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The Political and Defensive Development of the European Community: An Examination of the Changing Role Played by the Member States.

For nearly forty years, the member states of the European Community have pursued the intent of its founders who were “determined to lay the foundations of an ever closer union among peoples of Europe.” World War II had served as an instrument of policy to solve the differences between the states of Western Europe by creating a body of law applicable to their citizens and to themselves. Six nations originally created the European Community because they perceived it as a means of obtaining a substantial degree of unification. Although progress has been plagued by the reluctance of the member states to surrender their claims of ultimate sovereignty, the EC has played a key role in facilitating economic cooperation and coordination.

The present members of the European Community are seeking to create through negotiations a single European market in which national boundaries would be no greater an impediment to economic activity than state borders in the United States. No longer preoccupied with expansion, the EC has shifted to a period of consolidation.

1. The European Community refers collectively to the Economic European Community, the Community or simply the EEC or EC.
4. Id. at 8. The EC has expanded to include twelve Member States. Besides the original six, Denmark, Ireland, and the United Kingdom joined in 1972, see O.J. EUR. COMM. (No. L 2) 16 (1973); Greece acceded in 1979, see O.J. EUR. COMM. (No. L 291) 22 (1979); and Spain and Portugal joined in 1985, see O.J. EUR. COMM. (No. L 169) 28, art. 13 (1987).
5. Ian Brownlie, Principles of Public International Law 252-53 (1966). In general, sovereignty characterizes powers and privileges resting on customary law and independent of the particular consent of another state. Sovereignty is often a term used to describe both the legal personality of a state and the incidents of that personality. Id.
7. Id.
The EC is attempting to go a step further than the Treaty of Rome which long ago abolished tariffs and other direct trade barriers within the EC borders. The Community now intends to abolish all indirect or hidden obstacles that restrict commerce through the enactment of the Single European Act (SEA).8

The SEA amends the Treaty of Rome for the purpose of "concrete progress towards European unity."9 In addition to articulating fresh objectives for the EC in economic, social and monetary policies, the SEA sets out to create a new political momentum among the member states. The SEA has enabled Community members to pursue cooperative political decisions through the codification of the European Political Cooperation (EPC) into Title III of the SEA.10 Through this Cooperation, the EC is attempting to harmonize the external policies of its member states, including a unified defense policy.11

The purpose of this Comment is to address the emerging political and defensive role of the European Community as it continues to advance its economic and social unity. The members of the EC have found that nothing is permanent; time forces all circumstances to change. These changes will be explored in light of the enactment of the SEA to determine if the Community succeeded in eroding each nation's individuality to bring closer the day when Europe can speak with one voice.

I. The Institutions and Laws Establishing the European Community

The European Community operates according to treaties signed by the member states.12 This Community law, where it applies, is supreme law — the legal equivalent of a constitution.13 Therefore, the EC Constitution creates more than a mutual obligation between contracting states. It represents an authority which citizens of member states can invoke through the Court of Justice which ensures that the Community law is observed in its interpretation and appli-

9. Id. at tit. I, art. 1.
10. Id. at tit. III.
12. HUGH ARBUTHNOTT AND GEOFREY EDWARDS, A COMMON MAN'S GUIDE TO THE EUROPEAN MARKET 42-43 (1979). The constitution is formed by the ECSC, the Treaty of Rome, and The Euratom Treaty, supra note 2. These treaties have been supplemented by six more: the Merger Treaty (1965), the Budgetary Treaty (1970), the Treaty of Accession (1972), the European Audit Court Treaty (1975), the European Parliament Direct Elections Act (1976), and the Single European Act (1986). Id.
The EC Constitution requires member states to remain committed to working together to promote steady economic expansion, balanced trade and fair competition, by establishing a common market and by expanding their economic policies.

By 1955, this objective appeared to be obtainable in light of the success of the treaty which established the European Coal and Steel Community (ECSC). This covenant provided for the development of a single market for coal, iron, and steel to eliminate all barriers to free competitive trading. The political leaders of the six member states recognized that a motivation existed for the establishment of the new European Economic Treaty (Treaty of Rome) to broaden the European market. The ultimate goal was to establish a common market through which the six EC nations could gain sufficient strength to compete economically with the United States and the Soviet Union.

This broadening process proved to be difficult since the Community held only those "powers conferred upon it by the Treaty." Despite the intent to create a true community, a contractual approach was chosen as the means to develop a sense of common identity. The inherent limits within the Treaty of Rome allowed the government of each member state to surrender its claims to sovereignty only as far as the benefits outweighed the cost. For example, a central element of the Treaty of Rome was the provision which allowed for the free movement of goods. Although the Treaty provided for the removal of customs barriers, it failed to set out specific guidelines to assist with the removal of internal tariffs. These diverse administrative and tax barriers of the member states interfered with the total free movement of goods throughout the Community.

In spite of these limitations, Community law was designed to be effectively administered by a Council, a Commission, an Assembly, and a Court of Justice. These institutions are responsible for the

15. Id. at art. 2.
16. ECSC Treaty, supra note 2.
17. Id.
18. ROBERT S. JORDAN, supra note 11, at 92.
19. Id. at 94. It was felt that increased economic strength would eventually give the Six, and later the whole of Western Europe, a political position equal to that of these two Superpowers. Id.
22. Id.
24. Id.
26. Id. See also, Treaty of Rome, supra note 2, at art. 97.
27. Treaty of Rome, supra, note 2, at art 4. See also, Articles 137-44 related to the Assembly; Articles 145-53, the Council; Articles 154-55, the Commission; Articles 164-88, the
development of an economic and social framework from which the EC expanded. The institutions not only supervise the implementation of Community law, but also undertake the task of facilitating agreements among the member states for its expansion.

A. Council of Ministers

The principle decision-making power is given to the Council of Ministers, whose members are sent at the discretion and on the instruction of their respective governments. It is the Council, therefore, that harmonizes and reconciles the interests of the separate member states and those of the EC as a whole. However, the Council of Ministers has no general law making power to make decisions outside the boundaries set by the Treaty. In addition, most decisions must be made through unanimous voting. These restrictions were designed to ensure that the larger states would not prevail over the smaller ones and vice versa.

B. Commission

Another protective measure can be found in the role of the Commission. The European Commission essentially acts as the "watchdog of the Treaty" by proposing and enforcing Community legislation. The Commission has the power to intervene when provisions of the Treaty are broken, and if necessary, it has to report breaches of the Treaty to the European Court of Justice. The Council of Ministers may be the last word in translating the proposals into effective Community orders, but it is the Commission that was designed to play a key role in the day to day administrative process that leads to their implementation.

