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WEU: A REGIONAL PARTNER OF THE UNITED NATIONS?

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PREFACE

Each year this Institute makes a limited number of awards for young scholars from WEU member states to spend a period of up to three months working with us in Paris.

Earlier this year Luisa Vierucci, then working at the University of Florence and currently at the University of Oxford, held one of these awards. While with us she produced this study on WEU's relationship with the United Nations.

We felt it was of sufficient interest and quality to merit a wider audience and hope it will make a useful contribution to an important current debate.

Luisa Vierucci has been awarded the WEU Institute Prize for 1993 for this paper.

John Roper
Paris, December 1993

INTRODUCTION

The Cold War prevented the implementation of the collective security system foreseen in the charter of the United Nations. Collective security at a global level was blocked by the vetoes which the superpowers could impose in the United Nations Security Council. At a regional level the existing organisations, such as the Organisation of American States, were unable to take the lead as they lacked internal cohesion, and because of the risk of veto of their action by the permanent members of the Security Council. The Atlantic Alliance and the Warsaw Pact were military alliances which were dominated by the superpowers. *De facto*, it was bipolarism which triumphed and consequently universalist as well as regionalist arguments were left to one side. After the end of the East-West confrontation, the United Nations began to play the role which the signatories of the charter had planned it to have, and it is now increasingly called upon to manage crises world-wide. In this improved climate the regional organisations have a new opportunity cooperate with the United Nations in the settlement of local disputes.

This paper is concerned with the contribution that WEU can give to the United Nations in the maintenance of peace and security, both within Europe and outside its borders.

In order to see how WEU could give effective assistance to the United Nations, it is necessary to examine the legal basis, in international law, of actions designed to maintain peace which are carried out by a regional grouping. For this reason it will be shown that the provisions of the modified Brussels Treaty(1) and the practice followed by WEU conform to the articles of the charter of the United Nations relating to regional arrangements. But does that mean that WEU is a regional arrangement or agency in the sense of chapter VIII of the charter of the United Nations? If it does, what would be the advantages and disadvantages for WEU? Is it the case that WEU could not cooperate with the United Nations without running the risk of its actions being blocked by the Security Council's veto? Which articles in the charter of the United Nations guarantee WEU the greatest effectiveness in the settlement of disputes?

To answer these questions it is first necessary to analyse the provisions of the charter of the United Nations and of the modified Brussels Treaty which govern the respective competence of the Security Council and of WEU in the maintenance of international peace and security. This study seeks to understand better the meaning of these texts, which are often obscure, by looking at the historical context and the political motives which led both to a small group of countries raising the issue of regionalism at the San Francisco Conference(2) and the WEU treaty being drawn up three years after the signature of the charter of the United Nations.

Since legal institutions are defined above all by their real ability to carry out the functions attributed to them, this study also considers the practice that has been followed by WEU in the settlement of disputes which have occurred since its reactivation in 1984.

In the light of the normative system and WEU practice, the tendency within the United Nations and WEU to define WEU as a regional agency in the sense of chapter VIII of the charter of the United Nations is analysed and the timeliness of such recognition evaluated.

The legal perspective in which this study has been framed obviously cannot leave aside political considerations, given that the borderline between legal and political developments is flexible, and that the application of norms of international law depends entirely on the goodwill of international actors. That is why the study ends with a consideration of the real and potential value of WEU's contribution to the maintenance of international peace and security.

THE NORMATIVE SYSTEM

Universalism and regionalism

International law, as a collection of customary rules, comes from the European states which have, over the centuries, formed the centre of the international system.

Since the end of the eighteenth century, legal opinion has considered European public law to be a law having a universal vocation, applicable even to `oriental nations'.[3] This Eurocentric view of international law persisted up to the beginning of the twentieth century, when in America[4] the debate began on the juridical rules appropriate for that continent. The debate on regionalism became increasingly important as the new states of Africa and Asia entered the international community and affirmed that international law, being a creation of the European states, did not meet the requirements of states of other continents and that it was, on the contrary, an expedient for submitting international relations to European rules.

Indeed, although determined to prove the legal supremacy of international law over domestic law, Grotius was obliged to admit that international rules often had a regional character, since `saepe in una parte orbis terrarum est jus gentium quod alibi non est.'[5] The failure of the League of Nations was, moreover, partly due to the vague and imperfect wording of Article 21 of the Covenant (Part I of the Treaty of Versailles) concerning regionalism:

`Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.'

At the time the Covenant of the League of Nations was drawn up, the role that regional arrangements could play on the international scene had not been considered. However, the development of regional organisations such as the Pan American Union forced jurists to tackle, in a rigorous and detailed manner, the question of the relationship between universal and regional mechanisms at the very moment when the Second World War was presenting the international community with the urgent requirement of working out a mechanism for coordinating regional bodies within the framework of an effective universal organisation. This is how things stood when the United Nations was born.

Regionalism in the charter of the United Nations

The Big Four (China, Great Britain, the Soviet Union and the United States) had drawn up a precise plan on the competence of the future international organisation during the Dumbarton Oaks Conference.[6] This plan did not attribute any powers to regional bodies in the maintenance of international peace and security.[7] However, at the San Francisco Conference the discussions on arrangements concerning regional groupings were very fierce since the regionalist front (represented by the Latin American and Arab states in particular) was determined to obtain satisfaction for its claims. Among the Europeans, the failure of the League of Nations was still too bitter

a memory for them to have confidence in regional bodies, which it was thought were likely to oppose each other or a particular state.

The outcome of these differing positions was an ambiguous compromise, as is proved by Articles 52-54 of the charter of the United Nations: in these, one finds neither a definition of `regional arrangements or agencies' nor a precise explanation of the relationship between the Security Council and regional bodies in the maintenance of international peace and security. Indeed, the Egyptian delegation proposed the inclusion of a definition of `regional arrangement'[8] in Article 52, but this was rejected for fear of starting negotiations which were too difficult to conclude (it was officially considered to be superfluous).

Since then, jurists have given various interpretations[9] of such terms but none has been accepted unanimously.

chapter VIII (Articles 52-54) deals exclusively with regional arrangements. According to Article 52, regional arrangements or agencies are strictly speaking `for dealing with such matters relating to the maintenance of international peace and security'; they must deal with matters which `are appropriate for regional action'; their activities must be `consistent with the Purposes and Principles of the United Nations'.

Regarding the maintenance of international peace and security, regional arrangements or agencies should have the means for both bringing about the peaceful settlement of local disputes and taking enforcement measures.

As for the second condition required by Article 52, it is not necessary for the states concerned to be geographically contiguous, since it is the matters dealt with and not the arrangements which must, according to the first paragraph of Article 52, be appropriate for regional action. In connection with this, the resolution of the General Assembly[10] of the United Nations approved in response to objections to recognition of the Arab League as a regional body gives an interesting indication of the notion of regional agencies:

1. Article 52 only stipulates that regional agencies must deal with matters relating to the maintenance of international peace and security and that their activities must be consistent with the purposes and principles of the charter; apart from these conditions, Article 52 gives no further details of the model to which regional agencies must conform.

2. Article 52 does not define regions of the world.

3. It does not stipulate whether the agencies in question must be open to all states within a given region.

4. It does not exclude those whose members are united by racial links.

5. It does not require the recognition and formal acceptance of obligations imposed by the charter.

6. Neither does it require regional agencies to adopt a position on questions of foreign policy, such as the Security Council's decisions concerning the maintenance of international peace and security.

7. A regional agency's secret proceedings are not inconsistent with international procedures and the principle of reciprocity of invitations has been rejected.

A wide interpretation has therefore to be given to the term `regional', considering not only its geographic dimension but also the communion and affinity of traditions and interests evoked by the term.

Finally, compatibility regarding the objectives and principles of the United Nations implies an ideological conformity with the spirit of the charter which is not spelt out but whose essential elements are to be found in the preamble and in chapter I.

Having said that, the difference between the notion of a regional arrangement and that of a regional agency has to be explained.

The expression regional arrangement concerns multilateral regional agreements which are not based on formal treaties and do not necessarily make provision for permanent institutions.

On the other hand, a regional agency is characterised by a treaty that creates permanent institutions which have an international legal personality.(11)

Having dealt with these questions of terminology, one can turn to the analysis of the articles of the charter of the United Nations concerning the tasks of regional bodies.
The pacific settlement of regional disputes

To appreciate the full scope of the provisions of the charter of the United Nations concerning the pacific settlement of regional disputes, reference must be made to both chapter VI and chapter VIII.

As set out in Article 33, in the event of a dispute `the continuance of which is likely to endanger the maintenance of international peace and security', the parties concerned must seek a peaceful settlement by resort to a variety of means,(12) including resort to regional bodies. Although the first paragraph of Article 37 and the second paragraph of Article 52 also include the requirement for the parties to a dispute to seek a settlement by resort to regional agencies or arrangements before referring it to the Security Council, other articles suggest that these provisions should be interpreted as simply a possibility. Indeed, Article 34 gives the Security Council the power to investigate any dispute, and Article 35 stipulates that any state,(13) whether or not it is a member of the United Nations, may bring to the attention of the Security Council, or of the General Assembly, any dispute of international importance. Furthermore, the Security Council may recommend `procedures or methods of adjustment' (Article 36) and the `terms of settlement' (Article 37) it considers appropriate, or encourage the development of pacific settlement of local disputes through regional bodies (Article 52.3). The United Nations is thus able to influence the pacific settlement of regional disputes. Such disputes can therefore come at the same time to the attention of both the world organisation and the regional body, which underlines both the competing

competence and the independence of the two types of organisation in the pacific settlement of disputes.(14) Moreover, doctrine and practice show that resort, in the first instance, to regional bodies over disputes coming within the province of chapter VI is welcomed. It is much more difficult to establish the respective competence of regional bodies and the world organisation in the case of disputes of the type referred to in chapter VII, that is to say threats to the peace, breaches of the peace and acts of aggression.

