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6

DIVIDED RESPONSIBILITY: NATO, THE EUROPEAN UNION, AND EUROPEAN DEFENSE AFTER THE COLD WAR

Samuel Jubelirer

I. INTRODUCTION

Throughout the Cold War, NATO and its European members had a relationship in which their respective tasks were distinct. NATO was to be responsible for the territorial defense and military integration of its members, and the various incarnations of the current European Union were to be responsible for the political and economic integration of their members.¹ When the Cold War ended, the threat of a large-scale attack on the territory of a NATO member state virtually evaporated, and with it, NATO's *raison d'être*. Conversely, the EU has been more able to further nonmilitary integration among its members due to a shift in the security environment from military to economic and political security, and the combating of crime rather than the resistance to a possible invasion.² With security becoming based less on "hard," or military power, and more on "soft," or political and economic power, it appeared that NATO was no longer needed to secure the North Atlantic area.

When it eventually became clear that NATO would remain in existence, it became necessary to redefine its role in relation to the growing military capabilities of the EU, which were initially seen as being in competition to those of NATO. As new threats on Europe's borders flared up, however, NATO was still the primary security actor as the EU proved unprepared to deal directly with the growing violence in the Balkans.³ Eventually, as the EU moved towards the establishment of a European Security and Defense Policy (ESDP), it became necessary to establish formal military relations with NATO as the military establishments of most EU members were heavily intertwined with each other and with the United States through NATO. This paper will analyze the NATO-EU military relationship after the Cold War with attention paid to the important issue of differing interpretations of primacy in the European security area, and in doing so will address the complicated development of military agreements between NATO and the EU. It will furthermore present case studies of the negotiations preceding and conduct of several post-Cold War military operations carried out by the EU and their implications on the NATO-EU relationship.

This paper will argue that there is a clear timeline in NATO-EU military relations and that agreements between the two organizations reflect both the changing security realities in

Europe and the improving military capabilities of the EU. While not always perfect, NATO and the EU have created a relationship that allows them to work independently and alongside each other when and if agreement on such cooperation can be reached. It appears that for now, the EU retains the capability to independently conduct military operations, however limited in time and scope, but at the same time is ready, willing, and able to conduct operations in close cooperation with NATO. The recent problems with the development of the Airbus A400M long-range military transport aircraft⁴ are also evidence not only of the EU's military capability shortfalls, but also of NATO (and of United States) primacy in military logistics, without which operations, especially those in "out-of-area" theaters, are not possible. NATO's reluctance to undertake police-type operations is also of great import. Thus, the EU must rely on NATO assets to conduct large-scale or high-intensity ESDP operations; conversely, NATO must rely on the EU to conduct militarized law enforcement tasks in areas previously under NATO operational control.

II. NATO-EU RELATIONS IN THE 1990S⁵

Compared to today, NATO and the European Union had little official contact throughout the 1990s. The NATO-EU military relationship was not a salient topic for discussion between NATO and the EU before the end of the Cold War as NATO was recognized as the primary intergovernmental provider of European security. Developments in military policy in the EU after the end of the Cold War began in earnest in 1992, when the Western European Union (WEU),⁶ the Western Europe-centered security organization that would eventually become what amounted to the European Union's military arm, agreed on a set of capabilities that it should be able to call upon as a European mutual defense organization. These capabilities or "tasks" were agreed at a meeting of the WEU at the Petersburg Hotel near Bonn, leading to their naming as the "Petersburg Tasks." The Petersburg Tasks include undertaking humanitarian, peacekeeping, and crisis management missions, but not territorial defense, which continued to be left up to NATO. The Tasks were merged into the Treaty of Amsterdam (which amended the EU's founding treaty, the Treaty of Maastricht) in 1997 which took effect in 1999. This effectively merged the WEU with the EU.⁷ However, before this merger occurred, an agreement on military cooperation between NATO and the WEU would be concluded, the Combined Joint Task Force framework.

II.A. THE COMBINED JOINT TASK FORCE

The Combined Joint Task Force framework, or CJTF, was envisioned as a way and in the end, allowed the Alliance to resolve in large part its existential crisis that had been ongoing since the end of the Cold War. Its name is in reference to a task force, or a temporary military unit formed for a specific purpose, which is mounted jointly across multiple branches of a military (army, navy, air force, etc.), and which is made up of a combination of forces from multiple countries.⁸ Originated by NATO's military commander, SACEUR (Supreme Allied Commander Europe) US Army General John Shalikashvili,⁹ and officially proposed in late 1993 by US Secretary of Defense Les Aspin, the CJTF arrangement would allow NATO member states to undertake military operations, using NATO resources, and without involving all NATO members. The main idea of the CJTF was to provide a formal way for subsets of NATO members to cooperate militarily through NATO in a non-Article 5 operation, because either the theater of operations did not include a NATO member (so

no Article 5 provisions could apply)¹⁰ or because the Alliance as a whole could not formally agree on an undertaking, keeping NATO from acting at all.¹¹

An example of problems of this sort faced by NATO in the 1990s were the disagreements among the United States, the United Kingdom, and France regarding the former Yugoslavia prior to NATO's eventual intervention in August 1995 in Bosnia. Various proposals had been put forward regarding a NATO intervention before this time, but inability to reach an agreement on the proper method (airstrikes, ground operation, etc.) kept any plans from moving forward, in addition to "paralyzing" the North Atlantic Council and severely hampering its ability to carry out the day-to-day operations of the Alliance.¹²

The proposal of the CJTF was an acknowledgement of several facts: first, that NATO's main purpose was no longer its only important one, that is, the collective territorial defense of member states. Second, it acknowledged that NATO was a useful and appropriate body to conduct smaller-scale peacekeeping-type operations that may not have interested or had an impact on all members, and third, that there existed non-state or intrastate threats to transatlantic security. One of the problems before the creation of the CJTF, and one that it was in part meant to solve, is that large parts of the military capabilities of some members were always envisioned to be drawn from NATO, so parallel capabilities were never developed or were not developed to the point where an individual member would be able to act fully independently if it so chose (excepting, of course, the United States and to a lesser extent the United Kingdom and France). It was the case that if, for example, some European NATO members wished to undertake a peacekeeping operation, there was no mechanism for them to have recourse to NATO assets which, if given, would have enabled them to undertake the operation. This problem was exacerbated by the two facts that all NATO member states must agree on any decision to use (or, in this case, provide for the use of) force, and that there are NATO member states who were not members of the European Union and were therefore not covered by the defense capabilities of the WEU.

The creation of the CJTF represented a major shift in Alliance policy which throughout the Cold War had been that NATO should act unanimously or not at all.¹³ The removal of the need for unanimous Allied action (but not of unanimous Allied approval) in the CJTF framework appeared to create the possibility that NATO assets could be used by the WEU to the detriment of a NATO member state as the two organizations' membership rolls were not perfectly overlapping. This concern was eventually resolved in agreements concluded in the early 2000s, as described below.

II.A.1. CJTF Development: Different Directions

It is possible to divide the discussion on the possibility of a CJTF framework into three camps: *Atlanticists*, led by the US and the UK, *Europeanists*, led by France, and *Euroatlanticists*, led by Germany.¹⁴ Arguments put forth in strong favor of a CJTF framework were stated by *Atlanticist* countries. They still saw NATO as the primary security organization in Europe, and their support for the CJTF was viewed by some as a "preemptive strike" against a burgeoning European Security and Defense Identity (ESDI)¹⁵ and a more independent WEU. In their view, an independent ESDI and WEU would violate the principle of "separable but not separate,"¹⁶ a goal stated in the unanimously-approved declaration released after the 1994 NATO Heads of State and Government meeting. This idea intended that there should be an independent European (WEU) capability to act militarily, and that these capabilities could include the use of NATO assets, but that they should not be permanently

separate from capabilities already possessed by NATO. The only way for that to happen, of course, would have been for the WEU to build duplicative permanent structures for their own use, which is exactly what the *Atlanticist* states were trying to avoid.¹⁷

The *Europeanist* view is simple to explain: the WEU should be able to act completely independently without any outside assistance or intervention. This would obviously require duplication of existing NATO assets and capabilities. France, a longtime critic of the “organizational” part of NATO, led this view and continued to block progress on development of the CJTF until, facing drastic cuts in defense spending at home and among other WEU allies, it realized it could no longer realistically support the development of structures and assets completely separate from NATO.¹⁸ *Euroatlanticist* states were interested in an expansion of both NATO and WEU capabilities and were initially uncommitted to a single proposal.

