

New NATO, New Century

**CANADA, THE UNITED STATES,
AND THE FUTURE OF THE
ATLANTIC ALLIANCE**

**Edited by
David G. Haglund**



Queen's University, Centre for International Relations,
in cooperation with
the Canadian Institute of Strategic Studies

Canadian Cataloguing in Publication Data

Main entry under title:

New NATO, new century : Canada, the United States, and the future of the Atlantic alliance

Includes bibliographical references.

ISBN 0-88911-886-8

1. North Atlantic Treaty Organization. 2. Canada -- Military policy.
3. United States -- Military policy. I. Haglund, David G. II. Canadian Institute of Strategic Studies. III. Queen's University (Kingston, Ont.). Centre for International Relations.

UA646.3.N48 2000 355.031'091821 C00-930892-X

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CHAPTER TWO

With the UN Whenever Possible, Without When Necessary

David M. Law

Introduction

This chapter focuses on the relationship between the UN and NATO, and in particular on the way that they work together in situations involving the use of force. The central question I address is this: should NATO always defer to the UN — or rather to its decisive body, the Security Council — for a mandate when responding militarily to contingencies other than those involving a direct armed attack on a NATO member (or on its land or sea assets within the operational boundaries defined in article six of the Washington treaty)? As the chapter's title suggests, it may be appropriate or wise (or both) for NATO to modulate its relationship with the UN as circumstances demand, working with an enabling Security Council mandate whenever possible, but being prepared to go it alone when such a mandate is not forthcoming.

I deal with this question in five parts. In the first, I review briefly the links between the San Francisco charter and the Washington treaty and the way the relationship between the UN and NATO has evolved since the end of the Cold War. In the second and third parts of the chapter, I examine the main arguments against a mandate-only type of relationship in enforcement situations of the kind described in the UN charter's chapter seven. In the fourth section, I take a critical look at the arguments against the mandate-only relationship. The fifth and concluding section offers some speculation on how the UN-NATO relationship may evolve in future.

The Evolving UN-NATO Relationship

During the Cold War, one could be forgiven for believing that the UN and NATO existed on two different planets. Of course, there were links between the two organizations. With the partial exception of the Federal Republic of Germany (FRG),¹ all NATO members were then as now also UN members, and in general they were fairly scrupulous about observing the provisions of the latter's charter, in conformity with the commitment that they had undertaken in the preamble to the Washington treaty creating the alliance in 1949. That treaty, moreover, made several references to the charter. In article one of the treaty, the allies committed themselves "to settle any international disputes in which they may be involved by peaceful means." Article seven stipulated that the treaty "does not affect, and shall not be interpreted as affecting, in any way the rights and obligations under the Charter or the primary responsibility of the Security Council for the maintenance of international peace and security." Article five, which commits the allies to exercise military solidarity in the event of an attack on any of them, takes its legitimacy from article fifty-one of the charter. Notwithstanding these juridical connections, however, just as the East-West conflict marginalized the Security Council during the Cold War, it also virtually ruled out any cooperation, even any contact, between the two security organizations during this period.

With the end of the Cold War, there emerged a context that was radically more receptive to interaction between the UN and NATO. Yet, the relationship between the two organizations has changed unevenly, and in considerable ambiguity. Even now, a decade into the post-Cold War period, there are still no well-established norms governing the way they work together.

The UN and NATO first found themselves on the same security beat in the late summer of 1990, after the forces of Saddam Hussein had invaded Kuwait. (If I might intrude a personal note, it is indicative of the nature of the ties between the two organizations that, prior to that time, I had had very little, if anything at all, to do with the UN — and this despite the fact that I had been a member of the NATO international secretariat's policy staff for some six years.) With the Gulf crisis, officials in the political directorate of NATO were confronted with the question of how the alliance should work together with the UN. Would the allies, as in so many previous out-of-area contingencies, be involved under national or other flags, or — and for most of them this had been the norm — simply not involved at all? Or would they act as an alliance in responding to the invasion of Kuwait, and if so, would there be an enabling UN mandate?

Despite the end of the confrontation between East and West, member states' attitudes towards out-of-area issues were not going to be as different as many of us at NATO had expected, certainly not over the short term. All those weighty considerations that had militated against NATO acting outside the boundaries

defined by article six proved to be operative in the new strategic circumstances. NATO continued to see itself as a defensive alliance, extremely reluctant to venture forth militarily beyond its treaty-limited confines. The historical and constitutional constraints that had blinkered such countries as Germany and Italy to out-of-area contingencies since the mid 1950s remained strong. The political and strategic divergences of opinion that had characterized the allied approach to any number of troubled theatres during the Cold War had, if anything, become more pronounced, as the disciplining impact of the East-West stand-off faded. The military asymmetries that had tended to condition the hesitation of the weakest members of the alliance to commit troops outside the treaty area had by no means disappeared; on the contrary, during the Gulf War, the chasm between the military "haves" and "sort-of-haves" would prove gaping.