The legitimacy of collective self-defence

As long as the use of force was accepted in international law, no norm authorising self-defence was necessary.(15) Indeed, the Dumbarton Oaks plan contained no provision on self-defence.(16) At the San Francisco Conference, the Latin American states were none the less determined to protect themselves from the veto of the Great Powers, which could have prevented the provision of mutual assistance sanctioned by the Act of chapultepec of 1945(17) and deprived them of any effective guarantee in the event of aggression. The question was hotly debated within Committee III/4, and it was only the amendment proposed by the American senator Vandenberg explicitly concerning self-defence which resolved the problem. As a result Article 51 of the charter of the United Nations saw the light of day.

The close link which exists between Article 51 and the provisions of the charter concerning regionalism first needs to be analysed. This article was examined by the same committee at the same time that chapter VIII was being drawn up. For the Latin American states, this stipulation truly represented a rule of international law, while for Senator Vandenberg the origin of the expression `collective self-defence' was nothing other than the necessity to maintain the rights of regional systems.(18) However, an important part of the professional debate(19) considers that Article 51 is aimed only at treaties of simple assistance, which differ from regional arrangements in the chapter VIII sense and conform to the charter precisely by virtue of Article 51. It is for that reason that Article 51 would not have been included in chapter VIII. In fact the article in question serves as a link between chapter VII, which sets out the powers of the Security Council, and chapter VIII, on regional arrangements. Moreover, it was in the interest of all the states not to draft it in terms which were too precise, given that this stipulation enabled them to regain freedom of action, at both the individual level, and at the collective level, where they had lost such freedom under chapter VIII.

The failure of the collective security system foreseen in chapter VII and the division of the world into two antagonistic blocs prompted the states to legitimate armed intervention to help states which were the victims of aggression(20) by invoking Article 51, but in several cases this justification proved to be without legal foundation. Who, then, is entitled to benefit from collective self-defence, and under what conditions?

The fact that Article 51 considers self-defence to be an `inherent right' has incited Western countries and jurists to using this definition as if it were a matter of customary law. Yet customary law allowed for only two restrictions on the exercise of self-defence--the response to an aggression (imminent or actual) must be instantaneous and in proportion to the damage suffered or feared. On the other hand, the scope of Article 51 is restricted by other provisions.

Firstly, the launching of a self-defence operation depends on an `armed attack' having occurred. What is to be understood by `armed attack'? The General Assembly of the United Nations has approved a declaration relating to the definition of `attack'.[21] It has drawn up a list of possible types of attack, from which is excluded assistance given to rebel forces acting on the territory of a state (indirect armed attack). This position was confirmed by the International Court of Justice,[22] according to which, in the case of Nicaragua, self-defence was authorised only if the victim state declared that it had been attacked and requested assistance. In any event, the General Assembly stated that its declaration did not impair the powers of the Security Council which, by virtue of Article 39, is the only UN body in a position to note an act of aggression.[23] If self-defence cannot in principle either assume a preventive character or be invoked following an indirect armed attack, in reality the Security Council has absolute powers of discretion in this respect.

Secondly, any self-defence operation must end as soon as the Security Council has taken `measures necessary to maintain international peace and security.' It is evident that self-defence actions must be halted once the Security Council has adopted appropriate measures, without them necessarily having proved effective.

Thirdly, members must bring immediately to the notice of the Security Council the measures taken `in the exercise of this right of self-defence', these measures not being in any way able to remove the prime responsibility of the Security Council in the field of international peace and security. This provision recalls Article 54, according to which the Security Council must be kept informed of activities undertaken or envisaged, under regional arrangements or by regional agencies for the maintenance of international peace and security. Does that include plans for collective self-defence? Most jurists have resolved the problem by considering that the preparation of self-defence activities does not constitute a veritable exercise of the right of self-defence. It is the measures taken and not the preliminary measures which fall under Article 51.

A state can thus only take advantage of Article 51 if a treaty of military assistance or a treaty setting up a regional agency requires it to give assistance to a state which has been the object of armed attack, or if the state attacked makes a specific request to a given state for assistance.

Regional organisations and the use of enforcement measures

Whereas, in the peaceful settlement of disputes, regional organisations and the United Nations have concurrent authority and collective self-defence confers a certain autonomy on regional actions, that is not the case for enforcement measures. In this area, the Security Council is the sole judge of the measures to be taken, and the regional organisations are merely `agents'[24] executing its decisions. In fact Article 53 stipulates that `The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority' and also that regional arrangements or agencies may not take enforcement action `without the authorization of the Security Council'. Clearly the Security Council has discretionary powers in this matter, being the only institution able to evaluate whether it is `appropriate' to resort to regional bodies.

Jurists have frequently asked whether a regional organisation must implement the measures adopted by the Security Council or whether it can refuse to comply. Given that Article 2 (paragraphs 5 and 6) places the obligation on both members and non-members of the United Nations to assist the world organisation in any action it takes in accordance with its charter, and given that Article 103 sanctions the supremacy of the provisions of the charter of the United Nations over other international agreements, regional bodies are legally bound to follow the Security Council's resolutions. However, the significance of Article 53 is greatly limited by the use of the veto within the Security Council, allowing the permanent members, and not the Council as a whole, to decide whether to authorise or refer to regional organisations the application of enforcement measures, or to keep them under the exclusive control of the world body.

As the requirements for the prior authorisation of the Security Council limit the great practical utility of regional organisations that the rapid implementation of enforcement measures represents (given in particular their geographical location), it can be understood why advocates of regionalism strongly opposed this article and insisted that Article 51 be included in the charter of the United Nations. Articles 51 and 53 contain in effect the same elements but in the reverse order: the right of regional organisations to use force until the intervention of the Security Council (in Article 51) becomes (in Article 53) a prohibition to use it without the authorisation of the latter. Obviously, the situations which lead to the application of one or other of these articles are very different, but if one wishes to appreciate the degree of autonomy which a regional organisation has, one has to bear in mind both these provisions at once. In addition, Article 51 begins by affirming that `Nothing in the present chapter shall impair the inherent right of individual or collective self-defence'; it is thus free from the obligations which stem from Article 53.

It is interesting to note that, if the right to block measures normally works in favour of the United Nations, it is also true that it can prove useful to regional organisations which do not respect the type of measure to be carried out under the mandate of the United Nations. In fact there is a range of possible enforcement measures, as suggested in Articles 41 and 42 of chapter VII, which distinguish between measures involving the use of armed force and those which do not. Now, if the Security Council asks or authorises a regional organisation to implement a measure not involving the use of force, and if that organisation nevertheless uses force,[(25)] the Security Council cannot, if one of the permanent members supports the regional organisation's action, then pass a resolution restricting that action. In such a case, the permanent member's veto works to the advantage of the regional organisation and implicitly legitimates an illegal measure. Article 54, which lays down the obligation to inform the Security Council of activities undertaken or contemplated under regional arrangements or by regional agencies for the maintenance of international peace and security, would be of no help against the bad faith of a regional organisation.

In any event, the most tricky problem which arises with respect to Article 53 concerns the nature of the authorisation which regional organisations must obtain from the Security Council in order to be able to undertake enforcement measures: must the authorisation of the Security Council be explicit and preventive, or does it suffice for it to be implicit and subsequent?

chapter VII, too, contains provisions relating to regional groupings.

Article 43 mentions the negotiation of agreements, on the making available to the United Nations armed forces, assistance and facilities, between the Security Council and members of the organisation, or between the Security Council and `groups of Members' of the organisation. The `groups of Members' may be either any states which have come together for this express purpose or existing regional alliances. Article 43 is aimed at the application of enforcement measures involving the resort to armed force, whereas Article 53 is also aimed at those which do not involve the use of force. The fact that these agreements have never been concluded is one of the reasons why the United Nations' collective security system has failed.

Article 47, which concerns the establishment of a Military Staff Committee to assist the Security Council regarding the military means necessary for the maintenance of international peace and security, stipulates in its fourth paragraph: `The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.' The strategic role of the region is thus recognised.(26)

The article of greatest interest to our study is Article 48. It indicates that `The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.' In the second paragraph, it is stated that decisions shall be carried out either by the members directly or `through their action in the appropriate international agencies of which they are members.' These bodies can be quite varied: economic, technical, regional accords and so on. It should be noted that the second paragraph of this article is very broad in scope. Indeed, any action (provided of course that it is in accordance with the Security Council's decisions) undertaken by a state or international body for the maintenance of international peace and security is legitimated by virtue of this provision.

The compatibility of the modified Brussels Treaty with the charter of the United Nations in the settlement of disputes

In several places in the modified Brussels Treaty the High Contracting Parties affirm their resolve to conform to the provisions of the charter of the United Nations. Beginning in the preamble, which is a panegyric of the shared traditions of the countries of Western Europe, the High Contracting Parties proclaim their faith in the principles of the charter of the United Nations and their resolve to `afford assistance to each other, in accordance with the charter of the United Nations, in maintaining international peace and security and in resisting any policy of aggression.' Since a preamble represents the philosophical basis(27) of a treaty and can thus help us in the interpretation of its provisions, it is important to note that the High Contracting Parties wished to see the progressive association with the treaty of `other States inspired by the same ideals and animated by the like determination'; they then undertook to organise their collective self-defence.

According to Article V, `If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.' An armed attack in Europe is thus the *casus foederis*(case stipulated by treaty).[28] The definition of attack accepted by the United Nations has already been analysed, and there is no reason to think that the term has any other meaning in the modified Brussels Treaty.

The fact that only an armed attack in Europe triggers off the intervention of the High Contracting Parties has consequences which one has to exploit. The draft of the original 1948 treaty did not include this provision since, according to the United Kingdom, which had taken the lead in this, it was only to protect the High Contracting Parties against possible attack by Germany. On the other hand, the Benelux countries wanted a wider, more flexible security mechanism. The talks on the subject of Germany held in London[29] shortly before the treaty was agreed ended in a joint position regarding Germany and consequently the provisions concerning that country were softened and the Benelux proposals accepted (*inter alia* the proposal concerning armed attack in Europe). The geographical restriction to Europe of the region within which an armed attack sets off the process of assistance is also explained by the fact that the Benelux countries did not want the obligation to intervene in the event of an armed attack on overseas possessions, which would have involved further costs and responsibilities.