The structure of a CJTF was fairly straightforward, but the development of its structure was mired in controversy. In general, officers participating in a CJTF would be assigned to a NATO installation as part of a CJTF “nucleus,” and would be “dual-hatted,” that is, they would at once be serving as officers of the NATO installation to which they were assigned and as officers in the CJTF chain of command.¹⁹ The political and military chains of command were some of the most controversial elements of the CJTF framework. France for its part resisted the American notion that a CJTF would be ultimately be led by the SACEUR, always an American, and wanted to set up a separate chain of command and policy body that would oversee CJTF deployments. The “separable but not separate” argument was again used by the US in its opposition to creation of new political and military command structures, which would allow the US to remain involved in every decision to use NATO resources, even if it ultimately chose not to participate in the operation at all. The US proposal was to set up committees within the existing North Atlantic Council to oversee crisis management and peacekeeping policy. This particular disagreement stalled progress on the CJTF framework for over two years.²⁰

Following France’s decision to move closer to the Alliance in mid-1995, an agreement on the CJTF moved closer to completion. Eventually, France was the only major player remaining in the *Europeanist* camp, with both the UK and Germany supporting the US vision of the CJTF.²¹ As the completion of the agreement neared, however, Chairman of the Joint Chiefs of Staff General John Shalikashvili objected to the entire proposal as he was concerned that there was a possibility that France would, in a CJTF, directly control operations involving US forces. His objections did not stop the United States from proceeding with the plan.²² Finally, the US made a major concession to move the agreement to a conclusion: it dropped its insistence on CJTF command being part of the existing integrated military command, that is, it no longer insisted that the SACEUR would be part of the chain of command. It accepted the possibility of CJTFs being commanded from national military headquarters, provided they adhered to NATO standards and regulations. This removed the final stumbling block to the CJTF agreement.

In Berlin in June 1996, NATO foreign ministers signed a formal agreement on the CJTF. This agreement would permit the WEU to use US airlift (as the US was the major provider of NATO airlift capability), communication, and satellite intelligence capabilities, as well as NATO airborne early warning aircraft during CJTF missions. The Alliance would have to unanimously agree on the conditions of the release of its assets. The phrase “separable but not separate military capabilities” was part of the Final Communiqué of the Berlin meeting, showing the influence of the *Atlanticist* view on the agreement, and

NATO's Assistant Secretary-General for Defense Planning and Policy, a key military capabilities planner in the NATO political hierarchy, admitted that the CJTF framework would avoid the creation of "unnecessary, separate capabilities".²³ Successful exercises of the CJTF system were carried out in 1997 and 1998. While the Berlin agreement, which would lend its name to the later "Berlin Plus" series of agreements, established the members' willingness to provide for CJTF missions, arguments about ultimate political and military control over a possible CJTF continued at varying degrees of intensity until the conclusion of the Berlin Plus agreements in 2002.

As envisioned in the June 1996 Berlin communiqué, the CJTF framework had three possible operation types. First, there could be a "NATO-only" CJTF with a subset of Alliance members participating and using Alliance assets. Second, there could be a "NATO-plus" CJTF with some Alliance members participating alongside Partnership for Peace²⁴ states, using Alliance assets. The creation of a structure to allow non-NATO countries to contribute to and cooperate militarily with NATO was another important function of the CJTF framework. Last, there could be a "WEU-led CJTF" where the WEU would use a NATO headquarters and Alliance assets to conduct its operation.²⁵ This final possibility was the closest equivalent to what would later become the central point of the Berlin Plus agreements. Furthermore, this possibility would allow the WEU to use US airlift capabilities as assigned to NATO, materially involving the United States whether it wished to contribute national assets or not, beyond those already assigned to NATO (such as ground troops, armored vehicles, etc). Despite the possibility that this arrangement could require a significant commitment of resources by the United States, it was not seen as a problem. As a US Ambassador to NATO put it,

*No one has yet thought of a scenario in which the WEU would want to do something and America would oppose it. But, if you Europeans do want to borrow our intelligence, transport or communications capacity in NATO, please ask on a case-by-case basis: the answer is likely to be "Yes."*²⁶

This quote also brings up the fact that in effect, the United States would have multiple reasons to veto a potential WEU-led CJTF operation. The US, of course, possesses a veto over any CJTF operation, as do all NATO members, but the significant and unique commitment by the United States to any CJTF operation, whether or not it contributed any soldiers, officers, or other materiel, may create additional concerns on the part of the US. If, for example, it was independently engaged in another military operation when a request for a WEU-led CJTF came to the North Atlantic Council, perhaps it might have authorized the CJTF but for its preexisting need for all of its airlift capacity to support its ongoing independent operation.

This question of the existence of a NATO veto over a potential WEU operation would become far more salient as the military capabilities of the WEU (and, eventually, the EU) improved. This veto has often been described as a "right of first refusal," which, if existent, would require that any WEU or EU mission be first brought to NATO for the consideration of a "NATO-only" operation, which, if refused, could then possibly continue as a WEU- or EU-led operation with possible recourse to NATO assets. This is not a "right of first refusal," as would become the term of art in the context of the Berlin Plus arrangements. The difference between the period preceding the creation of the CJTF mechanism

and following that, the period preceding the conclusion of the Berlin Plus agreements, is that during the former, the capabilities available to the ESDI were rather limited. Thus there was no “first” refusal to be made, as the WEU (or EU) was unable to undertake any type of significant peacekeeping or crisis management operation without NATO assets. It would be accurate to describe NATO’s right, as of the conclusion of the CJTF agreement, as a “right of refusal,” since a refusal by NATO to allow access to Alliance assets would effectively prevent the WEU from mounting any operation whatsoever. As the ESDI transformed into the European Security and Defense Policy, a subpart of the Common Foreign and Security Policy (CFSP), and the EU slowly acquired the ability to conduct independent operations without NATO assets, the question of a right of “first” refusal become central to the discussion of any NATO-EU cooperation.

