Increased Franco-British Military Cooperation: The Impetus, Its Results, and the Impact on International Humanitarian Intervention

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I. INTRODUCTION

After the horrors of both World Wars, protection of human rights became a focus of the international community. In the post-war period, as armed conflicts between states became less common and protections for human rights expanded, violations of those rights by state and non-state actors increased. The legality of intervention by a state or group of states in humanitarian crises is still unsettled. Given the increased interconnectivity of the world's populations, images of and outrage over human rights violations spread far more quickly and widely than ever before. In cases of gross violations of human rights there is inherent tension between a state's reluctance to intervene because of the unsettled

legal status and costs of international intervention and the pressure by the civilian population to prevent and halt human suffering.

Humanitarian intervention requires many resources, particularly military and civilian capabilities, but there are few states with both the ability and political will to intervene.[1] Cooperation between those few states is necessary for successful intervention to halt or prevent human rights violations, but some states are more willing to collaborate than others. On November 2, 2010, France and the United Kingdom (UK) signed the Treaty for Defense and Security Cooperation, which envisions greater bilateral military cooperation than ever before.[2] This Treaty is a natural outgrowth of prior Franco-British attempts to encourage European defense cooperation, but it is also an innovative approach to collective security and defense. The probability of humanitarian interventions supported by one or both of these nations will likely increase because of the merger of the similar worldviews and political intentions of the two states with the effects of the Treaty—greater efficiency, cooperation, and capabilities. Both France and the UK possess the political will to expand their global influence and, in particular, to exercise power in the humanitarian sphere. While France and the UK have previously expressed the desire to intervene in humanitarian crises, they both lacked the individual military capabilities to do so without the support and contribution of the United States.[3] Increased military cooperation between France and the UK, accompanied by a strong commitment to the development of capabilities that neither formerly possessed, will allow both France and the UK to lead interventions where the United States or other major states do not wish to commit themselves.

Section II of this Article addresses the current legal framework of humanitarian intervention. Section III examines previous attempts at international military cooperation by the United Nations, NATO, EU, and bilateral arrangements, Section IV considers the scope and implementation of the Treaty between France and the UK. Finally, Section

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1. *See* discussion *infra* Parts II, III.
2. Treaty for Defence and Security Co-Operation, Nov. 2, 2010, Fr.-U.K., Gr. Brit. T.S. No. 36 (2011) (Cm. 7976); Loi 2011-1190 du 26 September 2011 de traité de coopération en matière de défense et de sécurité, JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Sept. 28 2011, p. 16320 [hereinafter 2010 Defense and Security Treaty].
3. *See* discussion, *infra* Part III, IV.

V analyzes the interplay of international law and the bilateral military treaty in recent international humanitarian interventions.

II. INTERNATIONAL INTERVENTION: THE LEGAL FRAMEWORK AND JUSTIFICATIONS

International law principles are devoted to maintaining peace and security in the international system as well as respecting the tenets of sovereignty and non-intervention, which are central to the system's stability. The concept of humanitarian intervention, defined as, "dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual condition of things,"[4] runs counter to the guiding principles of international law, yet states have practiced such intervention throughout history.

Prior to the establishment of the United Nations, customary international law seemed to accept intervention on humanitarian grounds even though international law, at the time, did not guarantee essential human rights.[5] Popular support for humanitarian interventions provided a foundation for the legality of collective action.[6] Great powers intervened on behalf of threatened minorities throughout the 19th and 20th centuries: Great Britain, France, and Russia acted in Greece in 1827;[7] France interceded in Syria, at the time a part of the Ottoman Empire, to protect Christians in 1860;[8] and Greece, Bulgaria, and Serbia entered Macedonia on behalf of Christians in 1912.[9]

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4. LASSA OPPENHEIM, INTERNATIONAL LAW: A TREATISE, VOL. 1: PEACE 181 (Ronald P. Roxburgh ed., Longmans, Green and Co. 3d ed. 1920).