The stipulation that any party which is the object of an armed attack must be helped with all the means at the disposal of the High Contracting Parties has to be interpreted in the light of Article 51 of the charter of the United Nations which, as has already been seen, authorises collective self-defence following an armed attack. In such a case assistance will be automatic.

Article VI of the modified Brussels Treaty is justified on the basis of the provisions of Article 51 of the charter of the United Nations, of which it reproduces the second part. It stipulates that measures taken following an armed attack must be `immediately reported to the Security Council' and `terminated as soon as the Security Council has taken the measures necessary to maintain or restore international peace and security.' The second paragraph of Article VI is of particular importance to our study since it indicates that the WEU treaty `does not prejudice in any way the obligations of the High Contracting Parties under the provisions of the charter of the United Nations'[30] and states that `It shall not be interpreted as affecting in any way the authority and responsibility of the Security Council' in its principal capacity regarding the maintenance of international peace and stability. It is thus necessary to bear in mind the charter of the United Nations when analysing the provisions of the WEU treaty.

In Article VIII the High Contracting Parties reaffirm their commitment to the pursuit of a policy of peace and the strengthening of their security. They create a Council which will consider matters concerning the execution of the treaty and which is to be convened by any of the High Contracting Parties so that they can consult on `any situation which may constitute a threat to peace, in whatever area this threat should arise'. Interestingly, it should be stressed that in the event of aggression outside Europe or a threat to peace, the High Contracting Parties have no obligation but may `consult' on the matter. What value should be attached to consultation between the

High Contracting Parties in the event of a conflict outside Europe? According to Article VIII, there is no veritable `WEU zone'; however, WEU's competence outside Europe is not specified in the treaty. Reference has thus to be made to declarations by the WEU Council of Ministers and to what has happened in practice, which is the subject of the second chapter of this paper.

Article X also refers to the peaceful settlement of disputes. The High Contracting Parties are required to refer to the International Court of Justice in the case of legal disputes between themselves falling within the scope of Article 36, paragraph 2 of the Statute of the International Court of Justice, subject to any reservation made by each party when accepting the clause for compulsory jurisdiction. On the other hand, all other disputes are to be submitted to conciliation. There is no provision for cases where conciliation fails. Regarding mixed disputes, each party `shall have the right to insist that the judicial settlement of the legal questions shall precede conciliation.' One notes that this system of settling disputes by peaceful means was conceived in accordance with the charter of the United Nations. Indeed, the High Contracting Parties took care to specify, in paragraph 5 of Article X, that the provisions concerning the peaceful settlement of their disputes in no way affect any other method of pacific settlement, and therefore not even the provisions of chapters VI and VIII of the charter of the United Nations.

Finally, in addressing the question of the definition of WEU as a regional organisation, it is appropriate to analyse Article XI concerning the accession of other states to the treaty. Provision is made that `any other State' may be invited, by agreement of the High Contracting Parties, to accede to the treaty `on conditions to be agreed between them and the State so invited.' Does that mean that states from any region of the world can be invited to become part of WEU, and that WEU would thus no longer be an organisation of countries from a given region of the world? The answer is definitely not. In the first place, the provisions of the modified Brussels Treaty always refer to Europe, both in the field of economic cooperation and that of security. In the second place, the High Contracting Parties expressed their desire, in the preamble, to associate progressively only states which adhere to their ideals and resolutions. One cannot therefore see how the signatories to the treaty could have imagined its extension to states outside Europe, which do not have the same cultural roots. The Hague Platform of 1987 resolved the question definitely by indicating in its preamble that WEU ministers envisaged `the progressive association of other [European] States inspired by the same ideals and animated by the like determination.' In reality all the states which have up till now been invited to become members of WEU are located in Europe.[31]

THE SYSTEM IN PRACTICE

The first WEU operations

From the signature in 1954 of the Paris Agreements until 1984, WEU was not an organisation which was very active in the field of international peacekeeping and security, but the extraordinary Ministerial Council held in Rome in October 1984[32] gave it new impetus by deciding on the new political objectives which member countries intended to pursue and also the institutional reform of WEU. The reactivation of WEU was also announced in the `Platform on European Security Interests' approved by the Council in The Hague on 27 October 1987.[33] This Platform was concerned with the criteria to be observed for improving European security and the new responsibilities which the members of WEU intended to assume in the field of Western defence, arms control and East-West cooperation.

In this climate of reactivation, some WEU member states took the initiative of acting in concert, first in the Gulf at the end of the Iran-Iraq war and then during the Gulf crisis arising from the invasion of Kuwait by Iraq.

Mine clearance operations in the Gulf (1987-88)

The danger of a restriction on free navigation in international waters in the Gulf led the Netherlands presidency of WEU to convene a meeting of senior officials from the ministries of foreign affairs and defence in The Hague on 20 August 1987. At that meeting member countries agreed on the necessity to send further naval forces to the Gulf to assist the British and French ships already deployed in the region. Belgium, Italy and the Netherlands dispatched minehunters, while Germany provided replacement naval forces in the Mediterranean and Luxembourg made a financial contribution to the operation. Only the Belgian, British and Netherlands contingents were fully integrated but all naval operations were coordinated by a group of high-level `WEU correspondents'.[34]

On 19 April 1988 the member states of WEU issued a statement on the Gulf in which they undertook to continue their diplomatic efforts `particularly within the EPC framework, to support all endeavours towards the full and early implementation of Resolution 598[35] of the Security Council, which is the only framework for an overall solution to the problems raised by the Iraq-Iran conflict.' But they also continued the deployment of their naval forces in the region, which was confirmed by representatives of the governments of WEU member states meeting in London to take stock of the situation in the Gulf following Iran's decision to accept Resolution 598.

In this operation the role played by the presidency of WEU was important, since on several occasions it convened meetings in its capital of the `WEU correspondents'[36] to coordinate operational measures. This concerted action lasted throughout the eighteen months of the operation. It represented the first example of a combined military operation coordinated by WEU[37] and demonstrated the existence of a certain European desire to set up closer collaboration on security issues. The WEU Council of November 1988 in fact recognised that the operation in the Gulf had been a useful

experience from which lessons should be drawn on the strengthening of Europe's potential for concerted action in the future.[38]

Even if command of the operation was not exercised by WEU, it can nevertheless be noted that this was the first application of Article VIII.3 of the modified Brussels Treaty following the Rome Declaration of 1984, in which WEU ministers reaffirmed their agreement to `consider the implications for Europe of crises in other regions of the world.' In the Hague Platform of 1987, ministers also declared their intention to concert their respective policies on crises outside Europe `insofar as they may affect our security interests.'

During the mine clearance operations in the Gulf there was some debate on the appropriateness of the procedures for regular consultation *vis-à-vis* threats from outside Europe. Two opposing bodies of opinion emerged: one was in favour of the identification of potential threats and the harmonisation of programmes of aid to Third World countries, which entailed the creation of permanent structures and consultation procedures defined a priori; the other favoured a solution which would vary according to the crisis and therefore excluded the institutionalisation of the consultation mechanism. The second approach prevailed, as is shown in the reply given by the WEU Council to the Assembly's Recommendation 475,[39] in which the Council recognised WEU's role as a coordinator of operations by the armed forces of the organisation's member states but stressed that it was up to states alone to supply contingents for WEU operations.

There was to be no change in this attitude even following the Gulf war.

The Gulf crisis (1990-91)

Unlike the mine clearance operation in the Gulf, the crisis which followed Iraq's invasion of Kuwait provided a very interesting example of cooperation between WEU and the United Nations.

Within days of the invasion of Kuwait by Iraq, the President of the Assembly of WEU wrote to the United Nations asking them to use all means at their disposal to restore respect for Kuwait's sovereignty and territorial integrity.[40] He immediately called upon governments of WEU member countries to apply paragraph 3 of Article VIII of the modified Brussels Treaty if necessary.

The Security Council first demanded[41] that Iraq withdraw its forces from positions captured outside its territory; then, having met with no success, it approved Resolution 661,[42] which provided for an economic and military boycott of Iraq. In the resolution, the Security Council called upon `all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution'; it thus made no reference to regional agencies.

The Ministerial Council of WEU, meeting on 21 August 1990 in Paris, affirmed that the meeting had taken place pursuant to the provisions of Article VIII, paragraph 3 of the WEU treaty, the Rome Declaration of October 1984 and the Hague Platform of October 1987, provisions which authorised it to deal with crises occurring outside Europe. It restated its support for Security Council Resolutions 661 and 664[43] and

instructed an *ad hoc* group of foreign and defence ministry representatives to coordinate, in the capitals and in the Gulf region, operations carried out by member countries of WEU. Other measures were adopted on the basis of experience of consultation procedures used in the Gulf in 1987-88. Finally, it stated that the chairman-in-Office of the Council would inform the Secretary-General of the United Nations of the results of the meeting, in accordance with Article 54 of the charter of the United Nations.

The *ad hoc* group and the Chiefs of Defence Staff met several times during the following days. These meetings resulted in the adoption of a joint directive(44) on the coordination of naval operations by WEU countries in the Gulf for the enforcement of the embargo on Iraq and the occupied territory of Kuwait indicated in Security Council Resolution 665.(45) The directive specified the areas in which cooperation would have to be made and made clear that the chairman-in-Office would keep the Secretary-General of the United Nations informed of the enforcement of the embargo in the region by naval forces of WEU member countries.

All member countries of WEU contributed directly or indirectly to the resolution of the crisis but at this stage WEU merely coordinated the naval operations, even though these had been decided on and were commanded by each state individually. In Resolution 665, the Security Council asked member states which were cooperating with the Kuwaiti government and deploying naval forces in the region to stop merchant ships, under the authority of the Security Council. As there were several ships from WEU member countries in the region, this resolution referred to the ships of WEU countries.