II.B. NATO-EU MILITARY RELATIONS POST-CJTF

The successful implementation of the Petersburg Tasks under the aegis of the EU and not of the WEU was only possible after the conclusion of the 1998 Anglo-French Saint-Malo summit wherein the UK and France agreed that the “[European] Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises.”²⁷ This was a sea change in the European position on defense matters, as disagreements between the UK and France had held up significant progress on CFSP since the creation of the CFSP pillar of the EU in 1993 with the Treaty of Maastricht. The United States responded in support of the new ESDP initiative, with the caveats of Secretary of State Madeleine Albright’s “3 Ds:” no decoupling from NATO, no duplication of existing NATO resources, and no discrimination against non-EU NATO members (most significantly, the US, Canada, and Turkey) in EU-NATO cooperative operations. These were conditions that the US maintained until at least 2008.²⁸ NATO acknowledged the Saint-Malo declaration at its 1999 Washington Summit, and stated that it was immediately prepared to offer the EU “assured” (permanent) access to NATO planning capabilities, but that it would reserve decisions on EU access to NATO assets (aircraft, intelligence, communications, etc.) on a case-by-case basis.²⁹

Finally, in late 1999 at the European Council Summit in Helsinki, the Council decided upon the “Helsinki Headline Goal.” This was a series of military capability targets to be reached by 2003 that were needed by the EU to carry out the Petersburg Tasks, which it had assigned itself in the Treaty of Amsterdam.³⁰ The Helsinki Summit also marked the turning point in NATO-EU military relations from the CJTF towards the Berlin Plus agreements. Prior to the Summit, all military operations conducted under ESDP were dependent on the EU’s institutional connection to the WEU, which in turn was potentially dependent on borrowed NATO assets which could be revoked at any time by a loss of consensus in the North Atlantic Council.³¹ Following the Helsinki Summit, the EU gradually began to take over cooperation with NATO from the WEU so that the link to NATO assets went directly to the EU rather than through an intermediary organization. This change thus directly foreshadowed the eventual Berlin Plus agreements. NATO, for its part, subsequently stated its general agreement with the EU plans stated at the Helsinki Summit.³²

At this point, we have seen that there was the political will to have the capability to undertake military action on the part of the European Union, and a distinct lack of and desire for the capability itself. The development of ESDP as part of CFSP continued into the twenty-first century with the appointment of a former NATO Secretary-General, Ja-

vier Solana, as the EU's High Representative for CFSP and as the Secretary-General of the WEU. Mr. Solana's unique insights into NATO's organization, in addition to his tenure as Secretary-General during the establishment of the CJTF mechanism, lent credibility and added efficiency to the EU's ambitions for cooperation with the Alliance, and NATO, during the same period, undertook missions in Bosnia and Herzegovina (SFOR) and the former Yugoslav Republic of Macedonia (Operations *Essential Harvest*, *Amber Fox*, and *Allied Harmony*.) As ESDP developed, however, cooperation between the NATO and the EU became bogged down in Alliance politics. The development of the Berlin Plus agreements were not immune to this problem.

III. DIRECT NATO-EU COOPERATION: THE BERLIN PLUS AGREEMENTS

III.A. DEVELOPMENT OF THE AGREEMENTS

The Berlin Plus agreements, whose name refers to the 1996 Berlin accord that set up the CJTF mechanism, grew directly out of the conclusions of the 1999 Washington Summit which affirmed NATO's willingness to develop a system by which the EU could use Alliance assets. Until that point, the EU had recourse to Alliance assets only through the WEU, and such recourse was dependent on continued unanimous consent among NATO members. The June 1999 Cologne European Council meeting established the EU position on formal arrangements directly between the EU and NATO: that certain "capabilities and common assets" should be "pre-identified" for a "presumption of availability" to the EU, and access to NATO planning capabilities should be "assured," but that the release of Alliance assets should be ultimately decided "on a case-by-case basis."³³ This was a cautious position. It did not call for a significant change in the existing arrangements between the WEU and NATO, only that NATO should deal directly with the EU rather than through an intermediary, the WEU. A more ambitious stance on the part of the EU, perhaps more in line with the *Europeanist* view, might have included calls for concrete guarantees of NATO asset availability or for a specific list of assets to be "pre-identified." The fact that the EU did not adopt such a position, when it was well within its rights to do so, shows its nominal acquiescence to a more *Atlanticist* view that significant EU assets should not be separate, nominally or otherwise, from those of NATO. At this point, however, Alliance politics began to slow down the negotiations.

In late 1999, Turkey became concerned that an EU-only force with recourse to NATO assets might prejudice its interests in Cyprus. This was due to the fact that Turkey, a non-EU NATO member, had and still has a dispute over the island of Cyprus with Greece, a member of both NATO and the EU.³⁴ It would seem at first glance that the EU would be more interested in defending the interests of its own members rather than those of NATO members opposed to the interests of its members. The situation became significantly more complicated when the EU attempted to construct military agreements with NATO, an organization that operates on consensus, and had as one of its members a state that had serious disagreements with an EU member state. It can be concluded, therefore, that Turkey was not concerned enough about the CJTF mechanism to veto its implementation, but that a direct link from NATO to the EU, unencumbered by any WEU procedural involvement and with the possibility of operationally independent EU forces using NATO assets, would constitute a direct threat to its national interests. The Turkish position would continue to impede discussions of further cooperation between the EU and NATO until very close to

the conclusion of the Berlin Plus agreements.

Little progress on enhancing NATO-EU cooperation was made in 2000 and 2001 due to a variety of factors, including the changing US administrations and the September 11 attacks and NATO's first-ever Article 5 operation in response. However, by 2002, the European Council felt it could successfully mount a military operation with access to NATO assets, and offered to take over peacekeeping in the former Yugoslav Republic of Macedonia (FYROM) from NATO, on the condition that the Berlin Plus agreement was concluded beforehand.³⁵ Even earlier, in 2001, the EU Special Representative had openly proposed an EU takeover of operations in FYROM, but this was judged by both NATO and the EU to be premature.^{36,37}

The urgency of agreeing a successor to the 1996 Berlin agreement became clearer, with the EU taking official and open opposition to Turkey's stance which at that point continued to lock up any progress in the North Atlantic Council on Berlin Plus. The issue of an EU takeover of peacekeeping in FYROM became so important to the EU that France and Belgium jointly considered, but ultimately decided against, an independent military operation there that would be without any recourse to NATO assets.³⁸ NATO's position was that the "participation issue," that is, the differences between NATO and EU membership, was the linchpin in the Berlin Plus negotiations.³⁹

Eventually, progress became so bogged down that the EU was forced to take an official position on the issue. It stated that ESDP would "under no circumstances be used against a[n] [NATO] Ally," with the stated assumption of a reciprocal promise by NATO to not use Alliance assets against any EU member, NATO member or not. The EU further stated that Cyprus, which was slated to and eventually did become an EU member in 2004, would not participate in ESDP operations.^{40,41} This, combined with Greece softening its stance on potential Turkish EU membership, led to Turkey dropping its objections in the North Atlantic Council. This episode clearly shows the linkage between NATO and EU politics not only in general, but also between the specific areas of military cooperation and general EU foreign policy.

III.B. THE BERLIN PLUS AGREEMENTS: AGREEMENT, IMPLEMENTATION, AND OPERATION

Barely in time for the March 31, 2003 launch of the ESDP mission Operation *Concordia*, and just three days before the US invasion of Iraq, the Berlin Plus agreements came into force on the 17th of that month after an exchange of letters between CFSP High Representative Solana and NATO Secretary-General Lord Robertson. All but one of the individual agreements had been finalized in late 2002, but US insistence that all parts, including the key Security of Information agreement that covered the handling of classified NATO documents by the EU, should be finalized before the entire package could come into force delayed the final date somewhat.⁴² The US was not likely trying to derail the agreement, but attempting to ensure the security of its classified information, a large volume of which it makes available to NATO allies, the UK in particular.⁴³

The Berlin Plus agreements are a series of separate accords reached between NATO and the European Union on December 16, 2002 (again, not finalized until March 17 of the following year), and concern seven major areas of cooperation, according to SHAPE (Supreme Headquarters Allied Powers Europe, NATO's military headquarters):

1. NATO - EU Security Agreement [as described above]
2. Assured Access to NATO planning capabilities for EU-led Crisis Management

- Operations (CMO)
3. Availability of NATO assets and capabilities for EU-led CMO
4. Procedures for Release, Monitoring, Return and Recall of NATO Assets and Capabilities
5. Terms Of Reference for DSACEUR and European Command Options for NATO
6. EU–NATO consultation arrangements in the context of an EU-led CMO making use of NATO assets and capabilities
7. Arrangements for coherent and mutually reinforcing Capability Requirements⁴⁴