The policies of the United States, the country that in most out-of-area situations during the alliance's first forty years had taken the lead, were certainly not becoming more transparent or predictable. For the other allies, relying on the hegemon for a constancy of leadership remained as risky as ever, if not more. The only change that had occurred — and this was obviously a major one — was that concern that out-of-area action would destabilize the East-West relationship had been transformed into a less pronounced, but still significant, worry that it would alienate Russia. The result was that out-of-area actions remained highly problematical for NATO, even as voices could be heard advocating that the alliance would have either to go out of area or go out of business.

As it turned out, the alliance would end up going out of area. But NATO's involvement in the first major post-Cold War conflict very much reflected a transitional situation. While the allied contribution was probably decisive in determining the outcome of the Gulf crisis, the sixteen member countries could not agree that they should act as an alliance outside the treaty area. Some members — the so-called maximalists — argued that there was no reason why the alliance could not act as such outside the treaty zone, if all sixteen so agreed. Others — the minimalists — maintained that such action was excluded as it had not been foreseen by the treaty. Because of the need to decide by consensus, the minimalists won the day. What was done within the treaty area to support the war effort was done on an alliance basis, and what was done outside the treaty area was done on a non-NATO basis. And there was never any doubt about the need for the UN Security Council to bestow its blessing upon a NATO commander's leading Desert Storm.²

The fighting in Bosnia in the summer of 1993 presented the allies with a different situation. Among them, a controversy was raging about how best to respond. The Americans, who had no troops on the ground at the time, let it be known that they were prepared to launch air strikes against Bosnian Serb forces unless the siege of Sarajevo was lifted. NATO states with peacekeeping forces

committed to UNPROFOR strongly opposed such a move, out of concern for the possible impact on their troops' safety and on the delivery of humanitarian aid. The question was resolved with the passage of UN Security Council resolution 836, which threatened air strikes against any forces imperiling Sarajevo and any other safe areas (defined as such in resolution 834 of May 1993).

It was in connection with this decision that NATO and the UN established a procedure whereby both sides had to be in agreement before NATO aircraft could go into action. Initially, only the UN secretary general or his representative could initiate a request for air strikes. Later, in the spring of 1994, it was agreed that NATO could also launch the procedure. Nevertheless, the dual-key system remained unwieldy, and ultimately unworkable.³

The dual-key procedure underscored that by this juncture the out-of-area syndrome had become a "UN only" syndrome. In fact, NATO had imposed upon itself a geostrategic strait jacket that foresaw that it would do everything asked of it by the Security Council — maybe something less, but assuredly nothing more.⁴ The real issue remained, of course, whether this "everything" was effective. It proved not to be, as the number of casualties and displaced people the conflict generated on UNPROFOR's watch grew — to say nothing of the embarrassment inflicted upon UNPROFOR peacekeepers themselves, many of them from NATO countries, when at various moments during their deployment they could not defend themselves against local combatants.

Two years later, the UN and NATO would find themselves in a substantially different situation. With the UNPROFOR-led effort to contain the conflict in Bosnia demonstrably ineffectual, the UN ceded military leadership for peacekeeping to NATO, operating under a UN mandate. The Dayton agreement radically changed the architecture of the intervention in Bosnia. The Security Council continued to deliver the mandate, but it was NATO that delivered the goods, furnishing in cooperation with a plethora of other organizations and institutions (OSCE, Council of Europe, EU, WEU, and UN agencies such as the UNHCR) the necessary muscle. All was presided over by a high representative, who reported to a peace implementation committee composed of the representatives of countries contributing soldiers and resources to the stabilization and reconstruction effort.

The NATO aerial action over Serbia in the spring of 1999 marked a turning point. NATO, which earlier in the decade had made a veritable religion of working only with a UN mandate, now found itself working without one — at least not one specifically allowing the use of air power, for some eleven weeks. It was much criticized as a result, as is glimpsed in the chapter by Glenn Brown. It is against this background that I review the legal, political, and strategic arguments for NATO's working with the UN whenever possible, and without when necessary.

The UN Charter and the Evolution of International Law

Article twenty-four of the UN charter confers on the Security Council "primary responsibility for the maintenance of international peace and security," a status that is in turn acknowledged in the Washington treaty. Charter article thirty-nine also vests the Security Council with the responsibility for identifying threats to international peace and actual aggression, and for deciding what measures are to be taken in response. Article forty-two specifies that it is the Security Council that can decide that force be used to maintain and restore international peace and security, should other measures not prove adequate. To act in defiance of these provisions is widely viewed as tantamount to calling into question the legal order on which the international system is based; some even go so far as to argue that to defy these provisions is to invite global chaos.