Resolution 678(46) called upon member states to resort to all means necessary to implement the pertinent resolutions if by 15 January 1991 Iraq had not complied. On the expiry of the ultimatum, the WEU Council decided to set up a permanent naval coordination authority which would establish common rules of engagement for its forces in the zone. It thereby assured its support for the measures necessary for the implementation of Resolution 678 and demonstrated that the WEU countries were not confining themselves to respecting the United Nations resolutions but were endeavouring to implement them.

The Gulf crisis also underlined the necessity to define WEU's operational role in order to strengthen European security *vis-à-vis* threats from outside Europe, the possibility of which was no longer remote. In fact, once the war was over the ministers of WEU affirmed their determination to continue to play a significant role in the maintenance of peace in the region and decided to participate in the organisation of humanitarian aid to the Kurds. Similarly, the WEU Assembly, in the first part of its thirty-seventh ordinary session,(47) recognised the importance of `WEU's contribution to support the United Nations' efforts to solve the crisis in the Gulf;'(48) it recommended that the Council should `emphasise WEU as the forum for out-of-area coordination . . . and examine for the longer term the idea of creating a WEU naval on-call force for external operations.'(49) In the Council's reply(50) to the preceding recommendation could be perceived the intention to define WEU's operational role but no general indication or timescale was envisaged. The degree of institutionalisation of WEU had to be increased so that the chairman-in-Office was no longer alone in dealing with dangerous situations, by convening the Council in his capital and then instructing an

ad hoc group to follow the development of the crisis. It was noted that only a predetermined mechanism for crisis management could guarantee the effectiveness of WEU.

WEU's new operational role: the Yugoslav conflict

During the second half of 1991 the debate on the place of WEU in a new European security system was vigorous and productive. The WEU Ministerial Council held on 27 June 1991 in Vianden ended in a statement reviewing the efforts to promote a security architecture which could guarantee European states `the peace and security to which they aspire'. But it was the Maastricht treaty(51) which approved the transformation of WEU into the defence component of the European Union and the means to strengthen the European pillar of the Atlantic Alliance. In the declaration relating to WEU annexed to the Maastricht treaty, WEU member states agreed on the `need to develop a genuine European security and defence identity' in successive phases, and to `strengthen the role of WEU, in the longer term perspective of a common defence policy within the European Union'.

The reactivation of WEU thus being affirmed, it was now to its ministers to implement the agreements made.

In this regard the Petersberg Declaration(52) is an important step forward: it lists the provisions concerning the implementation of the Maastricht Declaration and WEU's operational role . In the Declaration it is affirmed that, while WEU develops its operational capability according to the Maastricht Declaration, member states will be `prepared to support, on a case-by-case basis and in accordance with [their] own procedures, the effective implementation of conflict-prevention and crisis-management measures, including peacekeeping activities of the CSCE or the United Nations Security Council.' Paragraphs 2 and 3 of the second part of the Declaration are of great interest, because they state that WEU member states are prepared to make available military units `for military tasks conducted under the authority of WEU' itself. However, states themselves will decide whether to participate in specific operations, whereas it is the WEU Council which decides on the resort to military units which are answerable to WEU, in accordance with the provisions of the charter of the United Nations. Military units acting under the authority of WEU could be used for many tasks other than collective self-defence according to Article V of the modified Brussels Treaty, namely for humanitarian missions and the evacuation of nationals, peacekeeping tasks and tasks of combat forces in crisis management, including peace enforcement.

These substantive changes have had important consequences for the practice followed by WEU in the Yugoslav conflict. WEU is now endowed with greater assets and in particular greater political determination than in the past with which to manage crises arising both within and outside Europe, while acting in accordance with the provisions of the United Nations.

Operations in the Adriatic

In the Yugoslav conflict WEU has always acted in close collaboration with the United Nations. The first *démarche* in this direction was made by the Presidential Committee

of the Assembly of WEU which, in September 1991, asked the Council of Ministers to invite the Security Council to set up a peacekeeping force capable of enforcing the ceasefire in Yugoslavia. It hoped that WEU could play a role if such a force were constituted,[53] but the Security Council then restricted itself to declaring an embargo on deliveries of arms or military equipment to Yugoslavia.[54]

In the meantime, the WEU ministers convened the *ad hoc* group in order to examine the politico-military repercussions of the situation in Yugoslavia.[55] This WEU group began to work out options for intervention in Yugoslavia and to examine the consequences of the implementation of Resolution 713 by WEU member states.

In November, the Council of Ministers[56] authorised the WEU Secretariat to make available to the United Nations `details of the contingency planning work already done by WEU experts', thus implementing Article 54 of the charter of the United Nations. Further, the ministers gave their support to WEU member countries that were also members of the Security Council, which were endeavouring to have a resolution passed for the creation of a peacekeeping force for Yugoslavia; they declared their readiness `to give practical support to such an operation', but noted that the necessary conditions for such a peacekeeping operation did not at the time exist.

At its December 1991 session the WEU Assembly recommended[57] that the Council should invite member states to establish the necessary cooperation with a view to their participation in a peacekeeping force acting under the aegis of the United Nations. The Council replied that the decision to participate in peacekeeping operations was a national one, and that it was only after such decisions had been made that WEU could establish such cooperation.

WEU ministers did not meet again until 19 June 1992 (meanwhile the United Nations had created UNPROFOR,[58] the UN Protection Force in the former Yugoslavia) when, in Bonn, they issued *inter alia* a declaration on the Yugoslav crisis which included very important statements. First, the ministers supported Security Council Resolution 758[59] and encouraged `the active participation of member States in this operation.' Second, they reaffirmed their support for UNPROFOR and the United Nations peace plan. Third, they declared their readiness to abide by Security Council Resolution 757[60] imposing sanctions on the Federative Republic of Yugoslavia and to contribute, within the bounds of their possibilities, to the effective implementation of United Nations Security Council Resolutions relating to the conflict in the former Yugoslavia. Lastly, they charged an *ad hoc* group of representatives of ministries of foreign affairs and defence to examine ways in which WEU could contribute to the implementation of United Nations resolutions on the former Yugoslavia.

That declaration left no doubt as to WEU's determination to act in accordance with the provisions of the United Nations in the case of Yugoslavia. What is striking, moreover, is the awareness that WEU shows of its own operational limits. It can only encourage its members to make available to the United Nations forces for the implementation of Security Council resolutions, as it has no assets of its own; it helps the United Nations `within the bounds of its possibilities' (although this point seems superfluous, as it gives a negative impression of WEU's capabilities).

A month later, the WEU Council of Ministers nevertheless took two remarkable decisions regarding the former Yugoslavia. Meeting in the margins of the CSCE Helsinki Summit,(61) it decided to go ahead with surveillance of the embargo imposed by Security Council Resolutions 713 and 757 by making available air and naval elements deployed in international waters, in the Strait of Otranto and other points off the Yugoslav coast, following consultations with UNPROFOR. On the initiative of the presidency, the appropriate naval authorities established rules of engagement and operational coordination. These measures were taken at the suggestion of the *ad hoc* group, which would have informed the Security Council of the appropriateness of a new resolution. As regards humanitarian relief, the recommendations of the *ad hoc* group were also favourably received. The Ministerial Council agreed that the presidency of WEU would present a list of contributions by WEU member states to the United Nations and that, on the basis of new decisions by the Security Council and contacts with the United Nations, WEU could set up corridors for humanitarian relief. Finally, coordination with the United Nations, which was to be assured through the intermediary of the presidency, was also to aim at identifying additional needs of the population in the region. Information on these initiatives was to be communicated to the Secretary-General of the United Nations and to the chairman-in-Office of the CSCE.

On 13 August 1992, the Security Council adopted Resolution 770, which called upon states `to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery by relevant United Nations humanitarian organizations and others of humanitarian assistance to Sarajevo and wherever needed.' Even if WEU is not mentioned in the resolution, it can be deduced that the resolution refers to WEU where it calls upon states acting through regional agencies or arrangements, given that the United Nations was aware of the plans for humanitarian assistance prepared by WEU. On the day before Resolution 770 was adopted, diplomats considered that WEU's participation in such an operation was implicit.(62)

Following the adoption of this resolution, the President of the WEU Assembly called for the Council to meet as a matter of urgency to take decisions on the implementation of such measures.(63) The WEU Ministerial Council met on 28 August in London following the London Conference on the former Yugoslavia. It expressed the view that humanitarian operations, including the protection of convoys, should be organised by the United Nations, but emphasised that the members of WEU(64) were ready to contribute to this initiative. The WEU presidency informed the Secretary-General of the United Nations of the scale of their contribution. Following the decision taken at the London Conference, the ministers then welcomed the Conference's decision that heavy weapons would be made subject to international supervision and notified to the United Nations. They declared their intention to participate in these operations `under the overall responsibility of the United Nations and in coordination with the CSCE and other organisations.' These plans were also brought to the attention of the Secretary-General of the United Nations by the Italian presidency of WEU. Finally, ministers declared their willingness to take any further steps necessary `to make the embargo as effective as possible'.

After the adoption of Security Council Resolution 776,[65] which authorised a broadening of the mandate and size of UNPROFOR, six WEU member countries decided to put forces at the disposal of UNPROFOR.

Since the measures to be adopted *vis-à-vis* the former Yugoslavia had not up to that point yielded the results hoped for, On 3 September 1992 the Standing Committee of the WEU Assembly adopted a recommendation[66] urging the Council to try to obtain the immediate agreement of the United Nations to, *inter alia*, the imposition of a complete blockade of Serbia and Montenegro, and to propose to the Secretary-General of the United Nations that WEU forces should be kept under European command and control.

However, the maritime blockade of the Federative Republic of Yugoslavia was only decided on 16 November 1992.[67] The Security Council asked states `acting nationally or through regional agencies or arrangements' to take the necessary steps, under the authority of the Security Council, to inspect maritime shipping and to coordinate with the Secretary-General on the actions taken.

