down upon themselves the wrath of the JNA.\textsuperscript{278}

2. Inaction in the Face of Genocide: Coup de Grace for UN Collective Security

When a vicious JNA offensive on February 28, 1998 against the Kosovo Liberation Army (KLA) somehow caught the West by surprise and destroyed the nucleus of the Kosovar Albanian resistance, the Kosovar Albanian population was rendered ripe for yet another genocidal campaign at the hands of the regular army, paramilitaries, and civilian brigands.\textsuperscript{279} However, whereas prior to this date the atrocities committed by Serbian and Yugoslav forces were evaluated against the derogable norms of international human rights law, with the more experienced KLA now waging an ongoing armed insurgency and controlling large swaths of territory, the situation had surpassed the threshold of an “armed conflict” and thus invoked the nonderogable protections of Article 3 and Protocol II of the Geneva Conventions and the customary laws of war.\textsuperscript{280} Moreover, the Kosovar Albanians voted on March 22, 1998 to re-elect the shadow government of self-styled President of the Republic of Kosovo, Ibrahim Rugova. On March 31, 1998, the UN Security Council found with Resolution 1160 that the crisis in Kosovo “amounted to a threat to international peace and security” and, although the UN took no immediate further action and although Yugoslavia nursed stalled bilateral negotiations along until their preordained demise in May, by late spring the KLA prompted the U.S. and the EU to reimpose the sanctions on Yugoslavia that had been progressively lifted in order to reward Yugoslavia’s

\textsuperscript{276} See id. at 403.
\textsuperscript{277} See id. at 464.
\textsuperscript{278} Eyal, supra note 230, at 304.
\textsuperscript{279} See Ramsbotham & Woodhouse, supra note 80, at 28.
\textsuperscript{280} Human Rights Watch, A Week of Terror in Drenica: Humanitarian Law Violations in Kosovo 84 (1999).
compliance with Dayton. 281 Although the U.S. was the only NATO member that took the position that NATO did not require explicit UN Security Council authorization to use force in Kosovo, 282 and although a chastened Rugova dropped his demand for international mediators and prepared to accept the Yugoslav conditional offer of restoration of territorial autonomy, the KLA surged to the political fore by withdrawing its support for Rugova and refusing to negotiate for anything less than independence. 283

By late summer, the desperate Kosovar Albanians won a major victory with the September 23, 1998 passage of UN Security Council Resolution 1199 that condemned those Yugoslav actions in Kosovo that were causing an enormous humanitarian disaster and that demanded that Yugoslavia cease its assaults on civilians. Although the failure of Resolution 1199 to explicitly mention that the use of force was the basis for a Russian vote in its favor, Yugoslavia acceded to Western demands for a cease-fire that briefly halted the humanitarian disaster. Nevertheless, by early October, Yugoslavia violated the cease-fire and sparked ethnic Albanian demands for Western humanitarian intervention. By October 15, the Kosovar Albanians had rejected a U.S.-negotiated autonomy plan (Hill Plan). The principal reasons for the rejection were that the Hill Plan would have postponed discussion of the final status of Kosovo for three years, diluted the legal personality of Kosovo, and locked Kosovo into autonomy rather than independence, as its status could be modified only at the end of the three-year period with the consent of all parties. Although Serbia indicated as a counteroffer that it was willing to accede to a reduction-in-forces agreement (to levels existing prior to the February 28, 1998 offensive) monitored not by the WEU but by two thousand unarmed civilian observers from the OSCE, Rugova proclaimed that NATO ground combat troops, in conjunction with the availability of NATO air strikes, were essential for enforcement of the cease-fire and protection of ethnic Albanians, while leaders of Kosovo Albanian nationalist parties rejected any deal outright. On October 20, when no agreement based on the Hill Plan could be fashioned, a third major Serb offensive steamrolled across Kosovo.

In the tense UN Security Council on October 21, member states, in disagreement not only about the causes of the war in Kosovo but

281 Baggett, supra note 272, at 465.
283 Baggett, supra note 272, at 467–68.
also about the principles at stake could not agree as to whether the Kosovar Albanians were entitled to exercise a right to self-determination, and the West could not overcome Russian and Chinese objections to even the implicit threat of force to back a potential accord predicated upon the withdrawal of Serbian military and paramilitary forces from Kosovo, let alone NATO humanitarian intervention in what Russia and China continued to insist was an internal Yugoslav affair. Irrespective of the merits of the Western claim that ongoing genocide and other widespread and systematic violations of human rights in Kosovo justified humanitarian intervention, military action was contraindicated in the absence of explicit UN Security Council authorization that clearly indicated the objectives and terminated with the establishment of a permanent cease-fire.

However, the U.S. and its Western allies intimated that simply because the principle of humanitarian intervention permits of abuse does not dictate that it will be abused in a specific instance and that, in instances of genocide, it would be absurdly legalistic to await UN Security Council approval. Continuing along this vein, the West contended that an alternative to explicit authorization was essential. In the stead of authorization, the West proposed that a de minimis threshold could serve as a basic trigger and reference point that would regulate the right to humanitarian intervention and serve as a source of implicit authorization in practice. According to the West, implied authorization can be gleaned from the acquiescence or ambivalence of the UN Security Council in refusing to impose sanctions. Thus, member states creatively may construe the UN purpose to maintain international peace and security as granting approval for and even creating an obligation to take forceful action to preserve order by removing threats to the peace posed by the transborder effects of massive human rights abuses in the absence of effective UN action to do so.