The actual text of these agreements is classified, and so unfortunately is unavailable for analysis. It is possible only to interpret the statements and public decisions made by various actors in order to determine the structure and function of the agreements. A key document to consider in such an analysis is the December 2002 “EU–NATO Declaration on ESDP.” Despite its lack of specifics, it provides an outline of the Berlin Plus agreements and a common opinion on their purpose and function on the part of NATO and the EU. In the document, there is recognition that NATO and the EU are “organizations of a different nature,” and conduct “crisis management activities... [which] are mutually reinforcing,” which in context is likely referring to the strictly military and military–civilian cooperative nature, respectively, of the organizations. It also states that there shall be “equality and due regard for decision-making autonomy...of the European Union and NATO,” which implies no rights of veto over or involvement in the decision-making process of the other for either organization. The document then addresses the overlapping membership of the two organizations by stating that “the European Union is ensuring the fullest possible involvement of non-EU European members of NATO within ESDP,” which excludes the US and Canada but includes Turkey. Finally, it contains language that allows the EU irrevocable access to NATO planning facilities, but that all other assets and capabilities will be made available on a case-by-case basis. The document and the agreements do not obviously include reference to an important concept to consider, which is one of the most controversial areas in NATO–EU military relations: the “right of first refusal.”⁴⁵

III.B.1. The Right of First Refusal: Differing Positions on NATO Primacy

To explain the right of first refusal, one can create a hypothetical situation where there exists a problem in a European country, not a member of NATO or of the EU, but perhaps looking towards membership in either organization in the future. It is decided by the EU that a peacekeeping operation would be necessary and helpful to the situation. If NATO in fact has a strictly defined right of first refusal, the EU would be obligated to ask if NATO wished to undertake an operation in that area. If the answer were negative, the EU could proceed independently or with an operation under Berlin Plus. If the answer were positive, NATO would be obligated to undertake the operation and the EU would not be involved militarily as an organization. Conversely, if NATO does not have a right of first refusal, the EU would not be obligated to ask NATO if it had an interest in an operation, and could proceed directly to undertaking it itself or asking for recourse to NATO assets under Berlin Plus.

If such a right exists, it would seem to imply that NATO could indefinitely hold up an operation proposed by the EU that would use only EU assets, by continuously discussing

the desire on the part of NATO to undertake the operation. As we will see, this does not appear to be the case. The Berlin Plus agreements do not by all accounts contain any reference to a right of first refusal; thus it remains unclear whether or not NATO possesses such a right. From statements made by NATO, the EU, and NATO member states, it is clear that there are differing evaluations of the existence of the right.

The United States has argued since at least 1992 that NATO is the “preferred institution to act, wherever possible,” and that it recognizes that the Alliance “might not act,” whereupon “[the US] agreed to make NATO assets available to the European Union.”⁴⁶ This appears to be not only an assertion that NATO does indeed possess the right of first refusal, but also a virtual guarantee, as above and stated later in 1995 by US Ambassador to NATO Robert Hunter, of NATO assets for an EU (or WEU) operation. At various points, the US Congress has also demanded the right of first refusal be accorded to NATO in writing by the EU.⁴⁷ The EU, however continually asserts its “decision-making autonomy,”⁴⁸ though this seems to be partially contradicted by the undisputed fact that under both the CJTF mechanism and Berlin Plus, NATO would have to unanimously agree to release its assets to a WEU or EU mission. The EU of course states its right to autonomously conduct ESDP military operations as it sees fit, but without absolutely guaranteed recourse to NATO assets, its options are more limited, as we will see below.

Just before the final conclusion of the Berlin Plus agreements, the “EU-NATO Declaration on ESDP” was agreed by the EU and NATO, which stated that the EU should have the ability to conduct operations where “the alliance as a whole is not engaged.”⁴⁹ A literal reading of this statement would seem to indicate that the EU cannot operate where NATO is already operating as an alliance. This interpretation is not disputed by either NATO or the EU.⁵⁰ The United States, however, and furthermore, the NATO Secretary-General, have stated their interpretations of the statement as “where the alliance as a whole chooses not to be engaged,”⁵¹ and that “the EU will only consider undertaking operations where NATO as a whole has decided not to be engaged,” respectively, and indicating official NATO agreement with the more restrictive (in the view of the EU) interpretation. The official interpretation by the Secretary-General may be even more restrictive, as it states, in effect, that the EU may not even officially consider an operation, let alone undertake one, until after NATO has decided to not involve itself in the same area.

Thus, it appears that NATO has a *de facto*, but definitely not *de jure*, right of first refusal, though NATO concretely and undisputedly retains the right to refuse the use of its assets by the EU. When taking into account the very likely scenario that the EU would be unable to mount an effective operation except with recourse to NATO assets, this effectively gives NATO and, significantly, non-EU NATO members, a veto over the operation. The question of a *de facto* versus a *de jure* right is important to consider in light of the fact that all statements and agreements on EU-NATO cooperation are not legally binding under international law, that is, they have not been written into any formal treaties or agreements. They have simply been laid out piecemeal in press releases, communiqués, and in the case of the Berlin Plus agreements themselves, what amount to “executive agreements” between the NATO Secretary-General and the EU High Representative for CFSP.⁵² Thus, the statements and agreements are only diplomatically binding in that it will be politically difficult for either organization to act contrary to what it had previously stated in one of the abovementioned ways.

III.C. POST-BERLIN PLUS MILITARY OPERATIONS

III.C.1. Background

It may be helpful in an opaque analysis (due to classification of relevant documents) of the Berlin Plus agreements to briefly analyze several military operations undertaken by the involved actors, including both operations by the EU not conducted under Berlin Plus but conducted independently after the conclusion of the agreement, and operations by the EU considered but ultimately not conducted at all. It is first necessary, however, to mention the NATO operations in FYROM, Operations *Essential Harvest*, *Amber Fox*, and *Allied Harmony*, as background for the later EU operations. These operations were tasked with the disarmament of ethnic Albanian groups and the destruction of their weapons. This necessarily involved ground forces, the overwhelming majority of which were contributed by European NATO members, with the UK being the “lead” nation and the United States only providing logistical support. This was basically an example of the “separable but not separate” capabilities envisioned in the Saint-Malo agreement: a “European operation under the NATO flag,”⁵³ and a logical step not only on the way to removing the WEU from a direct link between NATO and the EU, but also to the handover of nearly all operations in FYROM from NATO to the EU.

III.C.2. Post-Berlin Plus Military Operations: *Concordia*

The European Council felt that ESDP was well-developed enough to take over operations in FYROM from NATO, while still using NATO assets, in 2002, but was in agreement that Berlin Plus should be finalized beforehand, which occurred on March 17, 2003 with the aforementioned exchange of letters.⁵⁴ *Concordia* began on March 31. The operation was undertaken within the Berlin Plus framework and allowed the EU to take direct control of NATO assets. Its main task was to continue to ensure the implementation of the Ohrid Framework Agreement between ethnic Albanians and FYROM forces. Command of the operation had already been held by the UK, Germany, and the Netherlands while it was under the command of NATO, and the EU desired continuity in this area.⁵⁵

Command of *Concordia* was structured, as Berlin Plus envisioned, with the Deputy SACEUR, a European, as the operation commander and the operation headquarters at NATO’s AFSOUTH (now known as JFC Naples) in Italy, with an EU chain of command following from there. The EU force could call for backup or relief at any time which would have been provided by KFOR Rear, a NATO force, which remained in FYROM for a variety of reasons, not the least of which was that the Macedonian public had an existing relationship with and trust in NATO, which had made a point of mounting regular, visible, and heavily-armed patrols in the country during its operations. This continuity of presence and operational linkage was necessary for the EU’s mission to be successful.⁵⁶

Concordia was generally judged to be a success and ended in December 2003 after having been extended past its original end date by three months following an upsurge in violence in the fall. It was followed by a civilian (but still ESDP) police mission, EUPOL *Proxima*, which reflected a more general trend in the Balkans from a need for direct military peacekeeping to a need for militarized civilian law enforcement. The highest-ranking dual-hatted officer at JFC Naples was the Chief of Staff, who simultaneously acted as the JFC Naples Chief of Staff and the EU Command Element Chief of Staff.⁵⁷ Likely in part due to this dual-hatted post, the main problem with *Concordia* was seen as the questionable

autonomy of the EU Command Element at JFC Naples, which was supposed to be able to independently formulate and give orders to the EU forces. This may have had something to do with the fact that under Berlin Plus, the operational commander is generally the Deputy SACEUR, who functions in a "dual-hatted" role as both the NATO Deputy SACEUR and the EU operation commander.⁵⁸ *Concordia* also did not resolve the question of the existence of a right of first refusal, because the operation was a takeover from NATO, not a situation where both NATO and the EU had potential interest in conducting a new operation. The constant presence of KFOR Rear also raises questions about the ability at the time of the EU force to deal with any unforeseen severe problem.