Four days later, the Council of Ministers, meeting in Rome, welcomed this resolution and gave its support to the implementation of the naval embargo but it drew the attention of the United Nations to the appropriateness of extra measures if its resolutions continued to be violated. In any event, the `collective determination' of WEU member states to contribute to humanitarian assistance under the responsibility of the United Nations was not in question.

The next major initiative was taken by WEU on 5 March 1993, when it submitted to the United Nations Secretariat-General plans for the establishment of a security zone around Sarajevo, in accordance with the mandate it had been given.[68]

At the end of that month, the Security Council adopted Resolution 816[69] concerning the prohibition of flights over Bosnia-Herzegovina. Following the by then normal practice, the United Nations authorised states to take, either nationally or through regional agencies or arrangements, all measures considered necessary to ensure observance of the ban. Under cover of this resolution, NATO mounted an operation to control the airspace of Bosnia-Herzegovina. WEU continued to study possible ways of making the embargo more effective, in particular after the adoption by the Security Council of Resolution 820,[70] which prohibited the transport of goods across land frontiers into or from Serbia-Montenegro.

The communiqué issued by the Council of Ministers in Rome on 19 May 1993 reveals the awareness acquired by WEU of the remarkable role that WEU can play in `the . . . European security environment.' In particular it states that:

`The severe crisis in former Yugoslavia powerfully demonstrates the need for international organizations in the security field to act closely together . . . Given the enhanced role of the United Nations and the importance of developing cooperation within the CSCE, WEU Ministers reaffirmed their preparedness to support, on a case by case basis and in accordance with WEU procedures, the effective implementation of conflict prevention and crisis management measures including peacekeeping activities of these Organisations and cooperative efforts with other States.'

The Council noted with satisfaction that all WEU member states were designating military units and headquarters which could be made available for various possible missions.

As for the practical measures taken against the former Yugoslavia, the ministers asked the Permanent Council, *inter alia*, `to arrange for a study to be carried out on the establishment of different safe areas referred to in UNSCR 824,[71] as well as Mostar and other possible areas.' They also recalled the contributions already made by WEU in the Yugoslav crisis. In particular, a statement by the French Minister for Foreign Affairs is worth mentioning: `WEU has also intervened as such (as an organisation), over and above the actions of its members.'[72] The degree of institutionalisation of WEU has been all the greater as a result.

The Danube operation

The possibility of a WEU operation on the Danube to make the United Nations embargo more effective was first announced at the extraordinary Ministerial Council held in London on 28 August 1992. On that occasion ministers declared that `Member States of WEU could, if requested, offer expertise, technical assistance and equipment to the governments of the Danube riparian states to prevent the use of the river Danube for the purpose of circumventing or breaking the sanctions imposed by UNSC Resolutions 713 and 757.' The Security Council reaffirmed, in Resolution 787,[73] that it was up to the riparian states to take appropriate measures concerning traffic on the Danube in accordance with its resolutions. Moreover, it asked all states to give assistance to states which did take such measures `either nationally or through regional agencies or arrangements' to follow up the resolution. This was a clear reference to WEU's offer of assistance to the Danube riparian states.

Only four days after the adoption of Resolution 787, WEU ministers again declared their willingness to provide, on request, assistance to the Danube riparian states.[74] Following a request to WEU for such assistance from Bulgaria, Hungary and Romania, at the Ministerial Council in Luxembourg[75] it was decided to send patrol vessels to the Danube. However, WEU had to wait for the CSCE's concurrence, which was obtained on 22 April.

In the meantime, the Security Council adopted Resolution 820,[76] in which it repeated the request, which it had addressed to all states in Resolution 787, that they give the necessary assistance to the Danube riparian states. Once again the Security Council made an implicit reference to WEU. The memorandums of understanding were signed by WEU and Bulgaria, Hungary and Romania on 20 May and the operation began on 9 June.[77]

Conclusion

What is striking in the above analysis of practice is the fact that WEU has only carried out operations outside Europe by virtue of Article VIII, paragraph 3 of the modified Brussels Treaty. As that article allows member states to consult on situations which constitute a threat to peace anywhere in the world, WEU has been able to undertake operations even if no state has explicitly asked it to intervene. In any event, no state

has ever reproached WEU with carrying out an operation which lacked legitimation, or with encroaching on its domestic affairs.

IS WEU A REGIONAL ORGANISATION?

The United Nations' ambiguous position

The nature of the coordination between WEU and the United Nations has changed because of the increased institutionalisation and importance of WEU. As long as the member states of WEU lacked the political determination to make WEU the forum in which decisions on security matters were taken, the organisation could not be considered by the United Nations as a body representing a given position. That is why, during the two crises in the Gulf, the Security Council addressed members of the world organisation exclusively, even if its resolutions concerned the use of forces from WEU countries.

Even after the Maastricht treaty had been drawn up, the United Nations never mentioned WEU in its resolutions.(78) But, as has just been shown, the Security Council often had in mind WEU's offers of assistance, or its forces already deployed, when it called upon states, acting `nationally or through regional agencies or arrangements',(79) to implement its resolutions.

By virtue of which article of the charter of the United Nations can the Security Council ask states for assistance in this way? Possibly it can base its request on Article 48, according to which members of the organisation implement the Security Council's decisions individually and through their action `in the appropriate international agencies of which they are members.' It is clear that WEU is an international body, but the formula used by the Security Council could restrict the provisions of Article 48 if, as seems to be the case in most of the resolutions considered above, it asks states to act nationally or else in the framework of regional arrangements or organisations (whereas Article 48 allows both direct action by states and concerted action at the local level). Two alternative hypotheses can then be considered:

(1) By using this expression in resolutions, the Security Council wishes to avoid intervention by states at both national *and* regional levels.

(2) The formula implies coordination between national and regional activities and not a choice, the use of one possibility not excluding the other. In this sense, the Security Council does not wish to offer an alternative but on the contrary wishes to leave states free to choose either or both means of intervention.

If one opts for the first hypothesis, it is natural to ask oneself the reason for adopting such a position. Have there been difficult situations to manage in this respect in the past? This would need to be verified.

In the second hypothesis, the situation falls entirely within the provisions of Article 48 and the formula in question is legitimated.

But what can be said of Article 53? Does the Security Council, when it uses the expression mentioned above, intend to have `enforcement action under its authority' executed by regional arrangements or agencies? Basing this formula exclusively on

Article 53 seems restrictive, since that article only takes into consideration regional arrangements or agencies as such and excludes direct action by a single state. It could be objected that Article 53 is addressed to states as well, given that states make up regional bodies. This objection is only acceptable for regional arrangements, since regional agencies possess their own personality in international law. Be that as it may, as paragraph 1 of Article 48 gives the Security Council the power to have action to carry out its decisions taken by some of the members, Article 53 should not be interpreted as a repetition of Article 48. If these norms are observed to the letter, the formula being analysed then falls under either Article 48 or Article 53. However, since this is only one of the possible interpretations, and since this assertion has weighty consequences, it would be better to look for its confirmation elsewhere in the acts of United Nations bodies.

The United Nations has paid increasing attention to regional bodies in recent years, as it has been unable to deal directly with all the regional disputes it has been called upon to resolve.(80) It has declared its readiness not only to support but also to facilitate peacekeeping actions undertaken in the framework of regional organisations and arrangements.(81)

In particular the attitude of the present Secretary-General of the United Nations, Mr Boutros Boutros-Ghali, deserves examination.

A recognised expert in regional organisations, the Secretary-General has devoted part of his report *An Agenda for Peace*(82) to cooperation with regional arrangements and organisations. In it, he writes that the charter of the United Nations gives no precise definition of regional arrangements and agencies so as to allow states the necessary flexibility in any regional action aimed at the maintenance of international peace and security. He affirms that regional bodies could help the Security Council in its task and contribute to a greater sense of participation and democratisation in international affairs, provided that the Security Council's primary responsibility in maintaining peace is preserved. He stresses that `Regional organizations participating in complementary efforts with the United Nations in joint undertakings would encourage States outside the region to act supportively', and that `should the Security Council choose specifically to authorize a regional arrangement or organization to take the lead in addressing a crisis within its region, it could serve to lend the weight of the United Nations to the validity of the regional effort.' As the aim of the report *An Agenda for Peace* was not to give formal rules governing relations between regional organisations and the United Nations, this task was taken on by the Security Council, which asked the Secretary-General(83) to transmit to regional arrangements and agencies its invitation to study which means might strengthen the capabilities of the latter in peacekeeping tasks and improve their coordination with the United Nations. The declaration specifies that the invitation is based on chapter VIII of the charter of the United Nations but only cites explicitly the Arab League, the European Community, the Organisation of the Islamic Conference, the Organisation of American States, the Organisation of African Unity and the Conference on Security and Cooperation in Europe. It was, however, the Secretary-General who was to choose the regional bodies to which the invitation was to be sent, and he decided to extend it to the Secretary-General of WEU (13 April 1993). It can be deduced that there is no unanimity in positions held regarding WEU. It is evident that the Secretary-General of the United Nations wishes to consider WEU as a regional

organisation, because if that is the case it is at the service of the United Nations. But it is the Security Council which decides, and since two of its members are also members of WEU, there will first have to be agreement within WEU on its definition as a regional organisation. As will be seen later, such unanimity of views does not for the moment exist.

What conclusion can one draw from this? The United Nations Secretariat seems to tend towards recognising WEU as a regional organisation but this tendency is not yet either well defined or accepted formally by a majority of members.

It must in addition be recalled that the United Nations usually only give implicit recognition to regional bodies. As Boutros-Ghali wrote a few years ago,(84) in practice two conditions have to be met for the United Nations to recognise a given regional organisation:

(1) the formal sanctioning and conformity of the regional organisation to the aims and principles of the United Nations;

(2) a manifestation on the part of the regional organisation of its wish to be recognised as such by the United Nations.