5. *Id.* at 186, 346 ("Many jurists maintain that intervention is likewise admissible, or even has a basis of right, when exercised in the interest of humanity for the purpose of stopping religious persecution and endless cruelties in time of peace and war. That the Powers have in the past exercised intervention on these grounds, there is no doubt . . . But whether there is really a rule of the Law of Nations which admits such interventions may well be doubted. Yet, on the other hand, it cannot be denied that public opinion and the attitude of the Powers are in favour of such interventions, and it may perhaps be said that in time the Law of Nations will recognise the rule that interventions in the interests of humanity are admissible provided they are exercised in the form of a collective intervention of the Powers." *Id.* at 186–87.).

6. *Id.* at 186, 347.

7. *Id.* at 186.

8. IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 569 (Oxford University Press 5th ed. 1998).

9. Barry M. Benjamin, Note, *Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities*, 16 FORDHAM INT'L L.J. 120, 129 (1993). For an in-depth analysis of European interventions in the Ottoman Empire on the basis of humanitarian concerns, see DAVIDE RODOGNO, AGAINST MASSACRE: HUMANITARIAN INTERVENTIONS IN THE OTTOMAN EMPIRE, 1815-1914 (Princeton University Press 2011) (explaining the emergence of a European concept and international practice).

The types of humanitarian intervention practiced by European States in the nineteenth and early twentieth centuries were based primarily on State interest and were therefore applied unequally.[10]   The principal basis for modern international human rights law is the 1948 Universal Declaration of Human Rights (UDHR).[11]   The Charter of the United Nations (the Charter) also provides a basis for the protection of human rights in international law.[12]   Instruments created after the UDHR and the Charter, such as the International Covenant on Civil and Political Rights, have further strengthened the protections of human rights in international law.[13]

A. *The United Nations and the Intervention Issue*

In the years following the First World War, the international community tried to sustain peace by outlawing wars of aggression and encouraging peaceful means of dispute resolution. The League of Nations, established in 1920, obliged signatory states to avoid war, and called for sanctions on those that did wage war.[14] The Kellogg-Briand Pact of 1928 also purported to outlaw war and called for resolution of conflicts only by peaceable means.[15] However, since neither agreement provided the international community with the means to enforce such provisions, little could in fact be done to prevent the outbreak of World War II.

The founders of the United Nations (UN), created by an international community that had twice suffered the "scourge of war,"[16] intended to preserve international peace and security, protect fundamental human

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10.   BROWNLIE, *supra* note 8, at 569.
11.   Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).
12.   BROWNLIE, *supra* note 8, at 573.
13.   *Id.* at 577.
14.   League of Nations Covenant pmbl.; *id.* art. 16.
15.   General Treaty for Renunciation of War as an Instrument of National Policy, Aug. 27, 1928, 94 L.N.T.S. 57 [hereinafter the Kellogg-Briand Pact]. "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another." *Id.* art. 1. "The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means." *Id.* art 2.
16.   U.N. Charter pmbl.

rights, and prevent the outbreak of armed conflict.[17] The calls embodied in the League of Nations Charter and Kellogg-Briand Pact for peaceful resolution of international conflicts are echoed in Article 2 of the UN Charter,[18] which also purports to prohibit the threat or use of force against another sovereign state.[19] That prohibition, however, does not apply to a state's use of force in self-defense under Article 51 of the Charter.[20]

The Security Council of the UN (Security Council) is composed of five permanent members—United States, United Kingdom, France, Russia, and China—and ten rotating elected members.[21] The Security Council's task is to identify threats to international peace and security and determine the appropriate measures to respond to such threats—measures which may include armed force.[22] Because Security Council resolutions to authorize intervention are subject to the veto of a permanent member,[23] collective intervention was essentially impossible during the Cold War period (1948–1991).[24] UN peacekeeping operations provided for under Chapter VI and VII of the UN Charter require a voluntary commitment of troops, military police, and other personnel from Member States.[25] Member States pay for the expenses of peacekeeping operations based upon a formula that considers the relative economic wealth of each country and requires the five permanent members of the Security Council to pay