European Court of Justice.
29. Id. at 7.
31. Walter Hallstein, supra note 25, at 63.
32. Treaty of Rome, supra note 2, at art. 145.
33. Id. at art. 148-50.
36. "To ensure proper functioning and development of the Common Market, the Commission shall ensure the provisions of this Treaty and measures taken by the institutions thereto are applied." Treaty of Rome, supra note 2, at art. 155.
37. Id. at art. 173.
38. Eric Stein, supra note 34, at 39.
C. Assembly

Although legislative functions are fundamental to the success of the EC, the Treaty does not disregard the need to have representatives of the peoples, independent of national governments and independent of other Community institutions. The European Assembly was designed to be the most supranational of the Community institutions because of its composition. The representatives are members of the national parliaments of their member states and are selected by these respective parliaments to serve on the Assembly. Their European delegation is thus linked with their national parliamentary delegation. The Assembly, however, is not a legislative body and its powers are limited. Neither the Commission nor the Council is obligated by the Treaty to adopt the Assembly's proposals.

D. Court of Justice

The Court of Justice, on the other hand, has played a crucial role in enforcing the promises embodied in the Treaty. The Court has the power not only to directly invalidate any Community acts that it finds violate the Treaty, but also to require member states to fulfill their Treaty obligations. The Court's task is to "ensure that in the interpretation and application of the Treaty the law is observed." This is a broad power which allows the Court to found its decisions on other law as well. Moreover, through a referral procedure from national courts, it can indirectly invalidate national laws that contravene superior Community law. Ultimately, the Court of Justice requires the member states to accept the consequences of what they agreed to under Community law. If a member state fails to fulfill an obligation under the Treaty, the state can be "required to take the necessary measures to comply with the judgment of the Court of Justice."

The Court of Justice, as well as the other EC institutions, has continued to grow in number to accommodate nationals from new member states. The establishment of these institutions has provided

40. ERIC STEIN, supra note 34, at 43.
41. Id.
42. Treaty of Rome, supra note 2, at art. 138.
43. Id. at art. 137.
44. Id. at art. 164.
45. ERIC STEIN, supra note 34, at 136-37.
46. Treaty of Rome, supra note 2, at art. 169-88. See also, Costa v. ENEL, 1964 E. Comm. Ct. J. Rep. (1964). The Court dealt with this issue of the conflict of laws and found that Community law took precedence as confirmed by art. 189 of the Treaty of Rome. Article 189 states that a regulation "shall be binding and directly applicable in all member states." Treaty of Rome, supra note 2, at art. 189.
47. Id. at art. 171.
for a procedure of consultation. The Council, Commission, Assembly, and Court of Justice are required to work side by side in their decision making process to allow for consistent application of Community law. In addition, governmental authorities must recognize when amended provisions are needed to move the EC toward its goal of complete unification.

II. The Single European Act: The Dynamics of the Change

In an ambitious effort to progress towards European unity and to compete economically with the United States and Japan, the twelve members of the EC developed a revolutionary program for a single European market. The inclusion of the single market goal within the amendment to the Treaty of Rome was a logical step for the EC to create a more dynamic economy in Western Europe. The SEA committed the Community to achieving this integrated market by the end of 1992. This target date, however, has passed and the barrier-free European market has not arrived.

A single European market would ultimately be a market in which national boundaries are no longer an impediment to economic activity. The abolishment of all physical, technical and legal barriers to trade would result in a haven of free movement within the borders of the EC. The SEA specifically mandates “the free movement of goods, person, services and capital.” It is this provision which articulates the fresh objective taken by the EC to cooperate in economic and monetary policies. Although the single market goals are not complete, the real revolution of the 1992 plan is how it has changed the way Europe works and how it approaches business.

A. Majority Voting

The most interesting changes since the SEA’s 1987 implementation are the voting majorities. Majority voting in the Community has been previously used. However, the need for increased use of majority voting is a current development. Under a new, complicated voting formula, opposition from at least two large members, plus one or two small ones, is now needed to block a bill. As a result, a

48. SEA, supra note 8, at tit. I, art. 1.
51. SEA, supra note 8, at tit. II, art. 13.
53. SEA, supra note 8, at art. 13.
55. Id.
single nation can no longer veto an action. EC officials believe that without this change, the achievement of the 1992 program would be delayed even further.

However, the change in majority voting is limited to those matters which are not considered to be fundamental. The changes mainly concern the completion of the internal market while unanimity has been preserved for provisions applying "to fiscal matters, to the free movement of person and to the rights and interest of employed persons." The retention of unanimous voting in these areas indicates that EC members are not prepared to allow for a significant loss of power. Each member state also maintains the power to exercise a political veto when important issues are at stake. Nevertheless, the greater use of majority voting could ultimately weaken each member state's veto power in the Council. The Council is the only governmental institution in which an EC member can exercise real control over Community legislation.

In some respects, the power loss may be greater than the member states expected. The SEA has given the European Parliament, formerly known as the Assembly, legitimate say in the legislative process. The European Parliament is now allowed to propose amendments, or to reject the common position initially communicated to it by the Council. The Council must then act unanimously to implement its decisions. This new cooperation of the European Parliament in the Community's legislative process appears to shift the balance of responsibility from member states to the Parliament itself. The voting power of the member states in the Council is now weakened not only by the greater use of majority voting, but also by Parliament's increased ability to take an active role in the decision making process.

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56. SEA, supra note 8, at art. 6-7.
57. In Years to Come, One European Currency Might Become Feasible and Even Attractive, TIMES (London), June 27, 1991, § 3 (Features), at 4 [hereinafter In Years to Come].
58. SEA, supra note 8, at art. 18.
59. Nevertheless, the provisions allowing majority voting are not unimportant. They concern the alteration or suspension of duties, the right of establishment, restrictions on the right to provide services, the movement of capital, sea and air transport, research and technological development, the health and safety of workers, and certain decisions on the environment. See generally SEA, supra note 8.
61. ROBERT S. JORDAN, supra note 11, at 98. As discussed in an the above paragraphs, the Council of Ministers is the Community's legislative body and is responsible for taking decisions on Commission proposals. This institution is the only place the member states can exercise real control over Community legislation. Id.
62. SEA, supra note 8, at 6.
63. Id.
64. Id. at art. 7.
65. Treaty of Rome, supra note 2, at art. 148. This provisions sets out the number of votes available to each member state when required to act by a qualified majority. Id.
B. Free Movement of Goods

In addition to the use of the majority voting and the increased responsibility of the European Parliament, the SEA has re-oriented the legislative process toward the process of mutual recognition. The Council may now decide "that provisions in force in a one member state must be recognized as equivalent to those applied by another member state." This provision has made a positive contribution to the passage of the EC's legislative program and will open the way to competitive lawmaking in the Community member states. It appears that barriers to the single market will be dismantled as pressure is exerted on all member states to conform to the regulatory climate which businesses view as the most advantageous. However, the impact of this mutual recognition continues to be unknown.