According to Boutros Boutros-Ghali, the implicit recognition of a regional organisation by the United Nations consists in either an invitation from the Secretary-General of the United Nations to his regional counterpart as an observer at the General Assembly of the United Nations or, conversely, an invitation to the Secretary-General of the United Nations to participate as an observer in a meeting of the assembly of the regional organisation.

In a few resolutions,(85) the Security Council has referred to regional arrangements or agencies in the sense of chapter VIII of the charter of the United Nations, but usually following a declaration by the regional agency.(86) The fact that the Secretary-General of the United Nations sent the letter relating to regional arrangements and agencies even to those which do not define themselves as such confirms the change in the trend that has taken place within the world organisation, which is mentioned above. The United Nations is now aware of the assistance which regional bodies can give it in the maintenance of international peace and security.

Such is the position within the United Nations, which can but profit from the military and financial resources and the experience of regional agencies, provided that they are in accordance with the charter. But what price do regional bodies, in particular WEU, have to pay for such recognition?

The debate within WEU

The question of the definition of WEU as a regional organisation in the sense of chapter VIII of the charter of the United Nations arose as early as the beginning of the negotiations on the Brussels Treaty in January 1948. The positions of the High Contracting Parties in fact differed widely.(87) France and Great Britain proposed a treaty along the lines of the Treaty of Dunkirk, in which the parties resolved `to co-operate closely with one another as well as with the other United Nations in

preserving peace and resisting aggression, in accordance with the charter of the United Nations and in particular with Articles 49, 51, 52, 53 and 107 thereof.'[88] These two countries considered that the enemy was still Germany and not the Soviet Union, which would have been offended by a pact directed against it. The Benelux countries for their part were in favour of a West European regional organisation which included both military and economic provisions, in accordance with Articles 51, 52 and 53 of the charter of the United Nations.[89] The United States, on the other hand, strongly supported a European collective security treaty modelled on the 1947 Treaty of Rio de Janeiro, as Europe had to protect itself against any aggressor and not simply Germany.

The Prague *coup d'état* of February 1948 produced a change in the attitude of the British and French: their sole concern became obtaining American aid against any potential aggressor. With that aim in mind they accepted the creation of a regional pact.[90]

The debate on the legal nature of the WEU treaty was very lively within the national parliaments concerned. The Belgian chamber in particular dealt in detail[91] with the question of the place of the treaty in relation to the United Nations system. According to the majority view which emerged, WEU was both a regional organisation (chapter VIII) and a treaty of collective self-defence (Article 51). M. Buset, president of the Socialist Party, was very clear on this point, commenting:

`It is important to keep within the framework of the charter of the United Nations. It is possible to do that: Articles 52 and 54 allow for regional arrangements set up for particular purposes. And the Western Union can perfectly well be one of its regional arrangements. But I, among others, think that this basis is not sufficient, and that we are justified in building on the terms of Article 51, which recognises the inherent right of individual or collective self-defence.'[92]

In the end, the Brussels Treaty signed on 3 March 1948 included the American proposal to follow the model of the Treaty of Rio de Janeiro and the requests of the Benelux countries regarding economic stipulations, but account was taken of the British request to base the provisions concerning collective self-defence on Article 51 rather than on Article 52 of the charter of the United Nations.

The United States and Canada were satisfied with the Brussels Treaty. It is interesting to note a comment made by the Canadian Mackenzie King on the day the Treaty was signed:

`This [Brussels] Treaty is far more than an alliance of the old kind. It is a partial realization of the idea of collective security by an arrangement made under the charter of the United Nations . . . The people of all free countries may be assured that Canada will play her full part in every moment to give substance to the conception of an effective system of collective security by the development of regional pacts under the charter of the United Nations.'[93]

Why did the High Contracting Parties to the Brussels Treaty not settle the question of the definition of WEU as a regional organisation in a clear and definitive way? The strange situation which emerged during the negotiations on the North Atlantic Treaty

(March 1949) concerning this point can help our understanding of the reasons for such a lack of clarity. Although this treaty was considered, at least from certain standpoints, to be a regional arrangement,[94] admitting this would have had two serious consequences. In the first place, a few countries (notably the Soviet Union, against which the treaty was directed) would have been able to argue that the alliance was not workable in practice, given that the USSR's veto in the Security Council could prevent the collective security mechanism from being used. Secondly, it would have been possible to argue that the Treaty would undermine the charter of the United Nations if it did not respect the Security Council's prime responsibility in the maintenance of international peace and security.

During the negotiations on the Treaty, the Under-Secretary of State Dean Acheson emphasised:

`There were two concepts which would have to be mutually exclusive, although it would be difficult to draw the line between them. One was collective self-defense--something that could be engaged in at any time without anybody's approval in the event of armed attack. The other concept was enforcement action, which was something done to somebody else not in self-defense.'

He admitted that, although without the authorisation of the Security Council the Atlantic Alliance would not have undertaken enforcement action but would have simply taken self-defence measures, the argument was too subtle to be understood by Western public opinion. The negotiators agreed the following statement, which reminded the parties to the treaty not to quote chapter VIII of the charter of the United Nations in public statements:

`It is the common understanding that the primary purpose of this Treaty is to provide for the collective self-defense of the Parties, as countries having common interests in the North Atlantic area, while reaffirming their existing obligations for the maintenance of peace and the settlement of disputes between them. It is further understood that the Parties will, in their public statement, stress this primary purpose, recognized and preserved by Article 51, rather than any specific connection with chapter VIII or other articles of the United Nations charter.'[95]

Thus the signatories of the North Atlantic Treaty based the conformity of the Treaty with the charter of the United Nations on a provision (Article 51) which had not been included in the draft prepared by the Great Powers, but added at the insistence of the South American states.

Similar arguments could equally have been invoked for the WEU treaty, which was used as a model for the Atlantic Alliance.

The following declaration by the Foreign Affairs Committee of the US Senate *vis-à-vis* the North Atlantic Treaty settles the issue in a clear, pertinent way:

`The question has been raised as to whether the treaty establishes a regional arrangement within the meaning of chapter VIII of the charter. As stated earlier in this report, the treaty is intended primarily to establish a collective defense arrangement under Article 51. However, it is not necessary to define the organization of the North

Atlantic community as exclusively one or the other. The treaty need not be departmentalized. Its purpose is to assist in achieving the great purposes of the charter, primarily the maintenance of peace. It can be utilized as a regional arrangement under chapter VIII or in any way, subject to the principles and all pertinent provisions of the charter, which may be useful to accomplish those purposes.'(96)

WEU, too, is founded principally on Article 51 but if, in order to fulfil the functions which its treaty confers on it as well as the aims of the United Nations, it is constrained to act under chapter VIII of the charter of the United Nations, then that is what it must be prepared to do.

After the signature of the WEU treaty several jurists endeavoured to specify the legal nature of the treaty.(97) The debate covered two questions: the absence of provisions on enforcement measures *vis-à-vis* signatories to the treaty and the admission of new members.

Certain jurists(98) have considered that only treaties providing for the adoption of enforcement measures in the event of conflict between two or more parties were regional arrangements, whereas treaties which did not include this mechanism were merely collective self-defence agreements or agreements on the pacific settlement of disputes. From this standpoint it does not seem that WEU could be considered a regional arrangement, since its treaty does not conceive a system of enforcement against its members; moreover, it has already been seen that in 1948 the intention of the High Contracting Parties was to defend themselves against all external aggression. But when the Treaty was modified in 1954, on the occasion of the admission of Germany and Italy, General Billot, France's representative, in his report (number 9703) to the Foreign Affairs Committee of the French National Assembly, gave an interpretation of the Treaty which is worth mentioning:

`The Brussels Treaty is decidedly not a treaty of alliance of the nineteenth century type, which could not be used except against third parties. On the contrary, it is here a question of a regional security pact whose *casus foederis* comes into effect even when the act of aggression of which one of the signatories of the pact is the victim is perpetrated by a signatory. If, therefore, one of the member countries of Western European Union committed an act of aggression against one of its partners, the latter would immediately receive the automatic assistance provided for in the Treaty.'(99)

Further, chapter VIII of the charter of the United Nations does not require the members of a regional agency to make provision for such a system. chapter VIII in fact addresses regional agencies which settle affairs connected with the maintenance of international peace and security and which lend themselves to actions which have a regional character. Certainly, it cannot be denied that the WEU treaty creates an organisation whose objective is the maintenance of international peace and security. In addition, Article V of the modified Brussels Treaty does not exclude at any moment that members defend themselves collectively against aggression by one of the parties to the Treaty,(100) provided the aggression takes place in Europe. Moreover, if one of the parties attacks another, it breaks the *casus foederis* and is bound to be expelled from WEU.

The second question concerns membership and is based on Article IX of the treaty regarding the admission of new member states to WEU. Some jurists(101) refuse to define WEU as a regional organisation, since its members could in the future be located in different regions of the world. Now it has already been shown that the United Nations does not require of a regional organisation that its members be geographically contiguous, and in addition the Hague Platform of 1987 clearly established that only the European states could become members of WEU. What has taken place in practice also confirms this interpretation.

Once these objections are overcome WEU could, from a juridical point of view, be considered a regional organisation in the sense of chapter VIII of the charter of the United Nations. But what, in this regard, is the current trend within WEU, given that recognition as a regional organisation depends in particular on WEU itself?

The report submitted on behalf of the Defence Committee to the first part of the thirty-ninth session of the Assembly(102) entitled `United Nations operations--interaction with WEU' examined the question of the recognition of WEU as a regional organisation. In the recommendation, which was unanimously approved, it was affirmed that `the question of whether or not WEU may be declared a regional organisation under the terms of the UN charter should be fully debated and that in general WEU should take action in accordance with Article VIII of the modified Brussels Treaty only under the aegis of a UN mandate.' The document then underlines the necessity for the Council to study `the possible participation in UN operations by WEU *per se*, with appropriate WEU co-ordination', and for WEU to make `a thorough examination of the pros and cons of declaring WEU a regional organisation within the meaning of the UN charter'.