Russian and Chinese obstruction shifted to the impending threat of NATO airstrikes in response to the flagrant Yugoslav violation of the cease-fire and disengagement agreement for which NATO claimed authorization under Resolution 1199 and Article 52 of the

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285 Id. at 1030.
UN Charter.\textsuperscript{286} Although by October 24 no specific UN Security Council resolution authorizing NATO to use force on behalf of the Kosovar Albanians had managed to slip through the Sino-Russian diplomatic screen, NATO nevertheless insisted that Resolution 1199 had provided the legal basis for the Alliance to take action under Article 52 provided that the UN Security Council did not first take effective measures and provided that NATO did not threaten the territorial integrity or political independence of Yugoslavia. However, Sino-Russian diplomacy prevented any UN Security Council Chapter VII resolution specifically endorsing NATO airstrikes requiring NATO, in order to extend its October activation order indefinitely, to return to allied governments for unanimous approval under a cloud of Sino-Russian claims that NATO airstrikes were precluded via seisin of the matter by the UN Security Council notwithstanding its inaction there­tofore and, alternatively, violative of the geographic limits of the NATO Charter.

3. Enter the Alliance: “Last Hurrah” for the Regional Organizational Approach, or “With or Without WEU”

Concluding that the whole of Chapters VII and VIII of the UN Charter belonged to the political realm and were incapable of measurement by traditional legal instruments, NATO, rather than turn to the unreliable WEU, elected for the first time in its history to progressively interpret the UN Charter to couch its threatened offensive military action against a sovereign state as a humanitarian intervention by a multilateral organization in a situation of grave human rights violations. Sino-Russian obstructionism imploded in the increasingly irrelevant UN, and internal divisions mended themselves within the Alliance. Soon, U.S.-led Western diplomacy backed by credible NATO military threats drove the Serbs on October 25 to accept the Holbrooke Agreement, to dismantle roadblocks, and to retreat into their barracks and ushered Kosovar Albanians back into their villages under a new and more durable cease-fire agreement to which the UN Security Council accorded its imprimatur.

Nevertheless, experience had taught the West to be cautious of Serbia, particularly in the absence of a permanent agreement enforceable through a military balance of power and in a climate where

adherence to the inviolability of the borders of Kosovo simply would solidify the Serbian claim while perpetuating ethnic animosity.287 Whereas the West had succeeded in backing cohesive diplomacy with a credible military threat, there were no Western troops on the ground to prevent an endless string of broken cease-fires should Yugoslavia seek to renegotiate the agreement. Further, Russia had been relegitimized and reinvigorated as a great power by Dayton and now appeared poised to launch a drive to exploit any power vacuum the West allowed to develop in Eastern Europe. Russian fervor in support of the Orthodox faith and the Slavic people could not be precluded forever, and the deep and unrelenting doubts over the intentions of Russia and its Serbian ally bled into Kosovo despite the uneasy truce that held intermittently throughout the remainder of the year.

B. European Break from the Alliance? From WEU To a European Army

1. Legitimating the European Security and Defense Initiative

Recognizing that the Kosovo affair was unfinished business, the EU, with its familiar tired refrain directed this time by an alliance of the Labor-governed UK and France, called its first-ever meeting of defense ministers on November 4 to consider once again how its members might strengthen cooperation in the defense arena without undermining NATO. All agreed that Western Europeans “simply have to be willing and able to come to grips with European crises and conflicts, if necessary by our own efforts—before hundreds of thousands of people have been killed and millions have been driven from their homes” and that a “more effective military capability” was necessary to “give the EU a stronger voice in the world” through a “real” CFSP.288 The defense ministers, in addition to their call for closer EU links with the WEU, agreed that better coordination of multinational forces and more harmonization of defense procurement through the WEU were essential to achieving rapid reaction operational capacity so that when the EU decided upon a collective political will it would be “connected to a system and a capability that can deliver.”289 Non-EU members of the WEU, concerned that the EU was attempting to undermine the role of NATO as the primary consultative platform for

289 Eyal, supra note 230, at 304.
problems concerning European security and defense, found no reassurance in the first-ever joint NATO-WEU seminar on crisis management held in Brussels in early February 1999 for, in the period preceding the April NATO Washington Summit, the Chairman of the WEU Assembly, Luis Maria de Puig, proclaimed that the joint WEU-EU objective would be to adjust institutional arrangements and define common interests to produce an effective independent action plan to “break the monopoly of the U.S., which is trying to resolve the Kosovo problem in its own way.”

2. Collapse of Rambouillet and Implosion of the European Pillar

An uneasy truce lasted for most of the winter throughout Kosovo; however, when renewed negotiations held in Rambouillet, France under the auspices of the French and British-led Contact Group produced the Rambouillet Accords (Rambouillet), the Kosovo Crisis reached an unresolvable impasse. Thus, on March 19 the Contact Group concluded that discussion would end unless the Serbs accepted Rambouillet and that, while remaining seized of the issue, the Contact Group now would turn the matter over to NATO for military action.

With the WEU having failed to anticipate and stave off the Kosovo Crisis, and with EU diplomatic efforts through the Contact Group defeated, once again Western Europe forfeited an independent role in resolving a European crisis to the U.S-dominated NATO Alliance. So abominable was the role of CFSP and the WEU in articulating and exercising even a limited common role in combating lawlessness and upholding minimal humanitarian standards that the WEU Secretary General, Jose Cutiliero, pronounced the continued existence of his organization in jeopardy and encouraged claims that the WEU had succeeded only in teaching Europe and the rest of the world that the U.S. was the key to European stability.