One possible outcome is a frontier free Europe. The lifting of frontier controls on goods and people was perhaps the most symbolic goal of the single market program. These goals were to be achieved by 1992. However, it has become obvious to at least one, probably three, and possibly all twelve member states that they will not achieve the second of these objectives before the end of 1993. Member states appear to have met the deadline for lifting frontier controls on goods. The border posts which once existed to enforce product standards and regulations are no longer needed. The frontier-controlled value added tax (VAT) and excise system were abolished prior to January 1, 1993. As a result, border posts cannot be used to isolate each EC nation's indirect tax system which formerly prevented the free movement of goods.

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68. SEA, supra note 8, at art. 9.
70. Id.
71. In Years to Come, supra note 57. The goal of a Europe without frontier controls was important because frontier posts added an estimated 5% to 10% to the cost of traded goods. Project 1992, supra note 67, at 2.
73. Id.
75. Europe 1993: What It's Taken to Get This Far, Fin. Times, Jan. 4, 1993, at 2 [hereinafter Europe 1993]. Value-added tax is the tax incurred at each step of manufacturing process and calculated as a percentage of the increase in the value of the product due to the process it has undergone. James Fox, Dictionary of International and Comparative Law 468 (1992).
76. Id.
C. Passport Controls

Despite a few lingering doubts, the free movement of goods seems more or less assured. The abolition of passport controls, however, presents several problems which are unlikely to be resolved before the end of 1993, if at all. Major disputes over immigration checks at internal EC borders may defeat the realization of a common EC immigration policy. The goal under the SEA was that EC nationals would not need checks at internal borders because tighter restrictions would be imposed at external borders. A more stringent use of common visa and asylum policies would prevent unwanted asylum-seekers and illegal immigrants from gaining entry into the EC.

Although the EC governments approved the abolition of border checks in principle, some governments are resisting it. Airports have already won a deferral of the deadline for lifting controls, on the grounds that they could not physically change their infrastructure before December 1993 in order to separate EC and non-EC arrivals. Regarding internal border checks, the Community is divided in three main factions.

Britain has always been the member state most vehemently opposed to lifting border checks. Because of its geographical location, Britain is skeptical that it will not be able to keep out terrorists, drug smugglers and other criminals without some form of immigration checks. The SEA does not oblige Britain to lift its controls on non-EC citizens. Consequently, Britain believes that it must maintain at least a minimal check.

The second faction is made up of Denmark and Ireland. Denmark wants to maintain border controls, but has indicated in the past that it might be prepared to lift them if sufficient safeguards are implemented. Although Ireland claims to be committed to the lifting of controls, its geographical proximity to Britain makes it diffi-

77. Lingering doubts about a new frontier-free regime continue to exist and will affect certain products. There is as yet no definitive system for monitoring the cross-border movement of works of art or of “dual use” goods, which have both military and civilian applications. Andrew Hill, supra note 72.
78. Kate Holder and Rebecca Brown, Refugees From East Unsettle West, CHRISTIAN SCI. MONITOR, Mar. 28, 1991, at 18.
80. Id.
81. Andrew Hill, supra note 72.
82. Id.
83. Id.
85. Andrew Hill, supra note 72.
86. Id.
cult for Ireland to loosen its controls without, at a minimum, consulting Britain.87

Finally, the European Commission and the remaining nine EC countries are committed to lifting border controls on people. These countries are members of the Schengen Free-Travel Agreement which disputes the British interpretation of the SEA.88 The agreement is designed to phase out internal checks on people.89 However, even these most enthusiastic countries are unlikely to lift their border controls before the middle of this year.90

Controversy over immigration pressures touched off by the conflict in the former Yugoslavia, as well as upheaval elsewhere in the world, have made the Schengen nine think twice about lifting their internal border controls as quickly as they intended.91 The Schengen Accord does not commit them to abolish internal border checks until external frontiers have been sufficiently strengthened.92 In addition, ancillary measures such as a computer link between Schengen immigration authorities must be put in place.93 Neither of these prerequisites have yet been achieved.

Overall, EC officials argue that the member states are trying to arrive at a satisfactory solution for security on the one hand and free movement on the other.94 Several EC members, however, are critical of what they view as the lack of real commitment by the EC to facilitate free movement.95 They further argue that most member states, if not all, are violating Article 8 of the SEA mandating the free movement of persons and advocate action through the Court of Justice.96

The Commission continues to gather information on the actual situation at the borders.97 Members of the Commission believe they are doing everything in their power to overcome the problems and hope they are resolved this year.98 Nevertheless, the action the Com-

87. Id.
89. Id.
90. Id.
92. Andrew Hill, supra note 72.
93. Id.
95. Id.
96. Id.
97. EP Hears Commission, supra note 94.
mission will take to correct what some see as a clear breach of the SEA remains unknown. A decision by the Commission to implement the SEA provisions to achieve free movement could be a real test of the credibility of the EC. Elimination of internal checks would push each member state towards identifying themselves as citizens of Europe rather than of their individual countries. For now, a common EC immigration policy will remain a goal for the future.

D. EC Currency

The abolition of border checks is not the only goal presently out of the reach of the member states. With ten of the twelve EC governments committed to removing all remaining capital control before 1992 as members of the European Monetary System (EMS), a single EC currency and a central bank were thought to be possible.99 A common currency and bank were viewed as logical and perhaps vital steps to ensure that the full benefits of the 1992 project were realized. Although adoption of a common currency system is not directly required by the SEA, the SEA does declare that “the Community shall adopt measures with the aim of progressively establishing the internal market.”100 Under Article 20 of the SEA, the Community is also committed to “cooperate within the framework of the EMS and in developing the European Currency Unit (ECU).”101 The closer coordination of a monetary policy seemed possible through the steady development of the existing EMS and the expanding role of the ECU.102

Complete economic integration, however, was unrealistic under the Community's timetable. The prevailing attitude of Britain toward a monetary union limited the momentum behind its realization.103 Britain was forced into assenting to the EMS earlier than anticipated because of weak economic conditions which included an eight year high inflation rate.104 Although Britain has benefitted from their EMS membership by realizing a substantial decline in the national interest rate, it appears that this direct participation is now being used to slow the movement towards economic integration.105

99. Steven Pro kesch, Britain Will Join European System of Currency Rates Soon, N.Y. TIMES, Oct. 6, 1990, at 1. Portugal and Greece are not included in the EC members that have linked their currencies to one another within the European Monetary System. Id.
100. SEA, supra note 8, at art. 13.
101. SEA, supra note 8, at art. 20.
102. PROJECT 1992, supra note 67, at 1. The European Currency Unit includes the European Monetary System currencies plus that of Greece and the United Kingdom.
104. Steven Pro kesch, supra note 99.
105. Britain made a limited commitment to the EMS by allowing agreeing to a system of controlled exchange rates. Id.
Germany, France, Belgium, Luxembourg, Holland and Denmark all support Britain's insistence that a movement toward a single currency and central bank should come after the member states have moved closer together in economic performance.\(^{106}\)

A large question mark hangs over the future of the EMS. However, the heads of the twelve EC countries have agreed that the most prosperous among them, such as Germany and France, should replace their national currencies with a common currency no later than 1999.\(^{107}\) If this target date is met, a European central bank would make monetary policy decisions for all countries using the ECU.\(^{108}\) As a result, Europe would no longer waste more than $17 billion a year converting one EC currency to another.\(^{109}\)

The member states agree that a stable currency is a desirable aim.\(^{110}\) They recognize that money is the life blood of an economic system.\(^{111}\) More importantly, money is a central element of a nation's ability to control its own destiny. Despite these realizations, acceptance of a monetary union cannot evolve automatically. It will have to be built slowly as member states realize the benefits to be gained.