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17.   *Id.* art. 1.
18.   *Id.* art. 2, ¶ 3 ("All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.").
19.   *Id.* art. 2, ¶ 4. ("All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.").
20.   *Id.* art. 51. ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defense 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.").
21.   *Id.* art. 23, ¶ 1.
22.   *Id.* arts. 39–42.
23.   *Id.* art. 27, ¶ 3; International Commission on Intervention and State Sovereignty [ICISS], *The Responsibility to Protect*, ¶ 6.20 (Dec. 2001), *available at* http://responsibilitytoprotect.org/ICISS%20Report.pdf [hereinafter ICISS Report].
24.   Louis Henkin, *NATO's Kosovo Intervention: Kosovo and the Law of Humanitarian Intervention*, 93 AM. J. INT'L L. 824, 825 (Oct. 1999); ICISS Report, *supra* note 23, ¶ 6.16 ("Although these powers were interpreted narrowly during the Cold War, since then the Security Council has taken a very expansive view as to what constitutes 'international peace and security.'").
25.   *See* UNITED NATIONS DEP'T OF PEACEKEEPING OPERATIONS & DEP'T OF FIELD SUPPORT (DPKO/DFS), *United Nations Peacekeeping Operations: Principles and Guidelines*, 13–14 (2008), http://pbpu.unlb.org/pbps/Library/Capstone_Doctrine_ENG.pdf.

a larger share of the peacekeeping budget.[26] In 2013, the United States paid 28.38% of the UN peacekeeping budget, the UK paid 6.68%, and France paid 7.22%.[27] These three states, along with Japan and Germany, comprise the top five providers of assessed contributors to the peacekeeping budget.[28] The support of permanent members is essential for humanitarian intervention, as was demonstrated by attempts to intervene in the 1990s.[29] U.S. support was particularly essential because it was usually the only state with both the necessary military capabilities and the political will to intervene, although the will to intervene was usually shared by the UK, France, and other states.[30]

B. *International Humanitarian Intervention in the Post-Cold War Era*

Since the end of the Cold War, the Security Council has expressed a willingness to classify internal conflicts of a state with gross human rights violations as a threat to international peace and security.[31] This was demonstrated in the resolutions regarding Iraq in 1991, Somalia in 1992, and Rwanda in 1994.[32] NATO intervention in Kosovo in 1999, undertaken without explicit Security Council authorization, brought renewed debate regarding the legality of humanitarian intervention since it necessarily requires a violation of state sovereignty; specifically,

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26.   *Financing Peacekeeping 2011–2012*, UNITED NATIONS PEACEKEEPING, http://www.un.org/en/peacekeeping/operations/financing.shtml.

27.   U.N. Secretary-General, *Implementation of General Assembly Resolutions 55/235 and 55/236: Rep. of the Secretary-General*, add. 1, annex, U.N. Doc. A/67/224/Add.1 (Dec. 27, 2012). A new scale of assessments for 2013–2015 was adopted in G.A. Res. 67/238, U.N. Doc. A/RES/67/238 (Feb. 11, 2013), and the updated composition of levels for the same period was endorsed in G.A. Res. 67/239, U.N. Doc. A/RES/67/239 (Feb. 11, 2013). *Id.* The effective rates for the period 2014–2015 will remain fairly consistent with the 2013 levels—28.36% for the United States; 6.68% for the UK; and 7.21% for France. *Id.*

28.   *Id.*

29.   *See* discussion, *infra* part B.

30.   France and the UK were among the countries negotiating with the Serbs before NATO intervened in Kosovo. Jason Dominguez Meyer, *From Paralysis in Rwanda to Boldness in Libya: Has the International Community Taken "Responsibility to Protect" from Abstract Principle to Concrete Norm Under International Law?*, 35 HOUS. J. INT'L L. 87, 91–94 (2011).