An even greater source of disconsolation was the failure of the European members of the Alliance to preserve solidarity within the Alliance as to the optimal military strategy to be employed to force Yugoslav capitulation to NATO demands. Claiming as its lodestar the fulfillment of an obligation to avert a humanitarian disaster and prevent a wider conflict, NATO, now wholly under the strategic direction

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of the U.S., initiated Operation ALLIED FORCE on March 24 with the tactical application of coalition airpower against specific military and industrial targets in Kosovo and "Serbia proper" for the express purpose of degrading the military capacity of Yugoslavia and securing the conditions for peace. In a national address justifying U.S. participation in the NATO action, President Clinton explained that "we learned that in the Balkans, inaction in the face of brutality simply invites more brutality, but firmness can stop armies and save lives" and that the U.S. and its allies "must apply that lesson in Kosovo" and "stand united for peace." Nevertheless, by indicating that a ground invasion of Yugoslavia was not under consideration, the Clinton Administration inexplicably violated a key military principle that proscribes indicating intentions to an opponent and in so doing gave a green light to further genocide by the JNA. When the murder and expulsion of ethnic Albanians expanded exponentially in late March and early April, European NATO members could not agree to a land invasion as was necessary to comport with Alliance decisional rules as well as to permit the assembly and deployment of forces with adequate time to complete the mission prior to the onset of the Balkan winter. Worse, insufficient unified European political will prevented the Alliance from damaging the Serb military sufficiently to force a genuine surrender. As the air campaign wore on without demonstrable success, European states began to soften their support, with France, Belgium, Italy, and Greece openly calling for a halt to the bombing. Only the UK stood ready to unconditionally support the Alliance.

By late May, only the UK openly discussed the need to dispatch ground forces in anything other than a peacekeeping capacity, promising to do "whatever it takes" to create an honorable peace, and suggested the possibility of a European invasion even in the absence of a vacillating and squeamish U.S. However, whereas the Netherlands, Norway, Spain, and Denmark weakly backed the current strategy, Germany publicly opposed the use of ground troops, Portugal ruled out the use of its troops in a ground campaign, and Hungary ruled...

292 President's Address to the Nation on Airstrikes Against Serbian Targets in the Federal Republic of Yugoslavia, 35 WEEKLY COMP. PRES. DOC. 516 (Mar. 29, 1999).
293 Id.
out its territory as a staging point for an invasion. Despite the claims of NATO Secretary General Javier Solana that the air campaign was working and should be continued, U.S. critics proclaimed that the bombing was a failure and that future success was unlikely. Although NATO officially announced that the Alliance was holding together, cracks became chasms with the May 27 ICTFY indictment of Milosevic for planning, instigating, executing, and aiding deportation and murder of Kosovo Albanians. This indictment forced U.S. Deputy Secretary of State Strobe Talbott, Russian Special Envoy Viktor Chernomyrdin, and Finnish President Martti Ahtisaari, currently discussing a political settlement, into the awkward situation of negotiating with an indicted war crimes suspect. The U.S. insisted, over the objections of France and several other Western European states that Milosevic be captured and surrendered for trial as part of any resolution to the Kosovo Crisis. When Yugoslav forces breached Dayton with impunity by forcing entry into Bosnia to temporarily detain and interrogate six NATO peacekeepers on May 30,\textsuperscript{296} it became apparent that not only would NATO lose the war in Kosovo and fail to prevent the collapse of Dayton and the resumption of wider armed conflict across and even beyond the Balkans, but also that the very future of the Alliance under U.S. leadership hung in the balance. As the British Defense Secretary George Robertson was forced to conclude, "[i]n Kosovo, we have all come face to face with the European future, and it is frightening."

3. Cologne Undercuts the Alliance but "Rescues" United Europe

As the Alliance teetered on the Kosovar fulcrum, EU leaders huddled in Cologne for their annual midyear summit on June 3 with their official agenda the long-term economic development of the Balkans as a means to bring the region closer to the European political mainstream. However, sterner subjects dominated the discussions. With the reduced U.S. presence in Europe no longer mesmerizing its leftist/federalist member governments, the UK no longer so paranoid about Europe, Germany able to deploy troops abroad, and Europeans maintaining more soldiers under arms than the U.S., the EU found the impetus to construct the Europeanist "post-Washington" era of


\textsuperscript{297} Cohen, \textit{supra} note 295, at A12.
common European security on a “London-Paris-Berlin” axis. Consequently, on the opening day of the Cologne Summit (Cologne), the EU, unwilling to accept a NATO-derived ESDI with “all the military significance of an air ambulance and over which it would have no real political control beyond the capacity to ‘request’ the WEU to conduct this or that operation,” brushed aside earlier Atlanticist suggestions to merely reinforce the partnership with an autonomous WEU and Europeanist suggestions to strengthen the legal power Amsterdam granted the European Council in tasking the WEU, brashly declaring instead that it would capitalize upon Maastricht and radically overhaul the Alliance to end the “senseless triple co-existence” of NATO, the EU, and the WEU by incorporating the twenty-one nation WEU within the EU in order that its use as a NATO CJTF backed by a CFSP would come to be seen on both sides of the Atlantic as preferable to the ineffectual ad hoc coalitions deployed in Bosnia and now Kosovo.

Further, in recognizing that the historic unwillingness of its members to make the expenditures necessary to develop strategic airlift and intelligence-gathering and analysis capacity or joint command-control prevented emergence of a serious ESDI, with Cologne the EU resolved that Western European members of NATO would shed their reliance on U.S. airlift and intelligence assets. Accordingly, EU Member States resolved to give the European Union the necessary means and capabilities to assume its responsibilities regarding a common European policy on security and defense by disposing of the need for the WEU by the end of 2000 through development of convergence criteria and Council supervision of firm juridical and political commitments to govern institutional convergence of the two institutions.

Although the EU quickly and adamantly denied any attempt to undermine NATO, and despite the earlier conclusion by NATO Secretary General Javier Solana that the move would “strengthen the European defense status” and “pave the way for a more mutually bal-

302 See DINAN, *supra* note 33, at 85.
anced security partnership," in fact, with U.S. engagement no longer guaranteeing all its security needs, the EU boldly chose operational independence by agreeing to eliminate dependency on the NATO-CJTF concept, develop a legitimate ESDI, incorporate the WEU within a supranational European defense effort, and transform its political structure in the direction of a federal European superpower. With Cologne, the European pillar took a giant step toward military independence by formally creating EUROCORPS as a permanent multinational FAWEU standing force of 60,000 headquartered at Strasbourg. As additional evidence of its independence, the EU further eroded NATO primacy by claiming Solana its first foreign policy czar and granting him the authority to act independently on behalf of the EU in diplomacy and defense matters.