While important features of a true single market are absent in 1993, sufficient progress has been made to ensure the long-term completion of the market. The SEA has provided the momentum to push the EC towards this goal. The SEA was designed to drive the EC by a vision of the "Community interest" as a strong and independent motivational force\(^{112}\) rather than the limited common interests of twelve separate national interests. Nevertheless, the EC continues to find itself in a difficult period of transition.

In an attempt to take the next step towards economic and political union, the member states are again in the process of amending the Treaty of Rome. The Maastricht Treaty on European Union, signed in 1991, is a legally separate treaty from the SEA.\(^{113}\) The aim of the Maastricht treaty is to unify key elements of Europe's strength, including monetary, economic and political policies.\(^{114}\)

\(^{106}\) Id.
\(^{108}\) Id.
\(^{109}\) Id.
\(^{110}\) Id.
\(^{112}\) Joel Havemann, supra note 107.
\(^{113}\) A Community Within The Community, supra note 13, at 1085.

However, the treaty requires unanimous ratification by all EC members.\(^{115}\) Denmark's refusal to ratify the treaty, and marginal success in France, revealed unexpectedly low support across Europe for unification.\(^{116}\) Although the fate of Maastricht remains unknown, it appears that many obstacles remain to its ratification. It is possible the treaty attempts to do too much too soon. Instead, the member states must first be convinced that complete integration is the solution to their transitional period.

At present, the EC continues to make progress to become a community in more than name alone. The new power of the European Parliament in legislation will create additional pressures on a state in the minority to soften its stance against a political union.\(^{117}\) The successful use of majority voting for completion of the internal market may eventually be extended to other areas of policy. However, any suggestion that the creation of the SEA will result in a European super-state is an exaggeration. Although the outcome is far from decided, the EC will probably continue to gain the self-confidence necessary to become an aggressive competitor in the realm of economics and other global issues.

### III. European Political Cooperation

The members states have recognized the need to pursue the "broader and deeper community" envisioned by its founders.\(^{118}\) Although the sovereignty of each member state is highly guarded, the advantages of policy coordination have not eluded them. However, even as a united group, the organization of external policies is a complex process. The formulation of such policies is not based solely on the provisions found within the Treaty of Rome.\(^{119}\) They also emanate from the EPC, an organization motivated by the desire for political unification.\(^{120}\)

Provisions of the Treaty of Rome set the stage for common commercial policies and other similar matters related to the conduct of international trade with third states.\(^{121}\) The association agreements affiliating foreign states and the EC in various ways and giv-

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116. *Id.*


118. ECSC Treaty, *supra* note 2, at preamble.


120. *Id.*

121. The provisions pertain to tariff or trade agreements, trade liberalization measures, export policy, protective measures against dumping and subsidies, import and export quotas, and other similar matters related to the conduct of international trade. See Treaty of Rome, *supra* note 2, at art. 113.
ing these states preferential trade terms also fall under the competencies of the EC institutions. However, these activities constitute only a minor part of the foreign policy interests of the member governments.

By 1969 the EC agreed to expand their interests in foreign policy by experimenting in “European Political Cooperation.” The original intent was to create an accessible forum of high foreign minister officials for the coordination of foreign policy issues outside the EC competencies. The EPC was designed with the realization that a certain degree of interdependence exists between the economic, political and strategic goals of the EC. The ultimate goal was to attain an economic policy objective that could be used by the EC as a means to accomplish political and strategic policy coordination through the EPC.

The experiment proved to be successful, and the EC recognized the beneficial role played by the EPC in facilitating foreign policy integration. For example, it was the EPC that provided the necessary assistance in the democratization of Spain and Portugal during the 1970’s by encouraging supportive declarations and diplomatic actions. The EPC appeared to be the solution to a multitude of problems associated with foreign policy formulation and implementation.

By 1985, the Member States agreed to codify the EPC in Title III of the SEA. The intent of this amendment was to impose obligations upon the member states to ensure consistency between the Community and EPC policies. However, a fundamental limitation of Title III is that the member states have no real obligation to cooperate. Title III is not a constitutional document of the Community. Therefore, the Court of Justice cannot enforce its obligations. As a result, EC members retain their legal sovereignty with the ability to pursue their own agendas.

The member states have agreed to a limited obligation “to in-

122. “Community may conclude with a third State, a union of States or an international organization agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.” Treaty of Rome, supra note 2, at art. 238.
124. ROBERT S. JORDAN, supra note 11, at 141.
125. Id. at 138.
126. Id.
127. Id. at 144.
128. SEA, supra note 8, at tit. III.
129. “The external policies of the European Community and the policies agreed to in European Political Cooperation must be consistent. The Presidency and the Commission, each within its own sphere of competency, shall have special responsibility for ensuring that such consistency is sought and maintained.” Id. at tit. III, art. 30(5).
130. Id. at tit. IV, art. 31. Title III is explicitly phrased as a treaty of international law between sovereign states while Title II refers to signatories as “member states.” Id.
form and consult each other on any foreign policy matters of general interest" before taking unilateral action.\textsuperscript{131} This provision enables the EPC to increase the moral and political pressure on the member states to adhere to its terms. Moreover, the provisions of Title III are \textit{legal} obligations, not withstanding the Court’s lack of enforcement jurisdiction.\textsuperscript{132} The mere existence of moral, political and legal obligations, coupled with an ongoing practice of cooperation, has resulted in a willingness to increase the force of future obligations.\textsuperscript{133} With the assistance of a team of six national officials, the member states have reached a common line on EPC matters.\textsuperscript{134} The EPC has been able to ingrain the habit of cooperation among the member states as dozens of foreign policy declarations come out of the EPC each year.\textsuperscript{135}

Unfortunately, the member states tend to zero in on issues they know they can agree on. In an effort to pursue their single European market, they have focused primarily on their economic interests in the wider world.\textsuperscript{136} The high priority attributed to the formulation of common policies for the single market embodied in the 1992 program of the SEA has resulted in slow development of cooperative decisions on foreign and security policy.\textsuperscript{137} However, as the EC successfully eliminates the barriers to the movement of goods, services, money and people across its national boundaries, the member states can no longer ignore the new political responsibilities thrust upon them.\textsuperscript{138}

The EC must secure its own interests and security by evaluating the astonishing political changes which have taken place in the last five years. These changes include the collapse of the Soviet Empire, the reunification of Germany on peaceful terms and the expressed desire of former Soviet satellites to join the EC.\textsuperscript{139} Although the member states recognize the usefulness of the EPC, it is not likely that the EPC alone will stimulate the necessary political development for complete policy integration.