31.   Henkin, *supra* note 24, at 825.

32.   *Id.*; Mehrdad Payandeh, *The United Nations, Military Intervention, and Regime Change in Libya*, 52 VA. J. INT'L L. 355, 368 (2012).

territorial sovereignty.[33] Critics of intervention feared states would use it to disguise interference in the internal affairs of other states or that secessionist movements would provoke human rights violations in order to elicit international intervention.[34] They also suggested inconsistent application of the doctrine of intervention in weak versus strong states.[35] In response to these critics, UN Secretary-General, Kofi Annan, posed the following question to the General Assembly:

> [I]f humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how *should* we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?[36]

The Secretary-General called on the Member States to attempt to resolve the debate. In response, Canada established the International Commission on Intervention and State Sovereignty (ICISS) to develop a solution and find a common ground for humanitarian intervention.[37]

C. The Legal Basis of Humanitarian Intervention: "The Right to Intervene" or "The Responsibility to Protect"?

The report issued by the ICISS, entitled "The Responsibility to Protect," purported to change the language of the intervention debate. Previously, the legality of humanitarian intervention had been characterized as a state's "right to intervene" to halt gross violations.[38] The report proposed a doctrine called "the responsibility to protect" (R2P), which places a burden on both the individual state and the international community.[39] Implied in a state's sovereignty is its duty to protect its people from harm.[40] The international responsibility to protect only transcends the principle of non-intervention when a population is suffering serious harm and the state in question is unwilling or unable to stop it.[41] The duty of the international community encompasses three specific obligations: the responsibility to prevent humanitarian crises, to react to gross violations of human rights, and to rebuild after such violations cease.[42]

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33.   Henkin, *supra* note 24, at 825–27.
34.   U.N. Secretary-General, *We the Peoples: the Role of the United Nations in the 21st Century*, ¶ 216, U.N. Doc. A/54/2000 (Mar 27, 2000), *available at* http://unpan1. un.org/intradoc/groups/public/documents/un/unpan000923.pdf.
35.   *Id.*
36.   *Id.* ¶ 217.
37.   ICISS Report, *supra* note 23, ¶ 1.7.
38.   *Id.* ¶ 2.4.
39.   *See* ICISS Report, *supra* note 23, pt. 2.
40.   *Id.* ¶¶ 2.14–2.15, 2.30.
41.   *Id.* ¶¶ 2.7, 2.27, 2.31.
42.   *Id.* ¶ 2.32.

The report identified six criteria for military intervention: right authority, just cause, right intention, last resort, proportional means, and reasonable prospects of success.[43] The right authority to authorize a military intervention comes from a resolution of the Security Council or, perhaps even a widely-supported General Assembly resolution.[44] The international community must have just cause to intervene[45] as well as the right intention for intervention—"to halt or avert human suffering."[46] Intervention must be the last resort, meaning that "[e]very diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis must have been explored."[47] The intervention must use proportional means[48] and it must have reasonable prospects of success in halting or averting the suffering that originally triggered the intervention.[49]

The UN has seemingly embraced the R2P doctrine. For example, the UN General Assembly adopted a version of the "responsibility to protect" in its 2005 World Summit Outcome Resolution, which recognized the responsibility of states to prevent genocide, war crimes, ethnic cleansing, and crimes against humanity.[50] While this resolution instructed nations to help protect populations from these harms by first attempting peaceful means, it also expressed the General Assembly's vision of military

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43.   *See id.* pt. 6.

44.   ". . . [T]here is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes. It is the Security Council which should be making the hard decisions in the hard cases about overriding state sovereignty." *Id.* ¶ 6.14. But the Report points to the recommendatory powers of the General Assembly and prior General Assembly resolutions authorizing operations in Korea (1950), Egypt (1956), and the Congo (1960) to support its claim that "even in the absence of Security Council endorsement . . . an intervention which took place with the backing of a two-thirds vote in the General Assembly would clearly have powerful moral and political support" sufficient to support an authorization of intervention. *Id.* ¶ 6.7.