The UN's charter and practices both, however, provide several arguments for minimizing the sanctity of Security Council decisionmaking. In the first place, the charter stipulates that while the Security Council's responsibility for international peace and security may be primary, it is not automatic. For example, article twenty-four calls upon the Security Council, in fulfilling its responsibilities, to act in accordance with the "Purposes and Principles of the United Nations." As formulated in article one, these embrace commitments to work for the "principle of equal rights and self-determination of peoples," and to encourage respect for "human rights and fundamental freedoms for all without distinction as to race, sex, language or religion" — commitments that were the subject of the Universal Declaration of Human Rights that UN members agreed to uphold and defend a half century ago.⁵ This suggests that any failure to live up to these commitments must call into question the primary responsibility of the Security Council for international peace and security.

A second consideration stems from article thirty-nine, stating that the Security Council, having determined the existence of a threat to the peace as defined under chapter seven, *shall* (my emphasis) make recommendations or decide what measures are to be taken. In other words, it has a responsibility to take remedial action once it has established that a chapter seven situation exists. In its resolution 1160 of 31 March 1998, it was the Security Council that invoked chapter seven to demand that Serb police halt the excessive use of force against civilians, and that the KLA desist from terrorist acts. However, during the ensuing year, the Security Council demonstrated that it was unable to back up its appeals with effective action. That is, it failed to meet its responsibility to take effective action as required by the charter, once it had defined a situation as falling under the provisions of chapter seven.

Those who condemned the NATO bombing on legal grounds insisted that it infringed upon Yugoslav sovereignty. So it did, but the sovereign right is not nearly as absolute as many have held. Article two of the charter stresses that

the UN has normally no business in intervening in "matters which are essentially within the domestic jurisdiction of any state." But the charter also lays aside the principle of noninterference when the enforcement measures of chapter seven are under application.

A further consideration is that the traditional state-centred approach to international security has to be balanced against an increasing willingness on the part of the international community to waive temporarily sovereignty when a humanitarian disaster exists or impends. In particular, the UN Convention on the Prevention and Punishment of Genocide, and the Geneva conventions on their four protocols, make it *incumbent* upon states to take measures to deal with acts of genocide. In this view, such acts constitute an offence that must be regarded as being committed against all states.⁶

In addition, sensitivity within the international community to the need to be prepared to intervene to ward off or check humanitarian abuses has increased dramatically since the end of the Cold War. In 1988, Security Council resolution 43/131 stipulated that the international community had to be able to respond quickly and efficiently to the secretary general's calls for assistance in dealing with humanitarian emergencies. In 1991, the Security Council, addressing the situation in northern Iraq, authorized for the first time an operation of humanitarian assistance by invoking a threat to international peace and security. Since then, the Security Council has legitimized interventions in Somalia, Liberia, Cambodia, and Rwanda with the argument that at stake was a humanitarian crisis endangering international peace and security.⁷ There would seem to be no legal basis for approaching any differently the sovereignty issue in the case of Kosovo, where humanitarian abuse was well documented and was, moreover, addressed in various Security Council resolutions.⁸

A further criticism of the NATO aerial action against Serbia related to there having been no explicit reference in the relevant resolutions allowing the use of force. In several instances in the past, however, resolutions that led to interventions were similarly unspecific. Resolution 688 of 5 April 1991, invoking a threat to international peace and security, authorized an operation of humanitarian assistance on behalf of the Kurdish populations of northern Iraq. While the resolution did not specifically permit the use of force, the allies who established Operation Provide Comfort did interpret it as justifying their resort to military action. Resolution 770 regarding Bosnia described the situation there as a threat to international peace and security, yet it too did not authorize the force that would eventually be used. Instead, it referred to "all necessary measures." So did resolution 940, which led to the operation in Haiti in 1994 that was to restore the legitimate government. It was only with the Somalia crisis that the Security Council specifically acknowledged a right to intervene to address an internal situation threatening, in its analysis, international peace and security. The mandates for subsequent actions in Rwanda and Albania were similar.⁹

In other words, the lack of specific permission to use force in Kosovo was hardly novel.

Similarly, the tendency has been for UN resolutions not to mention NATO by name. In resolution 1244 of 10 June 1999, the one for which the G-8 brokered text served as a basis, the alliance was only mentioned by name in an annex.¹⁰ This was also the case of resolution 1031 of 14 December 1995, ratifying the Dayton accord. The nonmention can work both ways, of course. Previously, it seems to have facilitated the acceptance of a NATO involvement. In the case of Kosovo, however, this nonreference appears to have been designed to downplay the role of the Atlantic organization.