Although Cologne presented little more than a cumbersome and opaque vision for a future independent European response to a regional crisis, its gist was unmistakable: Europe claimed to be serious, at least to the level of detailed theoretical explication, about taking independent politico-military command and control of the strategic direction of future European regional crises and about spending whatever vast resources this would require.

C. The Kosovo Peace Plan: The End of NATO As We Knew It?

The cornered U.S.-led NATO accepted on June 3 the Ahtisaari/Chernomyrdin Plan (KPP) drafted by the Group of Seven industrialized nations and Russia to preserve the Alliance and present the fiction of victory. Although KPP guaranteed in theory each of the points for which NATO had initiated Operation ALLIED FORCE and resembled Dayton in terms of a scheduled deployment of fifty thousand NATO peacekeepers with responsibilities for national reconstruction and repatriation of hundreds of thousands of refugees, and although the mandate for international supervision of civilian implementation was issued under the coercive authority of Chapter VII, Chinese efforts to dilute the NATO role resulted in the weak language that provides that the "essential NATO participation ... under a unified control and command and authorized to secure [a] safe environment for all the residents in Kosovo and enable the safe return of the displaced persons and refugees to their homes" will occur not un-

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303 Deutsche-Presse Agentur, May 10, 1999, at 1.
304 Buzan, supra note 8, at 36.
305 See Gordon, supra note 244, at 131–32.
under NATO supreme control, but rather under the "auspices of the UN,"306 thereby subjecting the implementation efforts of the Kosovo Implementation Force (KFOR) to Chinese and Russian vetoes in the contentious Security Council. Moreover, as a further demonstration of the hollowness of the "victory" of a divided NATO, Resolution 1244 (1244), essentially Rambouillet reformatted, might have been secured had further negotiations within the Rambouillet framework been pressed past Russian objections by the Contact Group in March. Most distressing of all, no sooner had the ink dried on the Russian-drafted 1244 than the conduct of the supposedly vanquished Yugoslav government called into question whether it would be possible without ground combat to create essential autonomy and an economically secure future for repatriated Kosovo Albanians under the de jure control of the government that had terrorized them in the first place and was now claiming victory over the very forces sent to protect them.

On June 14, the inability of either the UN or NATO to quash Russian demands for a role in the enforcement of KPP, independent of the KFOR command, invited an armored column of Russian "peacekeepers" to block the access of forces sent to secure the Prishna airport despite the assurances of the Yeltsin government that Russia would not dispatch troops unless and until a participation agreement was reached with NATO. By early July, Russia felt emboldened enough by NATO disunity to attempt to force a revision of the June agreement to permit the stationing of its forces in sectors of Kosovo controlled by NATO member-states and, thereby, to dilute the tenor of NATO operational command.

By mid-July, running gun battles, sniper attacks, and grenade and mortar bombardments on military and civilian targets had broken out across the U.S. sector, and it became clear to U.S. Chairman of the Joint Staff Shelton, U.S. Defense Secretary Cohen, and KFOR field commanders that the traditionally equipped and trained peacekeeping forces would require the rapid augmentation by a local police force promised in Rambouillet, but theretofore absent in Kosovo. With the UN imposing upon KFOR to not only preserve the cease-fire but also to provide police services and run aspects of a civil administration the UN had yet to launch, the frustrated Clinton Administration soon waxed critical: Defense Secretary Cohen and General Clark

blamed NATO allies for having hindered the logical prosecution of the war by failing to preserve outward political consensus while chas­
tising European members of KFOR for compromising even the poor peace NATO had secured by cutting defense budgets and refusing to assume a proportionate share of the military burden. Furthermore, the framers of KPP, by failing to specify with precision the final status of Kosovo and the mechanisms whereby NATO protection of ethnic Albanians would prove so seamless and efficient it would obviate the need for any armed KLA presence, sowed the seeds for the perpetual renegotiation of their peace plan. As Sullivan remarked,

like the Dayton agreement that brought peace to Bosnia, Kosovo’s vague peace plan promises different things to different parties to the conflict. To the Belgrade government, the plan means Kosovo will remain an integral part of Yugoslavia. But, to the Albanians, the plan represents a step toward independence. Already the different interpretations are causing problems. For one thing, the Kosovo Liberation Army (KLA) has no intention of giving up its fight for a Kosovar state. . . . Though the agreement with Slobodan Milosevic that NATO has been sent to implement did not include this option, the guerrillas had not been consulted, let alone included, in the bargaining—so they can justifiably claim not to be bound by it. Indeed, from the moment the Serbs agreed to the peace plan, the KLA made it clear that it had no intention of giving up its weapons. . . . In fact, rather than demilitarization, the KLA seemed to think that NATO is planning to turn the rebel force into a professional army.307

By late July, Kosovo was slipping into the type of anarchy that had characterized Albania for a decade, as the KLA made no efforts to prevent ethnic Albanians from seeking revenge against the remaining ethnic Serbs. The incompetence of KFOR was made manifest by the July 30 murders of fourteen Serb farmers and the July 31 demolition of a Serbian Orthodox church in Pristina. By the start of August, Yugoslavia had begun to amass troops on the Kosovo border and was demanding of KFOR the right to dispatch JNA forces and Serbian police to accord ethnic Serbs and Serb religious sites the protection KFOR appeared unable to provide. KFOR member governments, un-

willing to learn the lessons of Dayton and more aggressively enforce the peace, risked forever forfeiting the opportunity to capitalize upon the cease-fire with democratization and refugee return. Russian forces, however, detained KLA Chief of Staff Agim Ceku on July 31 prompting KLA Commander-in-Chief Hashim Thaci to warn that ethnic Albanians, enraged at the presence of Russian forces in KFOR, would defend themselves.