45.   The Commission identifies two broad circumstances in which military intervention would be justified—"to halt or avert: large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale 'ethnic cleansing,' actual or apprehended, whether carried out by killing, forced expulsion, acts of terror, or rape." *Id.* ¶ 4.19.

46.   *Id.* ¶ 4.33.

47.   *Id.* ¶ 4.37.

48.   *Id.* ¶ 4.39 ("The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question.").

49.   *Id.* ¶ 4.41.

50.   2005 World Summit Outcome, G.A. Res. 60/1, ¶¶ 138–39, U.N. Doc. A/RES/60/1 (Sept. 16, 2005).

intervention.[51] This version of R2P intervention is apparently limited to interventions under the authority of the Security Council (Chapter VII of the United Nations charter), and only in situations involving genocide, war crimes, ethnic cleansing, and crimes against humanity. However, the General Assembly declined to establish any guidelines for military intervention, explicitly stating the need for a case-by-case determination.[52]

In 2006, Security Council Resolution 1674 explicitly reaffirmed the version of R2P embodied in the 2005 World Summit Outcome Resolution.[53] Resolution 1674 confirmed prior Security Council resolutions on the protection of civilians in times of conflict, which referred to instances where humanitarian intervention would be considered.[54] The Resolution reiterated the Security Council's practice of including provisions for the protection of civilians in peacekeeping mandates.[55] These UN resolutions, particularly the support of the Security Council of the General Assembly's version of R2P, give the doctrine greater legal support.

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51.   *Id.* ¶ 139 ("[W]e are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.").

52.   *Id.*

53.   S.C. Res. 1674, ¶ 4, U.N. Doc. S/RES/1674 (April 28, 2006) ("*Reaffirms* the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity").

54.   *Id.* ("*Reaffirming* its resolutions 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflict . . ."); S.C. Res. 1296, ¶ 15, U.N. Doc. S/RES/ 1296 (April 19, 2000) ("*Indicates* its willingness to consider the appropriateness and feasibility of temporary security zones and safe corridors for the protection of civilians and the delivery of assistance in situations characterized by the threat of genocide, crimes against humanity and war crimes against the civilian population").

55.   S.C. Res. 1674, *supra* note 53, ¶ 13, 16 ("*Urges* the international community to provide support and assistance to enable States to fulfill their responsibilities regarding the protection of refugees and other persons protected under international humanitarian law. . . .*Reaffirms* its practice of ensuring that the mandates of United Nations peacekeeping, political and peacebuilding missions include, where appropriate and on a case-by-case basis, provisions regarding (i) the protection of civilians, particularly those under imminent threat of physical danger within their zones of operation. . .").

D. The Impact of the United Nations Security Council Veto on Intervention

Military intervention requires UN authorization for legitimacy, preferably in the form of a Security Council resolution.[56] The veto held by the permanent members of the Security Council is the greatest impediment to issuing a resolution authorizing intervention in cases where political will to intervene exists. Security Council action is often thwarted by use of a member's veto. NATO intervened in Kosovo in 1999, but without prior, explicit authorization by the Security Council because of (not-unfounded) fears that Russia would reject any resolution calling for military intervention in the former Yugoslavia.[57] The ICISS proposed that the Security Council members implement a "code of conduct" whereby a permanent member could not use the veto to prevent humanitarian intervention in cases where its vital national interests were not involved.[58] The Security Council has yet to officially implement this suggestion, so the use of the veto power still threatens any proposed humanitarian intervention action by the UN.

A positive sign for the future use of humanitarian intervention came with the vote on Security Council Resolution 1973, which authorized the implementation of a "no-fly" zone over Libya.[59] The vote—taken on

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56.   ICISS Report, *supra* note 23, ¶ 6.15 ("The Commission accordingly is agreed that: Security Council Authorization must in all cases be sough prior to any military intervention action being carried out. Those calling for an intervention must formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter. . ."); Henkin, *supra* note 24, at 826 ("In my view, the law is, and ought to be, that unilateral intervention by military force by a state or group of states is unlawful unless authorized by the Security Council."); *but see* Benjamin, Note, *Unilateral Humanitarian Intervention*, *supra* note 9, at 122–23 nn. 12–15 (identifying authors arguing for legalization of unilateral intervention).