Two other legal considerations also deserve comment. The use of force, it is said by some, is restricted to self-defence against an armed attack, pursuant to article fifty-one of the UN charter. This recognizes the member states' right to individual or collective self-defence against armed attack, until such time as "the Security Council has taken measures necessary to maintain international peace and security." This clause is referred to in the Washington treaty as legitimizing the creation of NATO. However, what constitutes an armed attack is not clearly defined in the charter, nor is there consensus on this point in international law. Does a country have to wait until it is actually attacked to respond legitimately in its defence? Does the attack on its security have directly to impinge on its territory before it can respond?¹¹

Traditional jurisprudence would answer in the affirmative to both these questions. A more contemporary approach might take into account, as do the alliance's two strategic concepts of the 1990s, that security threats can be indirect or nonmilitary in nature, and can include the uncontrolled movement of large numbers of people, particularly as a consequence of armed conflicts.¹² This was very much the case with Kosovo in the late winter and early spring of 1999. Moreover, the crisis there threatened to engulf four states that are members of NATO, and thus did pose a serious threat to their security.

A second difficulty with article fifty-one is that it refers to attacks against member states, not parts of states such as Kosovo. But there is a priori no reason why the people of Kosovo, with a population larger than some 20 per cent of the world's states, including that of independent Slovenia and potentially independent Montenegro, should not enjoy the same right of protection as others, simply because their attacker happens to be their own government. To reject this reasoning is equivalent to suggesting that the international community should have recognized Kosovo as an independent state in order to be able to defend it; or, even better, that their failure so to recognize Kosovo should have discharged them from any obligation to the Kosovars. In fact, this factor certainly played a role in the willingness of many states to recognize the former republics of Yugoslavia, arguably to unfortunate effect. What we detect in the case of the Kosovo action, however, was a deliberate effort on the part of the intervenors

to safeguard the territorial integrity of Yugoslavia, even as they relativized its sovereignty so as to address a humanitarian crisis.

The UN charter also foresees that the General Assembly can discuss any questions relating to the maintenance of international peace and security and make recommendations to the Security Council. According to the charter, this can only happen should the Security Council itself not be seized of the issue, or if it requests that the Assembly pronounce itself on the matter in question. Despite these restrictions, however, there have been occasions on which the General Assembly has responded to a Security Council failure to react to a situation effectively by passing its own resolution. The first such instance came in 1950 with the passing of the "Uniting for Peace" resolution, at a time when the Security Council was divided on how to respond to the Korean War. The resolution warned that "if the Security Council, because of a lack of unanimity of its permanent members, failed to exercise its primary responsibility for the maintenance of international peace and security," the General Assembly would consider the matter immediately, with a view to making appropriate recommendations to the members for collective measures, including the "use of armed force."¹³

This option was also open to the General Assembly at the height of the Kosovo crisis. That it was not taken suggests that members felt that sentiment was sufficiently supportive of the NATO action as to make a special Assembly motion unnecessary. (This I discuss in more detail in the next section.) From a legal perspective, however, it can be argued that the decision of the Security Council on 26 March to reject draft resolution 6659, which called for a halt to the bombing and was sponsored by the Russian Federation, expressed not only the dissent of the twelve (of fifteen) members voting against the resolution, but also of the UN's broader membership.¹⁴

Political and Strategic Considerations

The political advantages of being able to operate with a UN mandate are substantial. In view of the quasi-universal membership of the UN, it makes obvious sense for a country or a group of countries to seek international support for an intervention wherever possible and to avoid action that could pit the membership of the global body against them. This is especially the case if action is being taken that challenges what remains the bedrock of the international state system (namely, state sovereignty and territorial integrity), even if there is no intention in the process of doing anything that would permanently alter a state's sovereign status. There are also obvious geostrategic arguments for operating within the framework of a Security Council mandate and for negotiating any dispute among the five veto wielders (the US, Russia, China, France, and the UK).

These are important concerns and they have certainly helped shaped the NATO approach to the global organization. Alliance members have in general been very enthusiastic about pursuing opportunities for a new relationship with the UN in the post-Cold War era. They responded favourably to Boutros-Ghali's *Agenda for Peace* in 1992, and to the hope expressed by the secretary general that the UN would become the "nerve centre of the international system." The alliance was particularly receptive to the UN's declared ambition to forge new relationships with regional organizations such as NATO.

Their enthusiasm led to NATO's undertaking, at its foreign ministers' meeting in December 1992, to support peacekeeping operations under the authority of the Security Council, and to respond positively to any initiatives that the UN secretary general might take in this regard. This offer was qualified with the stipulation that NATO would only commit itself on a case-by-case basis, and in accordance with its own procedures. Still, for an organization that had had hardly any interaction at all with the UN through four decades of Cold War, this was a significant step. Support for political cooperation remained strong within the alliance, as manifested by the interest on the part of all NATO member states to secure UN backing for their efforts to reestablish a mandated basis for their action in Kosovo, as well as a mandate for the entry of peace enforcement troops into the beleaguered province as soon as circumstances could permit in the spring of 1999.¹⁵

As the 1990s progressed, there developed a sense, among alliance members, of the limits to UN-NATO cooperation. A major factor has been the representativeness of the Security Council and the legitimacy of the veto powers of the so-called P5 (i.e., the permanent five). These states, with the partial exceptions of China and France, have their role as World War II victors to thank for their current elevated status. But while they remain militarily the most powerful countries on earth, much has changed since 1945. The P5 are no longer the only nuclear powers. They are no longer representative of the international community's membership, which in 1945, counted only fifty states; today it embraces 185 countries spread across five continents, whereas among the P5 are only represented Europe, Asia, and North America. It is no wonder that the calls for reform of the Security Council have grown increasingly loud.