Analysts suggest that future foreign policy issues may be better addressed by the proposed Maastricht Treaty.\textsuperscript{140} They argue that if

\begin{footnotesite}
\footnotetext{131}{\textit{Id.} at tit. III, art. 30(2)(a).}
\footnotetext{132}{\textit{A Community Within The Community}, supra note 13, at 1071 n.31.}
\footnotetext{133}{\textit{IAN BROWNLIE}, supra note 5, at 25-6.}
\footnotetext{134}{David Buchan, \textit{A Long March Towards Euroarmy}, FIN. TIMES, Oct. 18, 1991, § 1, at 2.}
\footnotetext{135}{\textit{Id.}}
\footnotetext{136}{\textit{Brittan Speech on Europe and Wider World}, REUTER EUR. COMMUNITY REPORT, Feb. 9, 1993 [hereinafter \textit{Brittan Speech}].}
\footnotetext{137}{\textit{Id.} “The external policies of the European Community and the policies agreed in EPC must be consistent.” \textit{See SEA,} supra note 8, at tit. III, art. 30(5).}
\footnotetext{138}{\textit{Brittan Speech,} supra note 136.}
\footnotetext{139}{\textit{Id.}}
\footnotetext{140}{\textit{Uncivil War in the European Community}, THE ECONOMIST, Jan. 30, 1993, at 40.}
\end{footnotesite}
the Maastricht Treaty comes into force it will, in theory, allow the EC to run a more coherent foreign policy than it does today.\textsuperscript{141} Under the Treaty's provisions, the European Commission would gain the right, alongside national governments, to make proposals on foreign policy.\textsuperscript{142} If enacted, the Maastricht Treaty may finally give the EC the appropriate machinery to deal with the member states increasing interest in a common foreign and security policy.

IV. European Community's Defense Identity

The rapidly changing events in Europe have posed the problem of establishing a new defense and security framework. The question now presented is whether the institutions that came into being during the Cold War still have a role to play in the international arena or whether they should be phased out.\textsuperscript{143} Europe finds itself in a strategic limbo with no obvious defense arrangements. A new security environment requires fundamental changes that will foster a greater allied commitment to a common defense.\textsuperscript{144} Europe's weak response to the Gulf Crisis forced it to find ways to strengthen its ability to respond to future crises.

A. Gulf Crisis

During the Gulf Crisis, the EC faced the realization that the conditions for a new European defense initiative did not exist.\textsuperscript{145} At the time the EC pulled out of the Gulf War, Iraqi authorities had refused to implement the resolutions of the United Nations Security Council.\textsuperscript{146} Therefore, the EC Foreign Ministers decided to abandon the idea of a joint peace proposal, recognizing the obvious signs of powerlessness to influence events in the Gulf.\textsuperscript{147} The EC lacked both an army and a common foreign policy to serve as an effective force in the crisis situation. The EC, however, reaffirmed their commitment to contribute actively to the settlement of other regional problems and to establish a situation of security, stability and development upon the resolution of the Gulf Crisis.\textsuperscript{148}

The European Community continues to search for the proper

\textsuperscript{141} Id.
\textsuperscript{142} Id.
\textsuperscript{143} Political Union: Defending Europe, EUR. REP., Sept. 25, 1991, § 1, at 1.
\textsuperscript{146} Id.
\textsuperscript{147} The powerlessness of the EEC did not, however, rule out individual initiatives. France, for example, proposed a plan for Iraq's withdrawal from Kuwait by holding an international conference on the problems in the Middle East. Id.
role to play in a new European security order. Although its present role is growing, the EC must determine if it will ever be able to provide the military backbone that is a necessary part of ensuring European security. The present Yugoslavian civil war has given the EC an opportunity to work towards making this determination.149

B. Yugoslavia

The Yugoslavian crisis is viewed as indicative of the problems Europe will face in the future. The strife caused by ethnic rivalries and economic hardship will continue to plague the growth of European unity.150 This fact has compelled the EC to become involved in the internal affairs of Yugoslavia, a non-member state.151 The inability of the EC to play a coherent role in the Gulf War sharpened its will to stop the bloodshed in Yugoslavia. In addition, the warring federation borders EC members Italy and Greece as well as candidate member Austria.152 For obvious reasons, the EC wants to prevent any adverse effects the war may have on these nations.

The initial objective of the EC was to use its diplomatic and economic clout to push Yugoslavia’s warring Serbs and Croats to the negotiation table.153 Although military action was considered, the EC does not have armed forces of its own to place in the position of separating rival armies.154 Instead, the EC threatened Serbia, Yugoslavia’s largest republic, with economic and political sanctions if it failed to accept the peace plan.155 Mediation efforts were unsuccessful when the Yugoslav parties refused to stop fighting.156 As violence continued, the EC was forced to abandon its peace efforts.157

The EC became frustrated by the continued failure to halt Serbian-led attacks on Croatia, and therefore, the Community urged broad economic sanctions. The EC suspended the 1980 Trade and Cooperation Agreement with Yugoslavia.158 In addition, the EC placed new limits on Yugoslavian imports and stripped Yugoslavia of trade benefits.159 They also convinced the United Nations Security Council to order an oil embargo in the hope of cutting off fuel for

151. David Lawday, supra note 149.
152. Id.
153. EC Gains Clout, supra note 150.
155. Id.
157. Id.
159. Id.
Nevertheless, the EC appears to be finding itself in the same difficult position of powerlessness that suspended its efforts in the Gulf.

Despite the outcome of this security venture, the EC will gain new international respect as a political power through its efforts to bring peace to Yugoslavia. In addition, the EC may be able to better access the strengths and weaknesses of other Western institutions that are restructuring (North Atlantic Treaty Organization), undergoing revitalization (Western European Union) and evolving (the Conference on Security and Cooperation in Europe). These organizations must also address the issue of what role they should play in the changing structure of European defense.

C. NATO Attempts to Adjust

For more than forty years, the North Atlantic Treaty Organization (NATO) has been a successful alliance by making important contributions to the maintenance of peace among the Western powers. However, the major question now confronting NATO is whether the alliance, as it is currently structured, can continue to play an effective role in meeting the vital security needs of its members. The future of NATO may depend on its capacity to adjust in relation to existing institutions as the EC comes closer to the realization of a single European defense policy.