Despite the criticisms leveled at *Concordia*, it was the first successful mission carried out under Berlin Plus. The implications of its success do not go far beyond demonstrating the ability of NATO and the EU to cooperate directly, because there was little controversy involved in the planning of the EU mission or in the handover process itself. It was nonetheless a successful mission and the next significant Berlin Plus operation, Operation *Althea*, commenced in 2004, would be another takeover of a preexisting NATO mission, this time in Bosnia and Herzegovina (BiH). However, during the intervening period, the European Union moved to undertake its own military operation both outside NATO's European area of involvement and without the use of Berlin Plus. The planning and conduct of this operation may give different answers as to the interpretations of a right of first refusal.

III.C.3. Post-Berlin Plus Military Operations: Artemis

The ESDP mission Operation *Artemis*, conducted by the EU without any recourse to NATO assets and not under Berlin Plus, was carried out in the Democratic Republic of Congo in June 2003, acting under a UN Security Council mandate and with the objectives of restoring order in the town of Bunia and of relieving the UN MONUC force already there.⁵⁹ *Artemis* was time-limited and ended in September of the same year. While decidedly on a smaller scale than either *Concordia* or *Althea*, it was still a military deployment conceived and undertaken by the EU in Africa and notably used no NATO (or US) airlift capability.⁶⁰

In May 2003, the EU made a decision between an independent ESDP operation and a Berlin Plus operation, and the former was chosen for a variety of reasons, some of which may have implications on the possibility of the existence of a right of first refusal. First, continual improvements in EU member state military cooperation and capabilities had reached a point where an independent operation appeared feasible. This encouraged the EU to act as not only a test of its capabilities but as a demonstration that it was able to do so independently. Second, the US was very unlikely to agree to a NATO-supported intervention in Africa after its disastrous intervention in Somalia in 1993 and its refusal to intervene in Liberia earlier in 2003. Britain and France, on the other hand, had independently intervened in Africa in 2000 and 2002 and were continuing both to strengthen European defense capabilities and cooperation on security in Africa and to heal the rift between EU members over the Iraq War.⁶¹

Preparations for *Artemis* minimized the NATO-EU relationship. Initially planned as a purely French operation, neither France nor the EU made any request for consultation with NATO at least as far as public records show. Early in June 2003, High Representative Solana outlined the EU's plans for *Artemis* to the North Atlantic Council. NATO was surprised by the extent of planning for the operation, and was presented more or less with a fait accompli by the EU, and by France to a certain extent.⁶² Even if NATO had been given

an opportunity to consider (and ultimately reject) participation, it likely would have had trouble defending its decision to oppose the undertaking of what was essentially a humanitarian operation. Clearly, the EU did not interpret any right of first refusal as one “where the alliance as a whole has decided not to be engaged,” because it had not brought any proposals to NATO for its refusal before commencing the operation.

In a press conference following the session, Secretary-General Lord Robertson stated that “NATO would not want to be engaged” because NATO’s strategic interests were elsewhere. A member of the Secretary-General’s staff, however, was more candid in his remarks when he stated that they were “disturbed” by France’s planning methodology, claiming that France had initially called for an “international force on the basis of a ‘coalition of the willing,’ [a CJTF] then planted the European flag over it. How not to consider it as a deliberate plan to shortcut the ‘permanent arrangements’ [Berlin Plus] agreed between NATO and the European Union?”⁶³ The operation was further criticized as a “French operation with an EU cover” due to the extremely high proportion of French troop contribution and extensive French planning; nearly sixty percent of the staff of the operation headquarters were French officers.⁶⁴

Despite these criticisms, the operation was successfully carried out and the planned ESDP framework functioned as intended, with the EU Political and Security Committee exercising full political and strategic control at all times. It was not, however, a demonstration of truly universally independent ESDP military capability, as the EU required more strategic airlift than was available from EU members. This necessitated the contributions of airlift capability by Brazilian and Canadian aircraft, as well as leased Russian aircraft⁶⁵ (to be fair to the EU, the US also occasionally leases Russian aircraft to conduct its independent military operations due to a lack of needed capacity).⁶⁶ *Artemis* may demonstrate the ability of the EU to intervene in places NATO cannot or does not wish to go.

III.C.4. The Moldovan Non-Operation

Finally, there was an incident surrounding a possible EU intervention in Moldova in 2003. Since the breakaway “Transnistrian Republic” claimed a portion of Moldova’s territory in 1990, the region had been a source of instability and crime, but not large-scale violence. Still, it appears that all ESDP options were considered by the EU Political and Security Committee, including a police mission, an independent military mission, and a Berlin Plus military mission. The Berlin Plus military mission was initially considered to be the most favorable path, but discussions with NATO led to the United States “vehemently rejecting” the idea of an independent ESDP mission and favoring a Berlin Plus operation. After the summer of 2003, the matter dropped off the agenda of the EU and it has since restricted involvement in Moldova to diplomatic activity and a border-monitoring mission sent on the joint request of the Moldovan and Ukrainian governments.⁶⁷

It is difficult to discern whether or not this was an instance of NATO exercising a right of first refusal. Neither the EU nor NATO proceeded with any action concerning Moldova after the aforementioned discussions between the Political and Security Committee and the North Atlantic Council. Since it can be argued that a right of first refusal must be exercised by the right holder subsequently acting on the proposal itself, the result is that this particular case is inconclusive and that NATO continues to have such a right only in the form of denying access to crucial capabilities for an operation.

III.C.5. Interlude: The EU States Its Preferences For Future Operations

In December 2003, the European Council released an important document outlining its preferences for NATO-EU military cooperation. Entitled "European Defence: NATO/EU Consultation, Planning and Operations," it outlines the EU's preferences for military operations in a hierarchical fashion. It is important to note that NATO was not involved in the drafting of this document.⁶⁸

The document presents four options, in order of preference of use: first, the EU prefers a NATO-led campaign with no independent EU element. This may indicate the EU's tacit acceptance of a right of first refusal by NATO, but it does not specifically say so. The second option is an EU-led operation under the political and strategic control of the Political and Security Committee, using NATO planning facilities and assets. This is a Berlin Plus-type operation. Third, the EU prefers an independent operation without recourse to NATO assets, with an EU member state acting as a leading "framework nation". The least preferable option is an independent operation similar to the third option but with the EU Military Staff (a military body attached to the office of the High Representative for CFSP) acting as the lead unit.⁶⁹