Moreover, P5 behaviour has often been inconsistent with the stipulation formulated in article 24/2 of the charter, calling upon members of the Security Council to act in accordance with the "Purposes and Principles" of the UN. The abuses have been blatant. Beijing has misused the sovereignty argument to lay a claim to Taiwan that is bereft of any notion of self-determination for the islanders. It has, as well, displayed a tendency to use its veto status as a weapon in its campaign to incorporate Taiwan. For example, in February 1999, it vetoed the prolongation of the mandate of the UNPREDEP force stationed along Macedonia's border with Yugoslavia as a stabilizing measure, in retaliation against Skopje's recognition of Taiwan.¹⁶

As for Russia, it showed scant respect in the early part of the 1990s for the new sovereignties of post-Soviet space, using forces loyal to Moscow to apply pressure on former republics to adopt policies favourable to Russian interests. In the conflict between NATO and Yugoslavia over Kosovo, Russia and China each played a role that contradicted the principles and purposes of the charter. It is true that, through 1998, Moscow had consistently supported Security Council as well as Contact Group efforts to bring peace and stability to Kosovo. But the refusal of the government of Prime Minister Primakov to support the Western call, made in the Rambouillet context, for the positioning of an armed international force in Kosovo may have been decisive in encouraging Slobodan Milosevic's resistance to the introduction of a such a force. As such, Moscow could be said to bear co-responsibility for the failure of the peace talks.

The credibility issue also applies to the Western side, and in particular, to the US. Its arrears (more than \$1 billion) to the global organization have become tiresomely familiar. It has supported the policies of Israel even when the latter were clearly at odds with the charter. To many members of the international community, Washington has shown itself far too ready to resort to force in circumstances that imperil innocent lives. In addition to Yugoslavia, US planes have bombed three countries in the past two years. Against this background, it may perhaps surprise just how many members of the international community were prepared to support or tolerate yet another military action involving the US, in March 1999.

One other aspect of "representativeness" merits highlighting here: despite all their imperfections, the alliance's nineteen members are functioning democracies, which is more than can be said for China or even Russia. Indeed, the positions taken by the latter two throughout the conflict contrast sharply with stances toward the war of democratic states, whether members of NATO or not. Support for the NATO action was strong throughout Europe. In contrast, CIS members with close links to Russia condemned the NATO bombing, even though they still showed up at the April 1999 NATO summit in Washington, along with Ukraine and most other Partnership for Peace countries. Only Belarus, in addition to Russia, stayed home. Even the Balkan neighbours of Yugoslavia allowed NATO planes to use their airspace, or in the case of new ally Hungary, authorized the launching of bombing sorties from their soil.¹⁷

All fifteen members of the European Union supported the NATO air campaign. So did Japan. The Arab world was also generally in favour, with the result being that efforts on the part of Cuba and Libya to mobilize the non-aligned movement on behalf of its erstwhile lead state flopped. As if to set the stage for these subsequent developments, members of the NATO parliamentary association gave overwhelming support, at their November 1998 meeting, to the proposition that NATO did not require a UN mandate to take military action outside its treaty area.¹⁸

Finally, there was the constructively ambiguous position taken by Kofi Annan in the Kosovo conflict. The UN secretary general, while insisting that NATO should have consulted — not *had* to consult — the UN before taking military action, told reporters at the beginning of the emergency Security Council session held the day the bombing began that "it is indeed tragic that diplomacy has failed, but there are times when the use of force may be legitimate in the pursuit of peace."¹⁹

Some observers claim that interventions that take place under a mandate from the UN or a regional organization have tended to be much more successful than those lacking such a mandate. Cooper and Berdal, for instance, cite the action of UNICYP in Cyprus after 1964 as a successful operation, contrasted with the unilateral Turkish action on the island a decade later. They also deem successful the Syrian intervention in Lebanon after 1976, which twice received the approval of the Arab League, and unsuccessful the MFN II that was deployed to Lebanon in 1982. This latter force, which consisted of French, American, and Italian (and later British) forces, did have a mandate, but it was provided by a Lebanese government that was clearly not regarded as neutral. At the same time, it can be argued that the record of more recent interventions — for example, in places as far apart as Georgia, Bosnia, Somalia, and Haiti — suggests that a mandate is by no means a guarantee of success.²⁰

But how does one assess the "success" of an intervention? Take the case of Cyprus. Some say UNICYP has been a failure because after thirty-five years in existence, it does not appear to have rendered Greek and Turkish Cypriots more amenable to a compromise by which political responsibilities might be shared. Others hold UNICYP to have been a success, because it has managed to clamp a lid on overt conflict on the island. The problem is similar with the intervention in Bosnia. Certainly, if saving lives is the criterion of success, there can be little doubt that the UN-led phase of operations there was a disaster. The post-Dayton intervention, through IFOR and then SFOR, has been much more effective, though not to the point of managing to secure the return of refugees in significant numbers.²¹ Nor can there can be much doubt but that the situation in Bosnia would have collapsed once more had NATO not moved to oppose Milosevic's policies in Kosovo.