Unlike the creation of the EEC, NATO was never intended to be, and never has been, a supranational international organization. Western Europe established NATO when confronted with a danger that put at risk their continued existence as free nations. During the Cold War, their mission involved a need to keep “the Soviets out, the Americans in, and the Germans down.” However, Europe soon realized that the short term goals of NATO had long term effects as

161. EC Gains Clout, supra note 150.
162. Hans Binnendijk, The Emerging European Security Order, 14 Wash. Quar. 67, 76 (1991). The United States is also confronted by these basic choices as the EC continues to strength its ability to respond to future crisis and as other European States remain politically and economically fragile during their transition from communism. Id.
163. James R. Golden, Daniel J. Kaufman, Asa A. Clark, and David H. Petraeus, NATO at Forty 3 (1989). NATO’s durability may be traced to three major sources: agreement on the nature of the threats to the fundamental interest of the Alliance members; the evolution of a collective response to those threats that meets the political, economic, and military requirements of the allies; and the absence of any politically acceptable alternatives to the current structure of the Alliance. Id.
164. Robert S. Jordan, supra note 11, at 215. However, NATO’s new purpose may be to pull the East up, bring Europe together, and continue to keep the Americans in. Hans Binnendijk, supra note 162, at 72.
165. James R. Golden, supra note 163, at 24. NATO represents initial efforts at cohesion and collective security in Western Europe. Id.
NATO "resolved to unite their efforts for collective defense and for the preservation of peace."166

Although the goals remain the same, NATO recognizes that it must change the means to achieve them. It appears that NATO will become just one of a set of interlocking institutions which will contribute to the new defensive role played by Europe. The EC recognized, in the amendment to the Treaty of Rome, the necessity of such cooperation by stating that "nothing . . . shall impede closer cooperation in the field of security between certain of the High contracting parties within the framework of the Western European Union and the Atlantic Alliance."167 However, the overall outlook on security measures is limited to the provisions of the SEA which state:

The High Contracting Parties consider that closer cooperation on questions of European security would contribute in an essential way to development of European identity in external policy matters. They are ready to coordinate their positions more closely on the political and economic aspects of security.168

All EC members, except Ireland, are NATO members.169 Therefore, within the Transatlantic Community, an agreement by the members of NATO on the need for a collective European approach would represent a positive development for the Community.170 It would allow eleven of the twelve EC members to take part in the decision-making process concerning European security and then exert pressure upon Ireland to conform to these policy decisions. However, with the emergence of a European plan for a separate combat force, NATO may serve as only one arm to implement the political goals set by the EC under a common security and defense policy.171 Nevertheless, the twelve EC members are not yet ready to take on this collective responsibility for their own defense which will allow NATO to reassess its own role in strengthening the "European pillar" of the alliance.

NATO's greatest enemies as it seeks new missions may not be

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166. North Atlantic Treaty Organization, June 19, 1957, 199 U.N.T.S. 67, at preamble. Under Article 5 an attack against one member was considered an attack against them all and required them "to restore and maintain the security of the North Atlantic area." Id.
167. SEA, supra note 8, at tit. III, art. 30.
168. Id. at tit. III, art. 30(6)(a).
170. JAMES R. GOLDEN, supra note 163, at 310. Some legal structure, such as NATO, is needed now more than ever to reassure Germany's neighbors (France, Poland, and ultimately, the former Soviet Union) that their soil will never again be invaded by Germany or any other nation. Id.
171. NATO Leaders, supra note 169. Statement by the director of the EPC (Champenoic).
its adversaries in the East, but rather, competing Western European organizations. NATO's main enemy, the Soviet Union, has disintegrated, and a new role to defend peace must be found. NATO is therefore developing a more European character to overcome the resentment by many Western Europeans against the power influence of the United States. A fear has developed among United States officials that EC members will consider other defense arrangements to foster a greater Western European role in defense and security matters.

This fear appeared legitimate as France began to press for the creation of a security structure in Europe that excluded the United States. This pressure lead to the birth of a Franco-German corps. The corps is meant to be the nucleus of a future European defense and will fall under the command of the Western European Union (WEU), the defense alliance of ten EC countries. However, under an agreement signed by NATO's supreme military commander and the French and German chiefs of staff, the corps will also be available to defend NATO or for use in peace-keeping missions. Since France does not support or take part in NATO's integrated military structure, the agreement with Euro-corps is a way of drawing France closer to the NATO military.

As this debate over the proper European defense identity continues, France, along with the other member states, recognizes that the EC lacks the capability to be responsible for their own defense. The Euro-corps is not scheduled to reach full force until 1995 and the WEU remains weak. Throughout this transitional phase, Western allies have agreed that NATO will retain the power to make key decisions on the use of military force in Europe. Each member of NATO must strike a balance between their desire for autonomy and their obligation to the alliance. The future of NATO depends on its capacity to respond to this intrinsic tension between interest and duty.

Although its role is undefined, NATO remains vital to Europe's

174. Id. at 279.
175. Id.
177. Id.
178. The easing of the original tension between France and NATO is already apparent as France's position on NATO's role has changed to a more pragmatic view. France now accepts that the resources NATO has must be available for other purposes outside of NATO's geographical borders. Theresa Hitchens, NATO Retains Authority in European Military Affairs, Defense News, Feb. 1, 1993, at 3 [hereinafter NATO Retains Authority].
179. Max Boot, supra, at 172.
180. NATO Retains Authority, supra note 178.
safety in a time of violent nationalism which threatens the stability of Western Europe. 181 NATO provides a sense of security that underlies the Community’s prosperity and protects against re-nationalization. 182 The EC believes that NATO’s continued existence is necessary to prevent the return of separate national armies. This appears to be a valid concern in light of the reunification of Germany which reminds the EC of the powerful military force Germany once was and could become again. 183

The challenge of a possible rivalry with whatever European forces the EC creates for itself on its road to political unity has given NATO a new lease on life. Although uncertainty remains among NATO officials, NATO will most likely adapt to the new untested role it must play. 184 At present, NATO continues to be more militarily and strategically equipped to respond than the EC to defense related problems. 185 The limited impact of the EC in Yugoslavia has clearly indicated this fact. 186

D. Revitalization of the Western European Union

The WEU, established in 1955, was designed as a regional organization to defend Western Europe from attack. 187 In addition, it was created to help control West German rearmament, to cooperate with NATO in the defense of the Atlantic area, and to promote the unity and encourage the progressive integration of Europe. 188 However, these hopes for the development of a more independent defense effort through the WEU have had limited success.

The WEU is made up of ten members of the EC and NATO. 189 In addition to the full members, Turkey, Norway, and Iceland were recently included as associate members, and Denmark and Ireland as observers. 190 Although devoid of any governmental features, the

181. Robert Keatley, NATO Gains New Life as Europe Faces Rising Threat of Nationalism, WALL ST. J., Nov. 17, 1991, at 10. This challenge is giving NATO a new lease on life. The leaders will craft a vastly different NATO that is more political, much smaller, less nuclear and with somewhat imprecise duties. Id.