The Assembly even approved a directive asking its President to invite the Secretary-General of the United Nations to speak before the WEU Assembly during its next plenary session. Does that constitute implicit recognition, on the part of the Assembly, of WEU as a regional organisation? If one follows the criteria defined by Mr Boutros-Ghali(103) concerning recognition of regional organisations by the United Nations, one has to answer in the affirmative. However, the Assembly only has the power of recommendation *vis-à-vis* the WEU Council, which is the decision-making body. In its reply to Recommendation 542, as regards the declaration of WEU as a regional organisation, the WEU Council stated that the matter was on the Permanent Council's agenda, and that the Assembly would be informed of its conclusions in good time.

Such a correspondence of views does not seem to exist at present. Some WEU countries in fact fear the loss of the right of collective self-defence referred to in Article 51 if WEU takes advantage of Article 53. In any case I have demonstrated that an organisation may take advantage of the dispositions of both Article 51 and those of chapter VIII, and that the intention of those who drew up the charter of the United Nations was, on the contrary, that these provisions would be complementary. Conversely, it *is* a legitimate fear that WEU's actions could be slowed down by the requirement to wait for the Security Council's authorisation, or that they could be blocked by veto, if WEU acted in accordance with chapter VIII. It is for that reason that, in his speech to the June 1993 plenary session of the WEU Assembly, the Secretary-General of WEU, Willem van Eekelen, emphasised WEU's vocation to participate in peacekeeping and peacemaking and at the same time affirmed that, in

the absence of a Common Foreign and Security Policy among the members of the European Union, WEU actions came under the mandate of the CSCE and the United Nations. He hoped, however, that the European Union would be able to act autonomously, either in Europe or anywhere else its security interests were threatened, if the UN decision-making mechanisms were blocked. The old question of the explicit and prior, or implicit and subsequent authorisation of the Security Council is in future likely to arise for WEU in a very difficult way, as it has already done in the past for other regional organisations.

The letter concerning regional organisations(104) sent to the Secretary-General of WEU by the Secretary-General of the United Nations has been considered by the WEU Council of Ministers. The reply by the Secretary-General of WEU reveals the reticence of the Council of Ministers on this subject: `My reply is without prejudice to the question of whether WEU is a regional arrangement or agency as referred to in chapter VIII of the UN charter.'(105) In this way he circumvented the most difficult aspect of the problem.

Analysis of what has been the practice nevertheless demonstrates that WEU has always undertaken actions outside Europe, and that it has always intervened following the approval of resolutions by the Security Council, without the latter ever having explicitly invited WEU to implement its resolutions. So, operations undertaken by WEU up until now have been based on Article 48 of the charter of the United Nations, which permits UN member states to carry out the decisions of the Security Council `directly and through their action in the appropriate international agencies of which they are members.' The operations which WEU could undertake in accordance with Article 51, on the other hand, concern response to armed attack in Europe or help to a state which is the subject of attack and which requests WEU's assistance in the framework of collective self-defence.

CONCLUSION

The complexity and number of disputes with which the Security Council is called upon to deal by virtue of its prime responsibility in international peacekeeping and security, conferred on it by Article 24 of the charter of the United Nations, makes the assistance of regional groupings necessary. The latter can provide a rapid and definitive solution to local crises thanks to their direct and often greater knowledge of the region's problems.

WEU's treaty occupies a special place among regional treaties. It sets up a self-defence mechanism and lays down the principle of concerted action by the High Contracting Parties in crises arising anywhere in the world. Compatibility between WEU's actions and the provisions of the charter of the United Nations is therefore based on different articles, according to the type of intervention which WEU intends to undertake.

WEU can act in collective self-defence (Article 51) in two cases: if one of the High Contracting Parties is the object of an armed attack in Europe, or if one or several states explicitly request WEU's assistance in an operation of collective self-defence, wherever it may prove necessary. Such actions are legitimate if they cease once the Security Council has taken measures necessary to re-establish peace.

As regards the application of enforcement measures which are not part of self-defence, the second paragraph of Article 48 provided the legal basis for actions by WEU. Article 48 in fact states that the decisions of the Security Council `shall be carried out by Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.' But WEU can also intervene beyond the frontiers of its members if the Security Council requests it to do so or if it obtains the prior authorisation of the Security Council regarding such an intervention (Article 53).

In practice WEU has never acted in collective self-defence, either in Europe or elsewhere and, on the other hand, has only carried out operations with the implicit mandate of the United Nations outside Europe. In any event, WEU has never declared itself to be a regional organisation in the strict sense of chapter VIII of the charter of the United Nations, in order not to create confusion in the mind of the public on the autonomy of action it has by virtue of Article 51 and Article 48.

From a legal point of view WEU is thus able actively to support the United Nations in the field of peacekeeping but must be aware of the problems which an independent peacekeeping role implies at the international political level. In recent years WEU has seen its importance on the international scene grow thanks to the increasingly complex tasks it has taken on. On the one hand, member states are in the process of designating military units which will be made available to WEU for peacekeeping and peacemaking tasks, thereby strengthening the organisation's operational capability; on the other, WEU itself is attempting to institute coordination with the United Nations by using the mission from the country holding the presidency of WEU to the United Nations in New York and by an increased exchange of information. WEU would, however, have greater political weight if member countries developed a collective

awareness of their responsibility in international peacekeeping and security. The time has come for WEU to act as a group.[106] WEU as such should provide the United Nations with contingents which are ready to intervene wherever crises arise. The Secretary-General of the United Nations has already given his support to the signature of agreements as envisaged in Article 43 (agreements on making available to the United Nations armed forces, assistance and facilities, to be agreed between the Security Council and `groups of Members' of the organisation), and WEU should take advantage of this availability in principle. Since it is the Security Council which is supposed to take the initiative in stipulating such agreements, the two members of WEU which are permanent members of the Security Council--France and the United Kingdom--should push the United Nations' decision-making body in that direction.

Moreover, the two West European permanent members of the Security Council must become aware of the fact that the authorisation of WEU operations by the United Nations' supreme authority could be blocked by the other members of the Security Council, including the United States, which has always been an important military partner of Europe within NATO.

However, if WEU continues this process of institutional growth (of which the creation of a Planning Cell is a significant example) and operational growth, it will be able to present itself as an organisation capable of carrying out tasks which are complementary to those of the United Nations. In this perspective chapter VIII of the charter of the United Nations should not be interpreted as envisaging the subordination of regional groupings to the Security Council but rather as instituting the decentralisation of power and the complementarity of the two bodies.

Annexe A Extracts from the charter of the United Nations

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 51

Nothing in the present charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Article 52

1. Nothing in the present charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the

part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

Annexe B Extracts from the modified Brussels Treaty

Article V

If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.

Article VI

All measures taken as a result of the preceding Article shall be immediately reported to the Security Council. They shall be terminated as soon as the Security Council has taken the measures necessary to maintain or restore international peace and security.

The present Treaty does not prejudice in any way the obligations of the High Contracting Parties under the provisions of the charter of the United Nations. It shall not be interpreted as affecting in any way the authority and responsibility of the Security Council under the charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Article VIII

3. At the request of any of the High Contracting Parties the Council shall be immediately convened in order to permit Them to consult with regard to any situation which may constitute a threat to peace, in whatever area this threat should arise, or a danger to economic stability.

Article X

In pursuance of their determination to settle disputes only by peaceful means, the High Contracting Parties will apply to disputes between themselves the following provisions:

The High Contracting Parties will, while the present Treaty remains in force, settle all disputes falling within the scope of Article 36, paragraph 2, of the Statute of the International Court of Justice, by referring them to the Court, subject only, in the case of each of them, to any reservation already made by that Party when accepting this clause for compulsory jurisdiction to the extent that that Party may maintain the reservation.

In addition, the High Contracting Parties will submit to conciliation all disputes outside the scope of Article 36, paragraph 2, of the Statute of the International Court of Justice.

In the case of a mixed dispute involving both questions for which conciliation is appropriate and other questions for which judicial settlement is appropriate, any Party to the dispute shall have the right to insist that the judicial settlement of the legal questions shall precede conciliation.

The preceding provisions of this Article in no way affect the application of relevant provisions or agreements prescribing some other method of pacific settlement.

Article XI

The High Contracting Parties may, by agreement, invite any other State to accede to the present Treaty on conditions to be agreed between them and the State so invited.

Any State so invited may become a Party to the Treaty by depositing an instrument of accession with the Belgian Government.

The Belgian Government will inform each of the High Contracting Parties of the deposit of each instrument of accession.

1. The Treaty, signed in Paris on 23 October 1954, substantially modified the Brussels Treaty of 17 March 1948 under which WEU was set up.

2. The San Francisco Conference took place from 24 April to 26 June 1945 and culminated in the drawing up of the charter of the United Nations.

3. L. Dubois, `Les rapports du droit régional et du droit universel', in *Régionalisme et universalisme dans le droit international contemporain*, Société Française pour le Droit International (Paris: Pedone, 1977), p. 266.

4. See A. Alvarez, *American international law*, 1910.

5. `Often in one part of the world there is a law of nations which is not found elsewhere.' Grotius, *De Jure Belli ac Pacis* (*On the Law of War and Peace*, 1625), vol. I, ch. I, para. 14.

6. This took place from 21 August to 7 October 1944.

7. E. Kodjo, `Article 52', in *La charte des Nations Unies* (Paris: Economica, 1991), p. 799.

8. The definition was as follows: `There shall be considered as regional arrangements organisations of a permanent nature grouping in a given geographical area several countries which, by reason of their proximity, community of interests or cultural, linguistic, historical or spiritual affinities, make themselves jointly responsible for the peaceful settlement of any disputes which may arise between them and for the maintenance of peace and security in their region, as well as for the safeguarding of their interests and the development of their economic and cultural relations', cited by E. Kourula in `Peace-keeping and regional arrangements', *United nations peace-keeping: legal essays*, A. Cassese, 1978, p. 101.