Clearly there is a preference and assumption on the part of the EU that it will work closely with NATO during the initial phases of planning an operation in order to determine if the first option is feasible. NATO's response to the document, as outlined in Secretary-General Robertson's comments, was one of general agreement, but departed from the EU's language in two important areas. First, instead of only the second option being in the purview of the Berlin Plus agreements, it additionally placed options three and four "within the context" of Berlin Plus. This appears to have been an attempt by NATO not to co-opt, but at least to insert a reminder into EU-centric operations that it remained the EU's "first choice" security provider. Second, there was disagreement with language relating to a right of first refusal. The EU's document stated it would undertake non-NATO-led operations "where NATO as a whole is not engaged," while NATO rephrased it as "where NATO as a whole has decided not to be engaged," nearly identical to the US language on the matter as described above. Here, while the EU's language is indeterminate as to NATO's right of first refusal, NATO states it clearly, thus the disagreement over the existence of the right. NATO believes it to be a matter of fact and the EU is not certain; when the subject is discussed at both organizations, different language is used which reflects their respective viewpoints.⁷⁰

The EU document is not legally binding⁷¹ and amounts to a declaration by the EU of its preferences for cooperation (or non-cooperation) with NATO, though it would be difficult to defend a situation in which the EU violated this order of preference after the release of the document. The fact that the third and fourth options are mentioned at all, and especially in the same document as an option where NATO conducts an operation itself, increases the likelihood that they will be pursued and implies that the task of European crisis management is, in the view of the EU, shifting away from NATO to itself.

Artemis took place before the EU released the abovementioned document outlining its preferences for the format of military operations. It is possible that the document was, in part, released to reassure NATO that it would not, in the future, ignore its commitments to early consultation during the planning phases of an operation, as it had done in the case of *Artemis*.

III.C.6. Post-Berlin Plus Military Operations: *Althea*

The EU had officially offered to take over the mission of NATO's SFOR in 2002 at its Copenhagen Summit⁷², but was unable to do so because of the then-incomplete Berlin Plus agreement. NATO had been the only organization that had enough credibility with all sides in BiH to continue to implement the Dayton Framework Agreement, which had been brokered by the United States, EU, and Russian in 1995. US involvement in BiH had been hesitant throughout NATO's commitments there, as it had never been a specific security concern of the US (apart from general European stability concerns), though there was a small measure of concern over stemming possible Iranian influence there.⁷³ As with *Concordia*, European states, most significantly France and the UK, were the main troop contributors to NATO's previous mission as they had also been in the UN mission in BiH as well.

NATO had previously judged an EU takeover of SFOR in 2004 to be premature, but once Germany joined an Anglo-French proposal to take over SFOR in late 2003 and the EU declared itself "ready" to do so, NATO was moved to agree in principle that a takeover by the EU could happen. All parties agreed that to ensure continuity of presence, the EU mission was to be conducted under Berlin Plus, but also that NATO would maintain a headquarters there and reserve some parts of SFOR's mission for itself: specifically, the continuing hunt for war criminals in BiH, military reform, and preparing the country for participation in the Partnership for Peace program.⁷⁴ NATO also needed to maintain a presence in BiH, as one commentator put it, because the local population did not trust the EU to protect them, and that the Europeans were "the ones who sat there and did nothing for four years while they were slaughtered...[and that] the Americans [were] the people who came in and saved them."⁷⁵

SFOR was terminated in June 2004 and declared its readiness to hand over the majority of its responsibilities to the EU under Berlin Plus. *Althea* began officially on December 2, 2004. The US position on the takeover determined NATO's stance "virtually" at all times, as it had been the principal architect of the political peace in BiH, if not the military peace. The emphasis on a Berlin Plus mission was a way for the US to allay Congressional skepticism that the EU would be able to do NATO's job in BiH and fears that the US was slowly being excluded from European security. Again, as with *Concordia*, the Deputy SACEUR acted as the operation commander, but this time the operational headquarters was located at SHAPE. *Althea* was a larger-scale test for Berlin Plus, and so far has been successful in that there have been no major hang-ups in NATO-EU cooperation. The operation is ongoing as of April 2009. As mentioned above, the EU has also been a better choice to deal with the shift from a need for military peacekeeping to militarized law enforcement, and from large-scale violence to organized and financial crime as it is more able to deploy civilian police missions.⁷⁶ NATO is not a law enforcement organization and cannot readily draw on law enforcement personnel the way the EU can. In fact, concerns among EU members that the EU military force should not be involved in law enforcement in BiH led to the deployment of the EU Police Mission to coordinate ESDP assistance to BiH police instead of going through the military force.⁷⁷

Althea came closer to resolving the question of a right of first refusal. The EU did not officially declare its interest in a mission in Bosnia until NATO announced that it would terminate SFOR in 2004.⁷⁸ This waiting period likely held up EU planning of a mission in BiH until NATO announced it was amenable to an EU takeover. This may again indicate tacit EU acceptance of NATO's right as interpreted by the "where the alliance as a whole

is not engaged” phrasing, as NATO was not engaged in, and in fact, had just disengaged from the capacities the EU assumed when *Althea* was launched. Nevertheless, *Althea* demonstrated closer NATO-EU cooperation at all levels, and showed that the NATO-EU relationship is strong and functional.