182. Id.

183. Id.


185. Id.

186. Fred Tanner and Christian Tuschhoff, Only NATO Can Do the Job – or Can It?, INT’L HERALD TRIBUNE, Jan. 16, 1993, § (Opinion). NATO no longer considers Yugoslavia a problem beyond its jurisdiction. The EC has looked to NATO to enforce the no-flight zone over Bosnia and to enforce the UN embargo of Yugoslavia. Id.

187. ROBERT S. JORDAN, supra note 11, at 53.

188. In the 1980’s it also more clearly emerged as a European manifestation of NATO. Id.

189. The WEU defense alliance broadened its ranks on November 20, 1992. Greece was added as a full member. WEU Defence Alliance Broadens Its Ranks, AGENCE FRANCE PRESSE, Nov. 19, 1992, § (News).

190. These countries signed on November 20, 1992. The new associate members of the
WEU serves as an arena for intra-European military cooperation. As with NATO, Title III, Article 30 of the SEA recognizes that nothing should impede the ability of the EC to cooperate in the field of security with the WEU. This recognition indicates that the WEU is the most convenient and appropriate place for European Foreign and Defense Ministers to discuss their views on the role of a developing European defense system.

In spite of its limitations, the WEU has served an important role as an interface between the twelve members of the EC as they become increasingly interested in defense issues. The Community, however, remains divided on the ability of the WEU to emerge as the key institution for European security. France, and to a lesser extent Germany, want the WEU under the direct control of the European Council to facilitate a mutual defense commitment among the EC. Britain, on the other hand, has always supported the WEU as the appropriate focus for efforts to build a greater role for Europe, but as an arm of NATO, not as an EC pillar.

These diverse positions held by EC members regarding the effectiveness of the WEU represents a lack of mutual dedication needed to accomplish a unified security policy. A need exists to maintain political unity which in turn may force reluctant members of the EC down the road they most fear, that of being drawn into a conflict in a faraway country of which it knows little. The EC's involvement in both the Gulf Crisis and the present Yugoslavian civil war illustrate the reality of this fear.

Without a mutual commitment to defense, the members of the EC will undermine their "awareness of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act with consistency...in order to more effectively protect its

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191. Eric Stein, supra 34, at 3.
192. SEA, supra note 8, at tit. III, art. 30.
193. James R. Golden, supra note 163, at 290, 310. It is logical to prefer the WEU over NATO initially since a large portion of NATO's most modern forces are provided by the United States. The support of the WEU would result in a gradual lessening of West European dependence on the United States which is an inevitable trend. Id.
194. Political Union: Defending Europe, supra note 112.
195. Hans Binnendijk, supra note 162, at 78. Since the WEU was originally set up after WWII to monitor German rearmament, the idea of the WEU as a defensive for the EC is somewhat awkward for Germany. See EEC Defense Plan Gains Support, MONTHLY REP. ON EUR., Oct. 1990, at 15.
common interest and independence." More importantly, the EC will make a huge step backwards regarding a "closer cooperation on questions of European security" which "contributes in an essential way to the development of a European identity in external policy matters."

Although the precise role the WEU will play in the future remains ill-defined and disputed, the member states recognize that a logical solution exists. The problem of strategic limbo may be best resolved by the WEU acting as a bridge between NATO and the EC. A majority of the Community supports an arrangement where the WEU actively represents the European side within NATO's framework. However, this raises the issue of whether the WEU will reinforce rather than duplicate the work done by NATO. For the most part, the focus should be on the need to strengthen rather than weaken the cohesion between the institutions.

The WEU as the focal point for European defense identity was first realized when efforts were made by the WEU to coordinate European naval operations in the Gulf Crisis. Although the WEU aided in the enforcement of the economic embargo on Iraq through its naval activities, it was unable to reach internal agreement on what to do next. The reliance on the United States sea-lift, command and control, intelligence and manpower made it painfully clear to the EC that they need to fill large military and political gaps to become a united and equal voice in foreign and security policy.

Involvement in the Yugoslavian conflict has allowed the EC to explore its options for military intervention. Since the EC lacked military forces to send to Yugoslavia, unarmed civilians, also called monitors, were placed in Yugoslavia. The WEU supported the monitoring mission which was established to act in cooperation with all the concerned parties to help stabilize the cease-fire by monitoring the suspension of the implementation of declarations for

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198. SEA, supra note 8, at preamble.
199. Id. at tit. III, art. 30 (6)(a).
200. Political Union: Defending Europe, supra note 112. See also, Hans Binnendijk, supra note 162. Although the France and Germany collaboration envisions an absorption of the WEU by the EC after 1996, it also supports the idea of the WEU serving as a "temporary bridge" between NATO and the EC. Alan Cowell, NATO and European Warships Blockade Yugoslavia, N.Y. TIMES, Nov. 21, 1992, § 1, at 3.
201. Hans Binnendijk, supra note 162, at 69. Few members of the EC support a total fusion of the WEU into NATO to act as its European arm. Id.
202. Id. at 73.
203. The French broke ranks with a last-minute unilateral peace initiative. The Belgians were unwilling to well artillery ammunition to the British. The Germans hesitated before honoring the NATO commitment and sending Alpha jets to a threatened Turkey. Id.
204. Id.
The EC also considered sending military troops to Yugoslavia in place of the monitors. This proposal to send "peace-keeping" forces presented the potential to widen differences between EC members on the best way to handle the crisis. While France, the Netherlands and Germany pressed for intervention in the crisis, Britain consistently emphasized the need for restrictions on further action. Although the peace-keeping force was never accomplished, the member states became aware of the calls for a broader defense role for Western Europe.

As the crisis in Yugoslavia continues, the WEU has become more focused on its role as the European pillar of NATO. The WEU assisted NATO in giving teeth to the UN embargo imposed in early 1992. Five WEU warships were given approval to stop and search ships, to divert them to other ports and to fire across their bows if necessary. However, the impact of the WEU remains limited. The WEU does not have NATO's integrated military command and well-developed political structure. In addition, it lacks NATO's eighteen radar surveillance planes, and its standing naval fleets in the Atlantic, Mediterranean and English Channel.

The member states remain optimistic about the development of the EC's independent arm. The EC has ambitions to expand as the defense arm of a future European Union embodied in the Maastricht Treaty. In anticipation of this expanded role, the WEU has added a fifty-member military planning cell to its fifty-strong secretariat. The planning cell, comprised of military officers seconded from member states, will be charged with developing scenarios for future operations. At the start of 1993, the WEU Secretary-General William van Ecken, pledged that "the WEU's new military planning cell will not duplicate NATO activities." Instead, the WEU will have the opportunity to develop the Franco-German Eurocorps as it

206. Id.
207. EC Gains Clout, supra note 150.
209. Germany exhibits the strongest support for military intervention as it proposes "peace-making" rather than "peace-keeping" troops. However, they are unable to do anything without the EC support due to constitutional restrictions and their history with Yugoslavia. Id.
210. NATO Retains Authority, supra note 178.
212. Id.
213. NATO Retains Authority, supra note 178.
214. Id.
216. Id.
217. Id.
218. NATO Retains Authority, supra note 178.
strives to achieve full strength by 1995.