The longer refugees remain underserved, ethnic tensions remain high, force remains the sole convertible currency, and KPP goes unimplemented the more the prospects for a more peaceful Balkan future dim and the less certain becomes the very continued existence of NATO and the European regional collective security system the U.S. continues to shepherd. Whatever transpires in the near-term future, the failure of KFOR to aggressively implement KPP dictates that not only Kosovo but also the destabilized and economically stagnant Yugoslav successor states as well will remain a diplomatic headache for foreseeable future and that progress toward the $31 billion implementation of economic rehabilitation and refugee return will remain a chimera. Thus, not only will the disingenuous and dishonorable “peace” the EU and the WEU bequeathed Kosovo by default prove crushingly evanescent, but ultimate victory over the forces of disorder will require far more challenging and onerous commitments than the fickle West and its fractious security institutions have proven able and willing to undertake in what history may come to call, in part as a result of their inadequacies, the end of the post-Cold War era.

CONCLUSION

Since its founding in 1948, the WEU has been captive to the vicissitudes of the Atlanticist-Europeanist Great Debate over the architecture and purpose of Western European collective security and, thus, has contributed little to the resolution of the two existential questions regarding the aspirational notion of a United Europe: whether Western Europeans could accommodate their national sovereignties to a CFSP and, if so, whether they should expend the resources to build the military infrastructure required to relieve the burden on the U.S.,

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308 Now, Bill for Rebuilding the Balkans, WORLD PRESS REV., Sept. 1999, at 14-15. The economic costs of intervention are as follows: repair of Nato bomb damage, $99 billion; peacekeeping forces, $4.2 billion per year; economic reconstruction, $29 billion for the first five years. Id. In short, the total cost for the reconstruction and democratization of the former Yugoslavia may well exceed $100 billion. Id.
lead Western Europe from beneath the shadow of NATO, and transform a customs union with some judicial functions into a truly sovereign federal state with complete international personality. With the collapse of the European Defense Cooperation, the first of a series of failed Europeanist proposals for an enhanced ESDI external to NATO, it appeared Europe had answered these interconnected inquiries in the negative. By the mid-1950s, the Alliance was cemented by the accepted wisdom that any development of ESDI outside the subordinate WEU forum would weaken the U.S. commitment to Western Europe through NATO, which alone could manage capably the high politics of defense and security while the European project tended to economics and commerce. With the trans-Atlantic bargain, Western Europe, still recovering from the devastation of World War II, accorded the U.S. the role of undisputed hegemonic leader and the concomitant freedom to dictate the governing political and military strategies of Western European security in exchange for the right to free-ride as to the defense burden. However, French aspirations, Western European economic recovery, and renewed self-confidence conjoined to prevent the total sacrifice of European security and defense independence upon the altar of U.S. primacy. Over the next two decades, waves of contending Atlanticist attempts to stave off Europeanism and permanently resolve the cardinal questions at the core of the Great Debate were stymied by diametrically opposed Europeanist solutions which passionately if impractically advocated as sine qua non to the eventual integration and liberation of Europe a security and defense role apart from NATO. Although the WEU had slipped into a politico-military coma by the early 1970s, oil embargoes, trade wars, and U.S. global disengagement, by demonstrating the magnitude of the trans-Atlantic policy gap and the potential weakness of the U.S. commitment to the conventional defense of Europe through NATO, opened the door to new discussions regarding a “European voice” in security and defense. With the intensification of the Cold War and the subsumption of distinct Western European concerns within the superpower confrontation, the Western Europeans shook the WEU out of its decades-long slumber.

Although Article VIII of the Modified Brussels Treaty allowed the WEU to act out-of-area, without particularly strong or widely-shared sense of ESDI and without a CFSP to guide its tasking, the WEU was exposed as a Europeanist fraud. In succeeding months, the WEU was left to call a succession of summits and meetings wherein it issued a series of weak declarations representing little more than the lowest common denominator of nationally-defined interests that did nothing
to rectify problems in the CFSP process or substantively advance European integration even as to the political aspects of security. Moreover, fiscal crises confined the WEU within the NATO cage. Deflated Europeanists could offer only mild protests when the Alliance, in shaping its decidedly Atlanticist vision for the post-Cold War Western European security system, confined the prospective WEU contribution to facilitating relations with those members of the EC not yet members of the WEU.

However, the explosive profusion of security threats, in particular the dissolution of Yugoslavia, upset the post-containment Alliance consensus and paralyzed interlocking security institutions. The U.S. and UN called upon the EC and its institutions to summon a CFSP fit to the peaceful resolution of the brewing conflict. However, the optimistic Europeanist majority, busy crowing about Europe’s “finest hour,” miscalculated the degree of political cohesion required to shape the behavior of the recalcitrant actors in the Yugoslav crisis, and U.S.-condoned efforts to position the WEU as the principle international collective security organization in post-Cold War Europe succumbed to the parallel Atlanticist-European battle for primacy in the overarching process of European integration. In such a milieu, the EC institutional requirement of foreign policy-defense unanimity exacerbated national policy divergences and, in concert with risk aversion, fears of Soviet sabre-rattling and of a fundamental inability to synchronize a CFSP prevented the European pillar from tasking the WEU. Although Maastricht and TEU forced EC members to commit to a CFSP that they could support actively, these latest integrative measures provided the WEU not with a mandate but rather with guidelines on adaptation to NATO primacy. Thus, when the U.S. stubbornly clung to its refusal to commit U.S. ground forces even after the discovery of credible evidence of genocide, the frazzled EC, itself terminally wedded to the politically and morally bankrupt Vance-Owen partition plan and paralyzed by internal strife, busied the WEU with nothing more significant than the symbolic enforcement of embargoes.