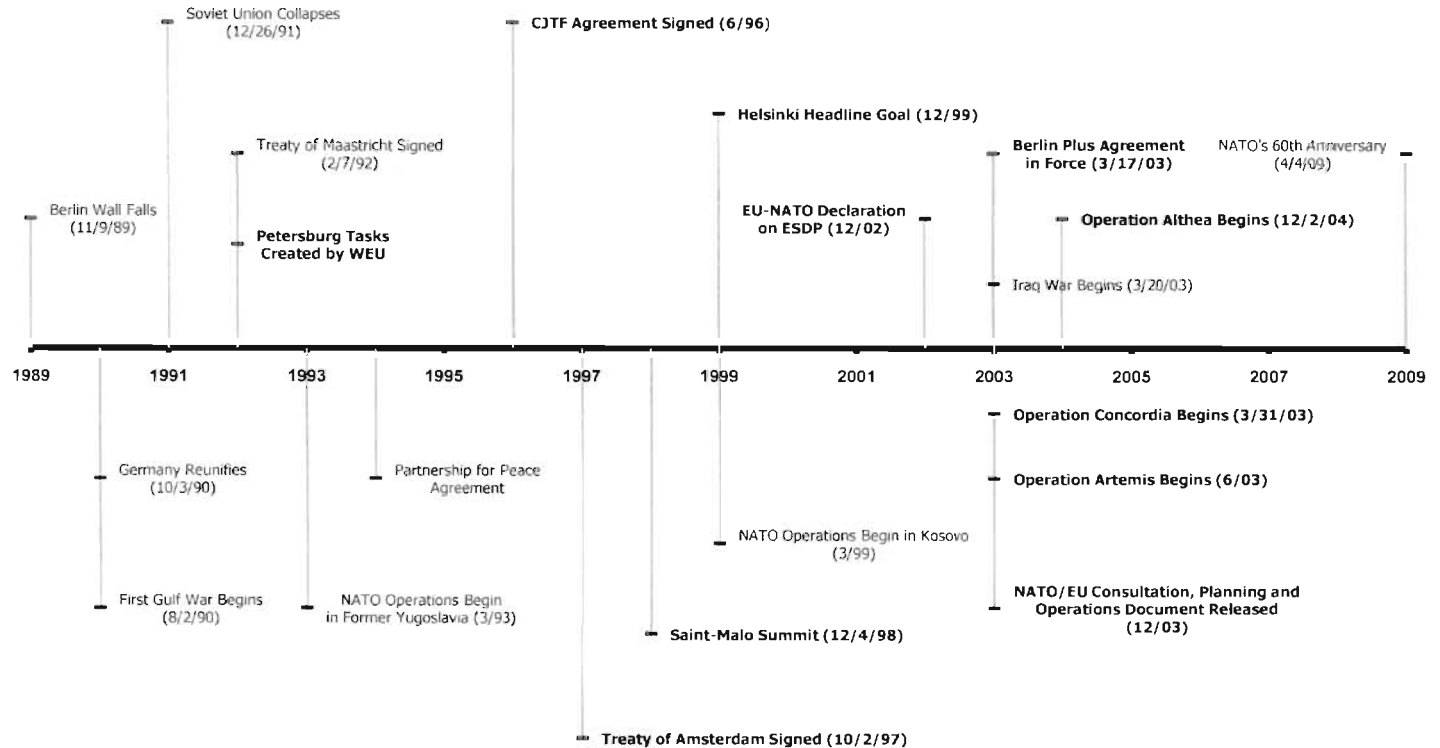
IV. CONCLUSION

Thus we have seen that there are indeed differing opinions on the existence of rights accorded to NATO under its agreements with the European Union. It is unlikely that we will know for certain of the existence of a right of first refusal until a new conflict arises in an area where both NATO and the EU wish to take action. Even if such a situation does arise, because no right is concretely enshrined in any publicly available document, it may be that NATO and the EU will simply negotiate as to which organization will be the one to take action. This possibility is indicative of a greater trend in NATO-EU relations after Berlin Plus towards openness, diplomacy, and political pragmatism between the two organizations.

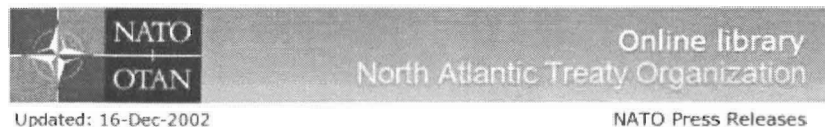
We have also seen that there has been a clear progression of the NATO-EU military relationship that required specific action on both members to move forward; the relationship has not been subject to circumstance or expedience. Moreover, we have seen that during operations conducted between the two organizations, events progressed smoothly and both NATO and the EU exerted significant effort to work cooperatively and successfully in pursuit of common goals. In more than one instance, the EU acknowledged the necessity of keeping NATO directly involved in the European security area, and conversely, NATO determined that involvement of the EU was necessary for the long-term success of its undertakings.

At present, NATO and the EU have a complicated relationship: complementary, and at the same time, adversarial, as the status of NATO’s veto or ability to co-opt an ESDP operation remains undetermined. In 2009, NATO will have existed for sixty years, and Europe continues towards becoming more peaceful and requiring less military and more political intervention. The important relationship between the NATO and the EU will undoubtedly continue to change along with the continually shifting security realities in the Euro-Atlantic area.

Appendix 1: Timeline of NATO-EU Relations, 1989-2009



APPENDIX 2



Press
Release
(2002) 142

16 Dec. 2002

EU-NATO Declaration on ESDP

THE EUROPEAN UNION AND THE NORTH ATLANTIC TREATY ORGANISATION,

- Welcome the strategic partnership established between the European Union and NATO in crisis management, founded on our shared values, the indivisibility of our security and our determination to tackle the challenges of the new Century;
- Welcome the continued important role of NATO in crisis management and conflict prevention, and reaffirm that NATO remains the foundation of the collective defence of its members;
- Welcome the European Security and Defence Policy (ESDP), whose purpose is to add to the range of instruments already at the European Union's disposal for crisis management and conflict prevention in support of the Common Foreign and Security Policy, the capacity to conduct EU-led crisis management operations, including military operations where NATO as a whole is not engaged;
- Reaffirm that a stronger European role will help contribute to the vitality of the Alliance, specifically in the field of crisis management;
- Reaffirm their determination to strengthen their capabilities;

Declare that the relationship between the European Union and NATO will be founded on the following principles:

- Partnership, ensuring that the crisis management activities of the two organisations are mutually reinforcing, while recognising that the European Union and NATO are organisations of a different nature;
- Effective mutual consultation, dialogue, cooperation and transparency;
- Equality and due regard for the decision-making autonomy and interests of the European Union and NATO;
- Respect for the interests of the Member States of the European Union and NATO;
- Respect for the principles of the Charter of the United Nations, which underlie the Treaty on European Union and the Washington Treaty, in order to provide one of the indispensable foundations for a stable Euro-Atlantic security environment, based on the commitment to the peaceful resolution of disputes, in which no country would be able to intimidate or coerce any other through the threat or use of force, and also based on respect for treaty rights and obligations as well as refraining from unilateral actions;
- Coherent, transparent and mutually reinforcing development of the military capability requirements common to the two organisations;

To this end:

- The European Union is ensuring the fullest possible involvement of non-EU European members of NATO within ESDP, implementing the relevant Nice arrangements, as set out in the letter from the EU High Representative on 13 December 2002;
- NATO is supporting ESDP in accordance with the relevant Washington Summit decisions, and is giving the European Union, *inter alia* and in particular, assured access to NATO's planning capabilities, as set out in the NAC decisions on 13 December 2002;
- Both organisations have recognised the need for arrangements to ensure the coherent, transparent and mutually reinforcing development of the capability requirements common to the two organisations, with a spirit of openness.

APPENDIX 3

EUROPEAN DEFENCE:

NATO/EU CONSULTATION, PLANNING AND OPERATIONS

Building on the experience of EU civilian and military operations in 2003 and on the discussions on these two issues between the UK, France and Germany, this paper sets out how the collective capability of the EU can be strengthened, including the ability to plan and run certain operations, and describes how consideration of the options involved would take place between EU Partners and NATO Allies.

NATO is the forum for discussion and the natural choice for an operation involving the European and American allies. In accordance with the EU/NATO permanent arrangements adopted in Nice, in a crisis contacts and meetings will be intensified so that EU and NATO can discuss their assessments of the crisis and clarify their intentions regarding possible engagements. The experience of 2003 shows that these arrangements are fundamentally sound, providing for intensified consultation, while respecting fully the decision-making autonomy of both organisations.

Where NATO as a whole is not engaged, the EU, in undertaking an operation, will choose whether or not to have recourse to NATO assets and capabilities, taking into account in particular the Alliance's role, capacities, and involvement in the region in question. That process will be conducted through the "Berlin plus" arrangements.

In order to improve the preparation of EU operations having recourse to NATO assets and capabilities under Berlin plus arrangements, we propose that a small EU cell should be established at SHAPE and to invite NATO to establish liaison arrangements at the EUMS. It will also ensure full transparency between EU and NATO embodying their strategic partnership in crisis management.

We also propose to enhance the capacity of the EUMS to conduct early warning, situation assessment and strategic planning through the establishment within the EUMS of a cell with civil/military components. It will in particular: -

- Link work across the EU on anticipating crises, including opportunities for conflict prevention and post-conflict stabilisation;
- Assist in planning and co-ordinating civilian operations;
- Develop expertise in managing the civilian/military interface;
- Do strategic advance planning for joint civil/military operations;
- Reinforce the national HQ designated to conduct an EU autonomous operation.

Regarding the conduct of autonomous EU military operations, the main option for this will be national HQs, which can be multi-nationalised for the purpose of conducting an EU-led operation. In certain circumstances, the Council may decide, upon the advice of the Military Committee, to draw on the collective capacity of the EUMS, in particular where a joint civil/military response is required and where no national HQ is identified.

Once such a decision was taken, the civilian/military cell in the EUMS would have responsibility for generating the capacity to plan and run the operation. This would not be a standing HQ. Rather it would be a capacity rapidly to set up an operations centre for a particular operation. The centre would operate separately from the strategic role of the EUMS, under a designated Operation Commander. This would require the necessary resources, including augmentation personnel, to be made available at short notice, by the EUMS and member states. A core staff, essentially "double hatted" from the EUMS, would be required to maintain the necessary level of readiness. To that effect the personnel of the EUMS could be reinforced, if necessary.