E. The Evolution of The CSCE

Following the end of World War II, every phase of life in Europe was affected.\(^{219}\) The early 1970's saw the beginning of an optimistic phase of an intensified search for solutions.\(^{220}\) The Conference on Security and Cooperation in Europe (CSCE)\(^{221}\) became an important part of that search. The signing of the Final Act by CSCE members at the Helsinki Summit of 1975 clearly illustrates this fact.\(^{222}\) The Final Act was an attempt to bury the past and to establish a new set of guidelines to lessen the tension and hostility between nations.\(^{223}\)

In substance, the Final Act is a comprehensive code of conduct which covers all major areas of international relations.\(^{224}\) The basic concept of the Final Act is that while national sovereignty must be respected, there should also be a gradual lowering of the barriers that separated the East and West since the end of World War II.\(^{225}\) The thirty-five participating states realized that the conflicting aims of the parties, the complexity of the subject matter, and the individual views of each participating state on a specific topic did not allow for any foreseeable results.\(^{226}\) The Final Act, therefore, appears to serve more as a challenge, than as a conclusion to the problems facing a divided Europe.

Western European governments, which now make up the member states of the EC, viewed the CSCE as more than a "bargaining chip" to territorial disagreements.\(^{227}\) Instead, the CSCE offered a forum that could be used to obtain a post-war equilibrium in Europe.\(^{228}\) However, the complexity of the final document does not allow for this simple interpretation. In addition, the Helsinki Final Act is not a legally binding treaty, but rather, a political document that

\(^{220}\) Id.
\(^{221}\) Final Act, Aug. 1, 1975, 14 I.L.M. 1292.
\(^{222}\) Id.
\(^{223}\) Id. The CSCE served as a substitute for a peace conference bringing World War II to a formal conclusion. The Helsinki Final Act is probably as close to a WWII peace treaty as we shall ever see. John J. Maresca, supra note 219, at 24.
\(^{224}\) Stefan Lehne, The Vienna Meeting of the Conference on Security and Cooperation in Europe, 1986-1989 5, (1990). The document covers military matters, as well as humanitarian concerns, aspects of economic relations as well as issues concerning information, and education and culture. It includes concrete normative commitments, general statements of intent, declaratory texts, and procedural provisions. Id.
\(^{225}\) Id.
\(^{226}\) John J. Maresca, supra note 219, at 25. The members of the CSCE that concluded at Helsinki on August 1, 1975, included all the members of the EC. Id. at 249.
\(^{227}\) Stefan Lehne, supra note 224, at 2.
\(^{228}\) Id.
is only binding in so far as the participating states have, both in text as well as on the occasion of its signing, stated their determination to fully implement its provisions.\textsuperscript{229}

Although consensus has been difficult over the past fifteen years, the CSCE laid the basis for a reasonable relationship between EC coordination and political cooperation.\textsuperscript{230} Some suggest that the CSCE created a flexible and efficient political procedure through which the member states could maintain a united front.\textsuperscript{231} However, the vast changes in the present European situation could render the CSCE process obsolete.\textsuperscript{232} East-West conflict as the dominant European concern have been reduced by the political, economic and military implications of the German reunification and the collapse of the Soviet Empire.\textsuperscript{233} The Eastern barriers to human contacts and to the free flow of information and ideas is rapidly falling. The political reality is that Europe is beginning to resemble the ideal status set out in the ten principles of the Final Act.\textsuperscript{234}

However, the CSCE agreement has remained at the center of discussions on the political and defensive future of Europe. CSCE's three baskets are uniquely suited to today's political, economic, and security challenges. The baskets address questions relating to security in Europe (Basket I); cooperation in the fields of economics, of science and technology, and of the environment (Basket II); and cooperation in humanitarian and other fields (Basket III).\textsuperscript{235} The variety of subject matters encompassed within this framework allows for a comprehensive and flexible agenda that the CSCE can address.

At present, the CSCE finds itself in a difficult position with no consensus on its future role. The collapse of the Soviet Empire left the fifty-four members of the CSCE with an ill-defined, evolving role in dispute settlement.\textsuperscript{236} In addition, those members of the EC who believe the Community should quickly develop its own political and military force envision a much more limited role for the CSCE framework.\textsuperscript{237} The ability of the EC to achieve this common security structure could have a significant impact on the future fate of the CSCE.\textsuperscript{238}

\textsuperscript{229} The United Nations Charter, Article 102, explicitly states that the Final Act is not eligible for registration. U.N. Charter, art. 102.
\textsuperscript{230} \textsc{Hugh Arbuthnott}, supra note 12, at 170.
\textsuperscript{231} \textit{Id.}
\textsuperscript{232} \textsc{Stefan Lehne}, supra note 224, at 189.
\textsuperscript{233} \textit{Id. See also}, Brittan Speech, supra note 136.
\textsuperscript{234} Final Act, supra note 221, at Basket I.
\textsuperscript{235} \textit{Id.}
\textsuperscript{236} Brittan Speech, supra note 136.
\textsuperscript{237} \textsc{Stefan Lehne}, supra note 224, at 191.
\textsuperscript{238} \textit{U.N. to Strengthen Cooperation with Regional Organizations}, Xinhua General News Service, Jan. 28, 1993, available in LEXIS, Nexis Library, Current File. In the present, the CSCE is taking on a different rule. The U.N. Security Council reached an under-
V. Conclusion

As the Cold War is left behind, the EC continues to be confronted with many age-old national, religious, and ethnic conflicts. NATO, the WEU, and CSCE will be required to play a greater part in deepening and broadening European unity. Although the EC is attempting to develop its own unified defense policy, it must continue to ensure that these organizations compliment and reinforce one another while the member states develop the military backbone to achieve their goal. The lines of communication must remain open between NATO, the WEU, the CSCE, and the EC.

The political unification of the EC, on the other hand, may progress at a faster pace than their quest for a central security policy. The enactment of the SEA has provided the EC with the fundamental changes needed to motivate it towards a single European market. Although the realization of the single market fell short of the 1992 target date, the EC has made positive advancements toward the establishment of a Community free of all internal barriers in the future.

The member states, however, remain leery of surrendering their identity as individual sovereign nations. They continue to be reluctant to allow for a central monetary system and a common immigration policy which are essential elements to EC unification. The member states must first recognize that the achievement of a single market opens a path to a more cohesive and competitive Europe. The EC may have to continue slowly in a step by step process, but it should not go on indefinitely. The governments of the member states will have to pool more of their economic policy-making resources than they imagined if they are to enjoy the benefits of a Europe where goods and services, capital and labor move freely around a truly common market.

Julie M. Pentico