The least that can be said is that NATO seems to have learned lessons from the UN-led peacekeeping operations in the Balkans during the 1990s — lessons that helped shape its approach to the crisis in Kosovo. The allies, particularly the US, wanted to avoid subordinating their operations to too much UN interference and oversight, such as had occurred with the dual-key arrangement for Bosnian operations in 1993-94. Difficulties experienced in convincing the Security Council to deal effectively with the situation in Kosovo over the twelve months following the outbreak of the crisis in February 1998 were a reminder of unfortunate earlier experiences in Bosnia.

One argument in support of NATO's acting only within the framework of a Security Council mandate invokes the "demonstration effect." If the alliance operates outside the charter, it is said, there is a greater risk that less democratic countries, individually or in groups, will do so as well. If there is indeed such a risk, the "consequences" appear not subsequent to the NATO action in Kosovo, but rather *before* it, thus are not consequences at all. Perhaps the most telling example in this regard has been the behaviour of Russian forces in the Commonwealth of Independent States. Russian peacekeeping doctrine does not consider consent to be a mission prerequisite. In practice, this has meant that of the four major peacekeeping operations in which Russia has been involved in the near abroad — South Ossetia, Moldova, Tajikistan, and Abkhazia — only the latter has proceeded with the support of all parties to the conflict.²² But even in that instance, Russia only requested UN authorization for its action well after it had been launched. Some observers hold that Georgia only agreed to support the request for a mandate when it realized that opposition was a losing proposition, and that going along with Moscow was the best, because only viable, option.²³

A related issue is whether NATO has fundamentally upset the proverbial geostrategic "applecart" with its aerial campaign against Yugoslavia. According to Henry Kissinger, the 1999 action against Belgrade has poisoned the relationship between the current, erstwhile, and would-be superpowers.²⁴ Again, and here applecart may be an apt metaphor, this could be another case of putting the cart before the horse, given that the deterioration in US-Russian and US-Chinese relations preceded, it did not follow, the air war. China has long opposed what it perceives to be hegemonic strivings on the part of the US in Asia. And Russian opposition to US leadership emerged as a factor of political importance once it became obvious that NATO enlargement would proceed.²⁵ Expressions of joint Russo-Sino interest in establishing a strategic partnership to counterbalance the US well predate the aerial campaign against Yugoslavia, with a declaration to this effect being pronounced at a bilateral summit held in April 1996.²⁶ More recently, some observers have cited the weakening flow of US foreign direct investment into China and of international funds into Russia as important factors in the souring of the mood in Beijing and Moscow.²⁷ This being so, while NATO's Kosovo action can hardly be said to have improved the West's relations with Russia and China, it does not follow that in the absence of the war those relations would have been cordial.

The real question is just how much more troubled has NATO's action made the strategic climate? There is no easy way to answer this question. Those who want to argue that the climate has been considerably worsened by NATO should ask themselves what would have been the impact on Kosovo and the region — to say nothing of the effect on the credibility of Europe's only viable security organization — had the alliance simply walked away from the crisis

once it realized it could not obtain a UN mandate to act. Much more was at stake than the fate of a transatlantic organization's reputation. NATO, for all its inadequacies, remains the only institutionalized grouping of states capable of dealing effectively with serious security threats in Europe and adjacent areas. Failure to have applied an effective counterweight to Milosevic's policies in Kosovo, far from mollifying Russia, might have resulted in the opposite effect, and have virtually guaranteed the production of a Milosevic clone in Moscow. Similarly, Western weakness in dealing with Yugoslavia would likely have strengthened the hand of those in Beijing who seek to establish Chinese hegemony over Asia.

Conclusions

On balance, there is a cogent case for NATO's being able to act outside the Security Council framework while remaining faithful to the principles and procedures of the charter. The argument that NATO can only work with a UN mandate in peace-enforcement situations is, at best, riddled with ambiguity. That state sovereignty invariably or even generally takes precedence over humanitarian rights is not clearly substantiated in international law. The sovereignty argument is weak and has been becoming weaker under the impact of globalization. The political advantages inherent in going along with the UN in all circumstances, even when the global organization is incapable of providing effective leadership on matters warranting the use of force, seem questionable to the point of being nonexistent. What applies to other political organisms should also apply to the UN: if a higher level of decisionmaking authority cannot deal effectively with a problem, then responsibility for the problem should be delegated downward, under the principle of "subsidiarity." For NATO to take decisions that the global body cannot take is in keeping with this principle.