With assertive European multilateralism mortally wounded in the Balkan hills, the WEU reached the obvious conclusion that, in the absence of even a lowest-common denominator CFSP to guide the EC, it had no role in Bosnia. Without politico-military crisis management capability, diplomatic recognition became the sole instrument with which the EC could condition the outcome of war in Bosnia. However, recognition only served to accelerate the ferocity of the ethnogenocidal inferno. With its post-recognition refusal, despite over-
whelming military superiority relative to the Bosnian Serbs, to inter­
vene to break the deadly siege of Sarajevo forfeited any claim to moral
legitimacy, catalyzed Serb butchery, and terminated hope for further
participation in the resolution of the war. Most distressingly, by refus­
ing for two years to admit to its diplomatic blunders and remove its
national forces from UNPROFOR in order to force the U.S. to enter
the arena and implement the NATO lift and strike plan, the Euro­
pean pillar facilitated U.S. erosion of Alliance credibility, revealed that
first-order politico-military problems such as Bosnia were beyond the
ken of United Europe, and doomed several hundred thousand people
to death. Bosnia was nearly catastrophic not only to the survival of the
WEU and the Alliance but also to the peaceful and just evolution
of the post-Cold War security system in Europe: unable to develop a
CFSP to guide deployment of the WEU or to admit its own incapacity,
the EU ratified military aggression and forcible population transfers,
ushered Russian influence back into the Balkans and, by encouraging
Milosevic, all but guaranteed the Kosovo phase of the conflict.

Nevertheless, despite the stunning carnage in the wake of its sec­
ond dramatic failure to positively manage an out-of-area crisis, the EU
fumbled fleeting opportunities to prevent future Bosnias by burying
the Atlanticist-Europeanist debate and to remedy intra-Alliance rifts,
choosing instead to dither its way through Amsterdam by avoiding
both the Scylla of substantively amending CFSP procedures and in­
corporating the WEU or the Charybdis of committing to loyal Alli­
ance service as a more robust European pillar. The abject failure of
EU diplomacy to stave off bloodshed in Kosovo through interposition
of the WEU forfeited to the U.S.-dominated NATO Alliance any inde­
pendent role for Europe in resolving yet a third out-of-area crisis.
Worse, the political disintegration of the European pillar over the
harrowing issue of ground combat in the treacherous Balkans forced
a tottering Alliance at the derivative cost of thousands of additional
Kosovar Albanian lives.

A specter is haunting Europe: a specter of tepid and unreliable
U.S. unilateralism, and there is no reason to suppose that multilateral
institutionalism holds the key to the resolution of the future brushfire
ethnic conflicts sure to erupt in the post-post-Cold War European pe­
riphery now that Western institutional failures have “given heart to
the wicked.”309 In the absence of the unholy bipolar balance of terror,
these peripheral crises may prove much more intractable than previ­

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309 MOUSAVIZADEH, supra note 83, at 196.
ously has been the case. Whereas throughout the Cold War the international system was governed by elements of predictability and the behavior of the superpowers was constrained by a tacit code which emphasized communication, restraint, and flexibility to stave off nuclear holocaust, in the more multipolar contemporary world where threats are more diffused but less intense, the need to cooperate in order to survive is neither so axiomatic nor so obvious. Without a new bogeyman to which all simultaneously agree to transfer their defensive orientation, collective Western European defense institutions increasingly will assume the mantle and trappings of anachronism.310 In the post-Cold War Balkans, the Alliance shamefully sacrificed military strategy and even the most fleeting and cursory considerations of justice to a lowest-common-denominator consensus, cowering behind bland and oblique formulations so as not to offend the sensitivities of its enemies.311 Many observers believe that if NATO did not exist today, it would not be created—as the disasters in the Balkans illustrate, bipolar collective defense institutions are structurally incompatible with the practical as well as the moral catechism undergirding the management of the post-post-Cold War international system.

Under its current governance, the ethos of Roosevelt and Reagan has been doused with the sand of multilateral institutionalism and the U.S. has absolutely no strategy and no idea when to intervene, what resources to employ, or what vital interests to secure. So long as Americans are misled into believing “it’s the economy, stupid,” inattention to foreign policy will continue to hobble any attempt to resuscitate U.S. leadership, scholarship, and responsibility. Further, although due to its politico-economic exhaustion Russia cannot threaten a ground assault on Western Europe, to the extent the U.S. engages in foreign policy analysis, it is obsessed with the Kissingerian, Cold War-influenced notion that the fin de siècle represents a crux in world history in which preventing the return of imperial Russia is worth any price,312 even the unforced abandonment of Western principles of truth, justice, and liberty via the maintenance of the destructive fiction of a U.S.-Russian partnership in the preservation of European security. While the U.S. retains overwhelming military power, not only does its relative economic decline deprive it of the resources to respond to every security and humanitarian emergency around the

310 See Christie, supra note 32, at 223.
312 See Rowen, supra note 253, at 125–26.
globe, \(313\) but it also lacks even the political or moral will to defend its core values by positively shaping the critical post-Communist transition in Europe. Yugoslavia was the indirect forum wherein to determine the future dynamics of post-Cold War European collective security and, in particular, the role of the U.S. With its mishandling of the crisis

[t]he U.S. . . . betrayed almost every principle that it claimed its domestic and foreign policy values were based upon. . . . [B]y standing by and watching the subjugation of the Bosnian Muslims [and now the Kosovar Albanians], the clear message has been sent out to every aspiring despot that there is no new world order and that the use of force will not necessarily be challenged. \(314\)

Although Benjamin Franklin understood that in the “clash . . . between Civilization and barbarism” Europe and America, the “world’s great civilizations . . . will . . . hang together or hang separately.” \(315\) and although “[m]any Americans feel, with some justification, that, during the two world wars, their participation and that of their forefathers who rest in European cemeteries have earned them a permanent voice in European affairs,” \(316\) an economic revolution born of the end of the Cold War is altering some of the economic interests which bound the U.S. and Europe, and selfish domestic concerns predominate over military cooperation on both sides of the Atlantic.