In the light of the lessons learned, further developments of the scope or nature of this capacity could be examined. It would require further decision by the Council.

END NOTES

1. Howorth, Joylon. (2007). *Security and Defense Policy in the European Union*. New York: Palgrave Macmillan. 36.
2. Bensahel, Nora, "Separable But Not Separate Forces: NATO's Development of the Combined Joint Task Force," *European Security* 8(2), 53-54.
3. Reichard, Martin. (2005). *The EU-NATO Relationship: A Legal and Political Perspective*. Burlington: Ashgate. 255.
4. Done, Kevin, "EADS warns on A400M debacle," *Financial Times* (online), 11 March 2009. <http://www.ft.com/cms/s/0/da063f6c-0ddb-11de-8ea3-0000779fd2ac.html>
5. See Appendix 1 for a general timeline of the period covered in this paper, including relevant events.
6. Established in 1954, the WEU was a mutual self-defense organization that also promoted social and economic collaboration and integration of its members (the UK, France, Germany, Italy, Belgium, the Netherlands, Luxembourg, Portugal, Spain, and Greece). Today it is largely inactive in its own right, having had its tasks adopted by the EU as described below.
7. Reichard, 55.
8. NATO Public Diplomacy Division, "*Backgrounder: Interoperability for joint operations.*" July, 2006. http://www.nato.int/docu/interoperability/html_en/interoperability01.html
9. Schake, Kori, "NATO after the Cold War, 1991-1995: Institutional Competition and the Collapse of the French Alternative," *Contemporary European History* 7(3), 395, fn. 41.
10. Article 5 of the North Atlantic Treaty, which is the establishing document of NATO, states that NATO members "agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area." An Article 5 mission would be one in defense of a NATO member's territory, and as such can only apply to NATO member states. Non-NATO members, even those states with which NATO has formal or strong relations, are not covered under Article 5.
11. Bensahel, 52.
12. *Ibid.*, at 55.
13. *Ibid.*, at 52.
14. *Ibid.*, at 55-56.

15. The “European Security and Defense Identity” was a concept put forward by the WEU in 1991 that recognized a need for a solely European defense identity and a greater responsibility for European countries in defense matters.
16. North Atlantic Treaty Organization, *Declaration of the Heads of State and Government Participating in the Meeting of the North Atlantic Council Held at NATO Headquarters*, Brussels, on 10–11 January 1994. <http://www.nato.int/docu/pr/1994/p94-003.htm>
17. Bensahel, 55–56.
18. Greenhouse, Steven, “NATO Clears Plan for Task Forces,” *New York Times*, 6 January 1994, A7.
19. Cragg, Anthony, “The Combined Joint Task Force concept: a key component of the Alliance’s adaptation,” *NATO Review* 44(4), 7–10.
20. Bensahel, 58, 60.
21. *Ibid.*, at 61–62.
22. Fitchett, Joseph, “Washington Praises New Paris Policy on Defense; US Sees Way Clear for Europe to Adopt Stronger NATO Role,” *International Herald Tribune*, 1 March 1996.
23. Cragg, 10.
24. The “Partnership for Peace” (PfP) program was created in 1993 as a way for former Warsaw Pact or Soviet constituent states to establish a political and military relationship with NATO with the goal of creating trust between them and NATO and to eventually allow them an opportunity to pursue NATO membership if they so chose. As of March 2009, ten former PfP states have joined NATO as full members.
25. Bensahel, 57.
26. “It Can’t Be Done Alone,” *The Economist*, 25 February 1995, 19.
27. UK Foreign and Commonwealth Office, *Joint Declaration on European Defence*, 4 December 1998. <http://www.fco.gov.uk/resources/en/news/2002/02/joint-declaration-on-eu-new01795>
28. President George W. Bush stated at the Bucharest NATO Summit in April 2008 that the United States would “encourage [its] European partners to increase their defense investments to support both NATO and EU operations [emphasis added],” and that “if Europeans invest in their own defense, they will be stronger and more capable.” (The White House, “President Bush Visits Bucharest, Romania, Discusses NATO,” 2 April 2008. <http://georgewbush-whitehouse.archives.gov/news/releases/2008/04/20080402-2.html>)
29. North Atlantic Treaty Organization, *Washington Summit Communiqué*, 24 April 1999. <http://www.nato.int/docu/pr/1999/p99-064c.htm>
30. Reichard, 226.
31. NATO, *Washington Summit Communiqué*, 24 April 1999.

32. North Atlantic Treaty Organization, *Final Communiqué of the Ministerial Meeting of the NAC*, 15 December 1999. <http://www.nato.int/docu/pr/1999/p99-166e.htm>
33. Reichard, 279.
34. *Ibid.*, at 284.
35. *Ibid.*, at 285.
36. *Ibid.*, at 248.
37. This eagerness to deepen involvement in FYROM may have been a result of the EU's central role in the conclusion of the Ohrid Framework Agreement that largely ended the armed conflict between ethnic Albanian and Macedonian forces (Mace, 475).
38. Reichard, 286; Dempsey, Judy, "Nato presses Europe to take lead in the Balkans," *Financial Times*, 11 January 2003, 6.
39. North Atlantic Treaty Organization, *Final Communiqué, Ministerial Meeting of the NAC Held In Reykjavik*, 14 May 2002. <http://www.nato.int/docu/pr/2002/p02-059e.htm>
40. Reichard, 286.
41. Denmark does not participate in ESDP but is a member of NATO.
42. Reichard, 248.
43. The US and UK are part of the UKUSA Security Agreement, which has instituted extensive intelligence-sharing activity since World War II.
44. Allied Command Operations, Supreme Headquarters Allied Powers Europe, *Berlin Plus agreement*, 21 June 2006. http://www.nato.int/shape/news/2003/shape_eu/sc030822a.htm
45. North Atlantic Treaty Organization, *EU-NATO Declaration on ESDP*, 16 December 2002. <http://www.nato.int/docu/pr/2002/p02-142e.htm>
46. Speech by S. Talbott before the NAC, *The State of the Alliance: An American Perspective*, 15 December 1999. <http://www.nato.int/docu/speech/1999/s991215c.htm>
47. Reichard, 160.
48. *Ibid.*, at 155.
49. NATO, *EU-NATO Declaration on ESDP*, 16 December 2002. See Appendix 2 for the document.
50. Reichard, 163.
51. *Ibid.*, at 91.
52. *Ibid.*, at 305.
53. Mace, Catriona, "Operation Concordia: Developing a 'European' Approach to Crisis Management?" *International Peacekeeping*, 11(3), 480.
54. Reichard, 248.
55. *Ibid.*, at 248.
56. Mace, 481-483.
57. *Ibid.*, at 482.

58. Reichard, 249–250.
59. Ibid., at 264.
60. Friesendorf and Penska, 516.
61. Ibid., at 522–523.
62. Reichard., 266–267.
63. Ibid., at 267.
64. Friesendorf and Penska, 520.
65. Ibid., at 516.
66. Tecter, Alyson M, “Russian aircraft transports ANG rescue helicopters,” *Air Force Link* (online), 24 April 2007. <http://www.af.mil/news/story.asp?storyID=123050091>
67. Reichard, 268–270; United Nations Development Programme, “The European Border Assistance Mission (EUBAM),” January, 2008. <http://www.undp.org.ua/en/projects-list-all/34-democratic-governance-/635-the-european-union-border-assistance-mission-eubam>
68. See Appendix 3 for the document.
69. Council of the European Union, *European Defence: EU/NATO Consultation, Planning, and Operations*, December, 2003. <http://www.consilium.europa.eu/uedocs/cmsUpload/78414%20-%20EU-NATO%20Consultation,%20Planning%20and%20Operations.pdf>
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