Nonetheless, there must remain something inherently disconcerting about such a conclusion, for its metatheoretical elements do obscure important issues lying at the heart of the NATO-UN relationship. In the first place, Europe, despite recent efforts to build a European security and defence identity (ESDI) within the EU, once again showed itself, in the conflict over Kosovo, to be incapable of addressing a crisis situation on its immediate periphery. In particular, it found itself bereft of an effective answer to the minority-majority dilemmas that threaten its periphery, and ultimately its core.

As a result, Europe was once more placed in a position of dependency on the US for the resolution of a *European* interethnic conflict. Notwithstanding the rhetoric about the US as the sole remaining superpower, America is overstretched and as a result is limited in its range of strategic choice. With

Washington not prepared to put its troops on the ground, an aerial war became the default option. Bombing eventually did force Milosevic to make peace, but only after civilian populations in Serbia and Kosovo experienced great suffering. The upshot is that in this latest conflict over ethnicity, territory, and sovereignty, Europe has had to accept what has essentially been an American solution to a European problem. Resolution of the UN-NATO relationship must, to a considerable degree, await resolution of the US-European relationship within NATO. But even if the latter problem can be solved, there is no guaranteeing that the former can be.

The UN and NATO can work together effectively, and have at times done so. As I argued at the start of this chapter, once the two organizations abandoned their "two-solitudes" stance of the Cold War, their relationship changed in ways that simply had not been anticipated, even by the "experts." Obviously, in situations where Security Council cohesion is high and NATO's will to intervene is similarly strong, the UN-NATO relationship can flourish; something like this occurred in the case of Bosnia, post-Dayton. But how much of a precedent can Bosnia since 1995 be expected to be?

Factors working against its being much of a precedent are threefold. First, Security Council decisionmaking is and remains hostage to the divergent geopolitical interests of its members. Secondly, NATO consensus-building continues to rely too much on American power to solve problems that demand more of a European solution. As such, both the UN and NATO have been experiencing something akin to a crisis of confidence of late. Even if these problems were effectively addressed, however, there would remain a third obstacle: developing a new set of rules and principles to guide the international community when it is confronted with situations in which the relationship between two communities has irreparably broken down, and a modification or transfer of sovereignty is needed.²⁶

The Security Council, *in principle*, might seem well-placed to play a leading role in the latter regard. In practice, however, its record is anything but reassuring. Kosovo merely underlines the regnant, and fundamental, discord. Ultimately, the question becomes this: do people exist for states, or do states exist for people? To a certain extent, the divisions among the P5 reflect the tension between what Robert Cooper has so aptly termed the "modern" and "post-modern" worlds.²⁹ Three members of the Security Council (the US, Britain, and France) live in the post-modern world; Russia and China do not. The implication is that post-modern states are more disposed than their modern counterparts to intervening abroad on humanitarian grounds. If this is so, then optimism regarding the ability of the Security Council actually to provide security seems unwarranted.

Notes

1. The FRG, which became a NATO member in 1955, was jointly admitted to the UN with the German Democratic Republic in 1973.
2. The relationship between in-area and out-of-area roles is described in my "The Alliance and Security in the Mediterranean, and the Gulf Crisis," in *Jane's NATO Handbook, 1991-92*, ed. Bruce George (Coulson, UK: Jane's Defence Data, 1991), pp. 199-201.
3. Dick Leurdijk, *The United Nations and NATO in the Former Yugoslavia* (The Hague: Netherlands Atlantic Commission/Netherlands Institute of International Relations ["Clingendaerf"], 1994), pp. 42, 62.
4. And of course NATO did do everything asked of it, from monitoring sanctions in the Aegean to providing the UN with a command structure and military plans, as well as aerial support.
5. General Assembly resolution 217A(III), 10 December 1948.
6. Arthur Paecht, general rapporteur, "Humanitarian Intervention between Politics and International Law," draft general report, Civil Affairs Committee, North Atlantic Assembly, paras 36-37.
7. Abdoulaye Diop, "De la mythification de l'humanitarisme à la démythification de la souveraineté et de la raison d'état," paper given at a meeting of experts on state sovereignty and human rights, Montreal, March 1995.
8. See UNSC resolutions 1199 of 23 September 1998, 1203 of 24 October 1998, and 1239 of 14 May 1999. For reports on the humanitarian situation, see the website sections on Kosovo for the UNHCR, Human Rights Watch, and Amnesty International.
9. "Humanitarian Intervention between Politics and International Law," paras 16-24.
10. Annex 2, para. 4 of the resolution states the following: "The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced people and refugees." Significantly, the resolution does not specify that the international security presence must be under the unified command and control of NATO.
11. Edwin Smith and Thomas G. Weiss, "UN Task-Sharing: Towards or Away from Global Governance?" *Third World Quarterly* 18, 3 (1997): 601.
12. "The Alliance's Strategic Concept," para. 24, NAC-S (99)65, 24 April 1999, www.nato.int/docu/pr/1999/p99-065e.htm.
13. UNGA resolution 377 of 3 November 1950, quoted in Hans Vethera, "Peacekeeping in the UN and the CSCE: The Normative Framework" (unpublished mss, n.d.), p. 5.
14. Only China and Namibia supported the Russian initiative.
15. See "The Role of NATO in Peacekeeping in the Former Yugoslavia," *Fact Sheet*, no. 4, www.nato.org.
16. RFE/RL, 26 February 1999. Thirteen out of fifteen Security Council members voted to extend UNPREDEP's mandate by six months, while Russia abstained. Slovenia's ambassador