[I]t was one thing for the U.S. to commit to, and spend heavily on, European defense to combat an evil empire whose forces were in the center of Europe; it is another to commit to allaying European uncertainties. . . . [O]ur presence creates an incentive for the Europeans to do less. . . . [T]he forces and money that we allocate to Europe might hurt our ability to deal with challenges elsewhere. \(317\)

The cardinal assumption underlying the Alliance—that a widespread agreement on the nature and severity of out-of-area threats as well as a functional consensus on how to address these threats would

\(313\) Luck, supra note 188, at 68.
\(314\) Duke, supra note 130, at 354.
\(315\) Bark supra note 25, at 4.
\(316\) Id. at 35.
\(317\) Rowen, supra note 253, at 137.
survive the fall of the Berlin Wall—has been falsified by Yugoslavia. Although U.S. ambivalence toward the emergence of a European challenge to its leadership of Western European collective security through NATO was responsible in part for the Balkan holocaust, Europeans much more than Americans bore the brunt of the failure of the balance of power twice this century. If the U.S. has elected to shrug off the heavy responsibilities of its superpower mantle in lieu of its old national security blanket, isolationism, Europeans are not unwise to heed their uncomfortable yet didactic history and accelerate a decades-long effort to redefine their collective security imperatives and devise institutional architecture to one day independently secure these distinctly European ends. In an era where a drift from universal security and norms augurs the growing salience of regional foci and institutions, if indeed there is to be collective security, Europe cannot continue turning to external powers for help lest its call either go unanswered or go answered by hostile parties dressed up as allies. Irrespective of whether the European push for independence alienates the U.S. or damages the Alliance, such will be the necessary price for the creation of an effective, reliable, post-post-Cold War European regional security institution.

No number of high-level summits or lofty declarations can substitute for the lack of common cause and political fortitude. Even if the EU is serious about achieving commonality as to the definition of security at the supranational level sufficient to create a vision of a peace-time CFSP operating in synch with a theoretical notion of ESDI, the drive for independence must be commensurate with the will to generate the capabilities necessary to exercise it responsibly. Any security institution that lacks military capabilities and the willingness to use them in pursuit of its objectives will be useless the next time the guns begin to roar and the lamps begin to go out all over some corner of the European hinterland. The attainment of international peace and justice requires the allocation of major capabilities and the willingness to make sacrifices of other objectives. While the WEU ably housed efforts to develop an ESDI during the Cold War twilight, provided outreach to the East, and served as the visible expression of the European commitment to NATO, by the early 1990s it was apparent that without increased political, military, and financial commitments from Western European governments, the WEU never would become more than a political expedient to deflect burden sharing criticisms while the U.S. defended Western Europe. With each humbling failure in response to a regional crisis, the WEU has survived not through complete institutional overhaul but by trumpeting its modest improve-
ments in paper commitments and logistical procedures.\footnote{Christopher Hill & William Wallace, \textit{Introduction, The Actors in Europe's Foreign Policy}, supra note 242, at 1, 13.} Should the U.S. recommit to Europe and the UN, the ever-vacillating EU ultimately may decide to retreat from Cologne, arrest the incorporation of the WEU, and revive multilateralism by buttressing European defense and security on complementary levels whereby the UN, OSCE, NATO, and the WEU, with their specific competencies clearly defined, would coexist and cooperate on the basis of the interlocking institutions paradigm.\footnote{See VAN EEKELEN, supra note 4, at 309.} Similarly, political stagnation or a change of heart may yet deprive the WEU of the clear political mission, the clear chain of command and control, and the operational means to correspond to the limits of potential future needs on the ground which it presently lacks.\footnote{ELINOR SLOAN, \\textit{Bosnia and the New Collective Security} 83 (1998).} Furthermore, another pendular swing in the political moods of the domestic electorates may usher a more nationalist or more Atlanticist philosophy as to security back onto the European stage. Regardless, should Western Europeans nevertheless act upon their cyclical and overblown optimism and institutional faith and charge past NATO to hang their hats upon the WEU without enhancing their own capabilities, the WEU, with the next major crisis, will become a martyr to the process of European integration, and the good it has accomplished likely will be interred with the bones of its soldiers in some foreign Golgotha.

Ultimately, although a catena of treaties, declarations, and summits attests to the enduring desire to subordinate nationalist and ideological rivalries to a supranational European defense institution which alone can exert constructive leverage on the major determinants of pan-European security problems in the absence of U.S. hegemony, no amount of tinkering about the edges of extant European security institutions will suffice. If the past is prologue, nothing suggests that any ambitious integrative project is within the grasp of the divided states of United Europe which, despite the end of the Cold War, are not yet post-sovereign. Although Western Europe finally has emerged from chaos to create a more intimate gathering of states which have managed to live for a half-century without the pervasive Hobbesian fear that any of them would use military force in relation to one another, the classical issues of security and war remain central to the divergent calculi of the individual states comprising the EU. The unwillingness of the critical triumvirate to define common politi-
cal and security interests to underpin combined operations has prevented the increasingly heterogeneous and neutral EU from acquiring international personality despite its success in fostering a high degree of economic integration. Unlike lower-order issues where divergence and dissent are not categorically proscribed in the interest of system stability, common defense is "deadly serious: it must be a matter of deeds, not words, of deep reaching solidarity, and not simply the highest common denominator."\textsuperscript{321} With the recession of the Soviet threat, the motivation of Member States to continue in interdependent foreign policy and military relationships and make the expenditures necessary to bolster national forces is going the way of the Berlin Wall.\textsuperscript{322} While much is made of the historical, cultural, and civilizational ties which bind the Member States and recommend a collective normative vision of international order,\textsuperscript{323} cooperation in security policy "comes through hard-won experience, including shared failures; it cannot be bought off the shelf."\textsuperscript{324}