9. See P. Vellas, *Le régionalisme international et l'Organisation des Nations unies* (Paris: Pedone, 1948), pp. 31-66; H. Kelsen, *The law of the United Nations* (London: Stevens and Sons Ltd., 1951), pp. 319-320; R. Yakemtchouk, *L'ONU, la sécurité régionale et le problème du régionalisme* (Paris: Pedone, 1955), pp. 139-177; B. Boutros-Ghali, `Régionalisme et Nations unies' *Revue Egyptienne de Droit International*, 1968, p. 10; E. Kourula, *op. cit.*, pp. 101-3.

10. A/RES/477 (V), 1 November 1950.

11. *Manual of the pacific settlement of disputes between States*, United Nations, Office of Legal Affairs (New York: United Nations, 1992).

12. Article 33.1 mentions negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means chosen by the parties.

13. And equally the Secretary-General, by virtue of Article 99 of the charter of the United Nations.

14. R. A. Akindele, `The OAU and the United Nations: a study of the problem of universal-regional relationship in the organisation and maintenance of international peace and security', *Canadian Yearbook of International Law*, 1971, p. 34.

15. A. Cassese, `Article 51', op. cit. in note 7, p. 772.

16. G. Camus, *Le régionalisme international d'après la charte des Nations unies*, mémoire submitted for Diploma in Public Law, University of Caen, Faculty of Law and Economic Sciences, 1960, p. 110.

17. The Act of chapultepec stipulated in particular that any attack by a non-American state on the integrity or inviolability of the territory, sovereignty or political independence of an American state would be considered an act of aggression against all American states.

18. P. Vellas, op. cit., p. 138.

19. See in particular P. Vellas, op. cit., pp. 138-141.

20. See in particular A. Cassese, op. cit., pp. 775 ff. and J. Meyer, *Collective self-defence and regional security: necessary exception to a globalist doctrine*, Center for International Studies, New York University School of Law, 1993, pp. 12-21.

21. A/RES/3314 (XXIX), 14 December 1974.

22. CIJ, *Recueil*, 1986, pp. 103 ff.

23. B. Conforti, *Diritto internazionale*, Editoriale Scientifica, 1988, pp. 356 ff.

24. G. Camus, op. cit., p. 94.

25. In practice regional organisations have often applied enforcement measures not involving the use of force (for example the Organisation of American States decreed an embargo against Haiti; the European Community and the CSCE decreed one on arms destined for the former Yugoslavia) before the United Nations, and that has never led to conflicts of competence between the two organisations.

26. P. Vellas, op. cit., p. 109.

27. R. Yakemtchouk, op. cit., p. 266.

28. The condition for starting the security process laid down in the treaty.

29. R. Yakemtchouk, op. cit., p. 266.

30. Moreover, Article 103 of the charter of the United Nations provides that `In the event of a conflict between the obligations of the Members of the United Nations under the present charter and their obligations under any other international agreement, their obligations under the present charter shall prevail.'

31. Greece is to become a full member of WEU; Iceland, Norway and Turkey are associate members; Denmark and Ireland have observer status.

32. For the full text, see *The Reactivation of WEU Statements and Communiqués 1984 to 1987*(London: WEU, 1988), pp. 5-15.

33. *Idem*, pp. 37-45.

34. Arnaud Jacomet, `The role of WEU in the Gulf crisis', in Nicole Gnesotto and John Roper (eds.), *Western Europe and the Gulf* (Paris: Institute for Security Studies of WEU, 1992), pp. 160-1.

35. S/RES/598 (1987), 20 July 1987.

36. A. Jacomet, op. cit. p. 161.

37. Assembly of WEU, *Western European Union, Information Report*, February 1993, pp. 16-17.

38. A. Jacomet, op. cit. p. 161.

39. Assembly of WEU, *Proceedings*, Thirty-sixth ordinary session, First Part, June 1990, WEU, Paris, p. 260.

40. Op. cit.in note 37, p. 20.

41. S/RES/660 (1990), 2 August 1990.

42. S/RES/661 (1990), 6 August 1990.

43. S/RES/664 (1990), 18 August 1990.

44. WEU communiqué of 31 August 1990.

45. S/RES/665 (1990), 25 August 1990.

46. S/RES/678 (1990), 29 November 1990.

47. Held in Paris in June 1991.

48. Recommendation 493, Assembly of WEU, *Proceedings*, Thirty-seventh ordinary session, First Part, June 1991, vol. I, p. 321.

49. Idem, p. 322.

50. Idem, p. 323.

51. Signed on 7 February 1992 by the heads of state of the twelve countries of the European Community.

52. Adopted on 19 June 1992 by the WEU Ministerial Council in Bonn.

53. Op. cit. in note 37, p. 29.

54. S/RES/713 (1991), 25 September 1991.

55. *WEU's involvement in the Yugoslav crisis and conflict--Chronology (June 1991-June 1993)*, Secretary-General's note (Brussels: WEU Secretariat, 15 July 1993), p. 1.

56. In Bonn on 18 November 1991.

57. Recommendations 511 and 512.

58. S/RES/743 (1992), 21 February 1992.

59. S/RES/758 (1992), 8 June 1992.

60. S/RES/757 (1992), 18 June 1992.

61. The meeting took place in Helsinki on 10 July 1992.

62. *Le Monde*, 12 August 1992, p. 3.

63. Op. cit. in note 37, p. 31.

64. It referred to the `"collective will" of the WEU member countries.'

65. S/RES/776 (1992), 14 September 1992.

66. Recommendation 525 of 3 September 1992.

67. S/RES/787 (1992), 16 November 1992.

68. *Le Monde*, 8 March 1993.

69. S/RES/816 (1993), 31 March 1993.

70. S/RES/820 (1993), 18 April 1993.

71. S/RES/824 (1993), 5 May 1993.

72. Quoted in *Bulletin d'Information*, Ministère des Affaires étrangères, Paris, 26 May 1993, p. 1.

73. S/RES/787 (1992), 16 November 1992.

74. Communiqué, Council of Ministers, Rome, 20 November 1992.

75. 5 April 1993.

76. S/RES/820 (1993), 18 April 1993.

77. Op. cit. in note 55, pp. 12-13.

78. Which *was* the case for the European Community and the CSCE. See, for example, Resolutions 743 (1992), 747 (1992), 752 (1992), 764 (1992) and 820 (1993).

79. See Security Council Resolutions 770 (1992), 776 (1992), 781 (1992), 787 (1992), 816 (1993), 820 (1993), 836 (1993) and 844 (1993).

80. See, for example, the speech by the French President to the Security Council of the United Nations on 31 January 1992 and the note by the President of the Security Council of 11 February 1992 (S/23500).

81. `Peacekeeping', statement by the President of the Security Council of the United Nations, New York, 28 May 1993, para. 3.

82. Boutros Boutros-Ghali, *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992 (New York: United Nations, 1992), pp. 35-8.

83. S/25184, 29 January 1993.

84. Boutros Boutros-Ghali, *Regionalism and the United Nations*, op. cit., pp. 7 ff.

85. See for example Resolutions 199 (1964) of 30 December 1964 and 217 (1965) of 20 November 1965, concerning the Organisation of African Unity.

86. The CSCE declared itself `a regional arrangement in the sense of chapter VIII of the UN charter' at the Helsinki Summit of July 1992.

87. See E. Reid, *Time of fear and hope. The making of the North Atlantic Treaty 1947-1949*(Toronto: McClelland and Stewart, 1977), pp. 36 ff. and P. Gerbet, *Le relèvement 1944-1949*(Paris: Imprimerie Nationale, 1991), pp. 337 ff.

88. For the text see *United Nations--Treaty Series*, 1947, no. 132, vol. 9, pp. 186-194.

89. E. Reid, op. cit., p. 39.

90. P. Gerbet, op. cit., p. 339.

91. On the occasion of the debate on the budget of the Ministry of Foreign Affairs on 3 and 4 March 1948.

92. *Annales Parlementaires de Belgique. chambre*, Session 1947-1948, II, no. 37, 4 March 1948, cited by R. Yakemtchouk, op. cit., p. 230.

93. E. Reid, op. cit., p. 43.

94. E. Reid, op. cit., pp. 190 ff.

95. Idem, Appendix 3, p. 268.

96. E. Beckett, *The North Atlantic Treaty, the Brussels Treaty and the charter of the United Nations* (London: Stevens and Sons Ltd., 1950), p. 34.

97. See E. Beckett, op. cit., pp. 22-4; R. Yakemtchouk, op. cit., pp. 231 ff.; J. Stone, *Legal control of international conflicts* (London: Stevens and Sons Ltd., 1959), pp. 247 ff.; E. Vignes, `La place des pactes de défense dans la société internationale actuelle', *Annuaire Français de Droit International*, 1959, pp. 45 ff.

98. See in particular E. Beckett, op. cit., pp. 21 ff.

99. Quoted in P. Theodoropoulos, *L'Union de l'Europe occidentale et la construction européenne de sécurité*, thesis for doctorate in international security and defence, Université Pierre Mendès France Grenoble 2, Faculté de droit, 1992, p. 21.

100. H. Kelsen, `Is the North Atlantic Treaty a regional arrangement?', *The American Journal of International Law*, 1951, no. 1, vol. 45, pp. 162-6.

101. See in particular E. Beckett, op. cit., p. 24.

102. This was held in Paris on 14-17 June 1993.

103. Boutros Boutros-Ghali, *Regionalism and the United Nations*, op. cit., pp. 7-8.

104. SCA/12/93, 1 April 1993.

105. Secretary-General's note, *WEU's relations with the United Nations*, Reply by the WEU Secretary-General dated 25 June 1993 to the UN Secretary-General's letter of 1 April 1993, p. 2.

106. Which they do in the case of the Open Skies Treaty, as the Netherlands Socialist Mr Tummers affirmed at the WEU Assembly in June 1993.