to the UN, who holds a rotating European seat on the Security Council, said that the veto reduced the credibility of the UN and marked a "sad day for the Security Council."

17. Peter Baumgartner, "Moscow and Minsk Virtually Alone in Support of Belgrade," *RFERL Newsline*, 12 April 1999.
18. "Assembly Says NATO Does Not Need UN Mandate," Reuters, 13 November 1998, cnm.com/WORD/europe/981113/BC-NATO-UN-MANDATE.reut.index.html.
19. Kofi Annan, "UN Should Have Been Consulted," CNN report with AP and Reuters contributions, 24 March 1999, CNN.com/WORLD/europe/9905/24/kosovo.reax/.
20. Robert Cooper and Mats Berdal, "Outside intervention in Ethnic Conflicts," *Survival* 35 (Spring 1993).
21. According to the UNHCR website, only 3 percent had returned to their homes by the spring of 1999.
22. Dale Roth, "Russia's New Military Doctrine and the Internal and Regional Use of Force," in *Coming Together or Falling Apart? Regionalism in the Former Soviet Union*, ed. S. Neil MacFarlane (Kingston: Queen's University Centre for International Relations, 1997), pp. 67-68.
23. Lasha Tchantouridze, "The States of the Caucasus and Their Neighbours," in *Coming Together or Falling Apart?*, pp. 87-89.
24. Kissinger, "New World Disorder," *Newsweek*, 31 May 1999, www.peaceinbalkans.freemove.co.uk/articles/kissinger.htm.
25. David Law, "Why Spain Should Have Been NATO's Last New Member," in *The Future of NATO: Enlargement, Russia, and European Security*, ed. Charles-Philippe David and Jacques Lévesque (Montreal and Kingston: McGill-Queen's University Press, 1999), pp. 35-50; and Andrei Kortunov, "NATO Enlargement and Russia: In Search of an Adequate Response," in *Will NATO Go East? The Debate Over Enlarging the Atlantic Alliance*, ed. David G. Haglund (Kingston: Queen's University Centre for International Relations, 1996), pp. 69-92.
26. David Law, "Principal Directions of Russian Foreign Policy in the CIS," in *Coming Together or Falling Apart?*, p. 46.
27. See "1999 Annual Forecast: A New and Dangerous World," *Global Intelligence Update*, 4 January 1999, www.stratfor.com.
28. Catherine Guicherd, "International Law and the War in Kosovo," *Survival* 41 (Summer 1999): 19-34.
29. Robert Cooper, *The Post-Modern State and the World Order* (London: Demos, 1996).

CHAPTER THREE

The Dilemmas of a Victor: NATO and the "New Collective Security" of the Post-Cold War Era

Shaye K. Friesen

Introduction: NATO After the Cold War

In November 1991, the North Atlantic Treaty Organization released its strategic concept, a document intended, as the chapter by Glenn Brown demonstrated, to provide an ongoing rationale for the alliance following the demise of the Soviet Union. With NATO's initial raison d'être a thing of the past, the future of collective defence was increasingly called into question.¹ Given the importance previously attached to an external threat as a major determinant in alliance cohesiveness, NATO quickly moved to ward off dissolution by broadly defining its main security threats as "multi-faceted in nature and multi-directional, which makes them hard to predict and assess."² This approach was reflected in such new security priorities as dialogue, crisis management, and conflict prevention. While implying that it continues to be an instrument of collective defence against external enemies, alliance leaders have not ruled out "collective security" and peacekeeping activities.

Far from it, for the rhetoric coming out of Brussels in the early 1990s testified to a growing realization that, if it were to remain militarily and politically relevant, the alliance would require significant modifications to its strategy and its mission.³ In less than two years following the Rome summit, an alliance that had been a central part of the division of Europe was seeing its military mandate transformed from collective defence into an increasingly flexible collective security regime dedicated to fostering a vision of security, cooperation, and stability in a transatlantic condominium said to stretch "from Vancouver to Vladivostok."⁴