The EU has been categorically unable to abandon state sovereignty and culture and bury institutional and intra-European rivalries which prevent emergence of a common security and foreign policy climate that must precede the generation and endowment of a functional supranational European defense organization capable of managing genocidal ethno-nationalist crises in its periphery. This failure portends ill for the future, for although the bombast still echoes in Cologne, leftist governments will find it impossible to deliver both guns and butter. The problem is not a question of drafting the proper treaty or spending enough on defense or revising decisional procedures. Rather, the dilemma facing the EU is an existential one: Europe must decide what it wants to be when it grows up, and it must decide quickly. Unless the EU summons the strength to cut through a confluence of contrary political, economic, legal, and social forces and create by treaty a robust executive with the courage and means to privilege defense over social welfare, European foreign policy will remain the jejune, disjointed sum of the policies of its increasingly neutral and narcissistic individual states, while the EU, "still a civilian power whether it wishes to be or not" and "unable to shape the world

\textsuperscript{322} Cornish, \textit{supra} note 202, at 753.
\textsuperscript{323} CHERNOFF, \textit{supra} note 254, at 251.
\textsuperscript{324} Id.
in which it lives" no matter how much economic integration it facilitates, will risk becoming a pawn of external actors and spectator in a time of great danger and evil on its own continent. If this transpires, far from constituting a new pole in the world system, the EU will discover to its dismay that the policy instruments of a trading club are useless and, with military force the sole available option, its members, like the tragic Scot MacBeth, lack the "spur to prick the sides of [their] intent."

It is important to note that the vow taken by so many upon learning of European genocide during World War II, "[n]ever again," has been defiled by the largely unopposed repetition of the ghastly phenomenon a scant fifty years later. Nothing relative to post-post-Cold War European security is absolutely predetermined, and it is "banal to conclude that the . . . future will evolve in a manner largely independent of our wishes and designs." Although the task ahead is fraught with hardship and "outcomes depend for their achievement on precise conjunctions of procedures, men, and issues," Europe simply cannot throw up its hands in defeat and count upon the declining U.S. to save it from itself. Unless future generations of Europeans are content to suffer the horror and ignominy of continental genocides in silence, they must insist that the EU begin at once to conduct itself as the United States of Europe rather than as Europe's new sick man.

**Post Script**

At the Helsinki Meeting of the Council of the EU in December 1999, the EU Member States adopted a Headline Goal which committed national militaries to endow the EU with the capacity, by 2003, to deploy and sustain a European force in support of future Petersberg operations where NATO as a whole elected not to engage. Although in Helsinki the Europeans continued to assert that ESDI represented a capable and effective European pillar, an intellectual position buttressed by the merger of the roles of EU High Representative for CFSP and Secretary General of the WEU in the person of Dr. Javier Solana, Member States were quick to differentiate the Headline Goal from any genuine effort at defense independence of NATO: the

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325 Coker, supra note 72, at 24–25.
327 Treverton, supra note 23, at 1.
Headline Goal excludes an “unnecessary duplication” of NATO structures and explicitly rejects the creation of a European Army, while NATO Secretary General Lord Robertson stressed that “more Europe” will not lead to “less NATO.”\textsuperscript{329} Although the WEU and NATO recently have begun to converge institutional and policy frameworks in theory\textsuperscript{330} and plan to prepare for a more coordinated, robust, and effective response to future out-of-area crises,\textsuperscript{331} the anvil upon which hopes for a better future remain to be forged—or broken—remains the willingness of the Europeans to commit the resources, political and financial, to build the sort of force structure capable of deterring or defeating future foes. As Lord Robertson, Secretary General of NATO, cautions,

[T]o maintain NATO’s credibility, we need effective forces. . . . It means air forces and navies with precision guided munitions. It means command and control systems that allow for efficient and effective operations. It means forces that can move fast, hit hard and then stay in the field for as long as necessary. And it means that these capabilities are shared across the Alliance, not just in one or two of the most advanced members. Developing these capabilities takes money. . . . \textsuperscript{332}

In an era when U.S. military commitments to Europe are less broad and deep than in the past and when the historical analogies of Bosnia and Kosovo are available to potential malcontents in Central and Eastern Europe, whether the Europeans can summon the will to fund, train, equip, task, and deploy their military forces in response to egregious violations of human rights in their backyard well may be dispositive of whether, in fact, future Bosnias are like buses in that one will always be coming down the street.

\textsuperscript{329} Id.

\textsuperscript{330} On February 17, 2000, CMX/CRISEx 2000, the first joint WEU/NATO crisis management exercise, was held to improve WEU crisis management procedures including collective consultation and management and to determine the practicalities of transferring NATO assets and capabilities to WEU. See NATO Fact Sheet, CMX/CRISEx 2000, available at http://www.nato.int/docu/facts/2000/mhtisex.htm (last modified Aug. 9, 2000).

\textsuperscript{331} See “NATO’s New Agenda: More Progress than Meets the Eye,” Remarks by The Rt. Hon. Lord Robertson of Port Ellen, Secretary General of NATO, SACLANT Symposium, Reykjavik, Iceland, Sept. 6, 2000, available at http://www.nato.int/docu/speech/2000/s000906a.htm (last modified Sept. 6, 2000) (noting the “growing cooperation between NATO and the EU in strengthening European defense” and the development of institutional procedures to share classified information).

\textsuperscript{332} Id.