57.   Press Release, Security Council, Security Council Rejects Demand For Cessation of Use of Force Against Federal Republic of Yugoslavia, U.N. Press Release SC/6659 (Mar. 26, 1999), *available at* http://www.un.org/News/Press/docs/1999/19990326.sc6659. html. Two permanent members of the Security Council (Russia and China) voted for a resolution condemning NATO's use of force in the former Yugoslavia. While the vote was 12–3 against the resolution, the opposition of two countries with veto power to the intervention indicated that an attempt to issue a Security Council resolution calling for intervention would have failed. *Id.*

58.   ICISS Report, *supra* note 23, ¶ 6.21 ("It is unrealistic to imagine any amendment of the Charter happening any time son so far as the veto power and its distribution are concerned. But the adoption by the permanent members of a more formal, mutually agreed practice to govern these situations in the future would be a very healthy development.").

59.   S.C. Res. 1973, ¶ 6, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

March 17, 2011—included ten votes in support and five abstentions. Russia and China, the permanent members that opposed military intervention in Libya, both chose not to prevent such intervention through use of their veto.[60] Conversely, in 2012, Russia and China both vetoed a draft Security Council resolution—supported by all other members—which called for a halt of violence by all parties in Syria and the implementation of a peace plan proposed by the Arab League.[61]

The Security Council and the General Assembly must balance the use of collective action in humanitarian crises against objections that doing so amounts to a violation of state sovereignty. In an effort to limit criticism of collective action, the international community has chosen to narrow the scope of potential humanitarian interventions and limit its use to cases of genocide, crimes against humanity, war crimes, and ethnic cleansing, where the moral duty to end the harm can be more easily agreed upon.

Past intervention success evidences that neutral intervention—with little or no self-interested motivation on the part of the intervening state—to prevent human suffering is possible.[62] While humanitarian concerns will

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60. Press Release, Security Council, Security Council Approves 'No-Fly Zone' Over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by a Vote of 10 in Favour with 5 Abstentions, U.N. Press Release SC/10200 (Mar. 17, 2011), *available at* http://www.un.org/News/Press/docs/2011/sc10200.doc.htm. Both Russia and China, along with the other abstentions (Brazil, Germany, and India) emphasized that the abstention was not meant as support for the actions of the Libyan government against civilians, and noted the desire to halt the suffering. However, those who abstained did not believe the time for military intervention had come, and preferred that a diplomatic or 'soft power' approach be taken. China specifically noted that it did not block the resolution because of the requests of the Arab League and the African Union that a no-fly zone be established. *Id.*

61. Press Release, Security Council, Security Council Fails to Adopt Draft Resolution on Syria as Russian Federation, China Veto Text Supporting Arab League's Proposed Peace Plan, U.N. Press Release SC/10536 (Feb. 4, 2012), *available at* http://www.un.org/News/Press/docs/2012/sc10536.doc.htm. The representatives of the other permanent members condemned the use of the veto ("It is a sad day for the Council, a sad day for Syrians, and a sad day for all friends of democracy," (quoting Gérard Araud, France); the United States was "disgusted" at the use of the veto by members who had "sold out the Syrian people to shield a craven tyrant," (quoting Susan Rice, United States); and the United Kingdom was "appalled" by the use of the veto (quoting Mark Lyall Grant, United Kingdom)). *Id. See also* Neal MacFarquar, *U.N. Resolution on Syria Blocked by Russia and China*, N.Y. TIMES, Oct. 4, 2011, http://www.nytimes.com/2011/10/05/world/middleeast/russia-and-china-block-united-nations-resolution-on-syria.html?pagewanted=all; Sebnem Arsu & Hwaida Saad, *Turkey Faults U.N. Inaction Over Syria*, N.Y. TIMES, Oct. 13, 2012, http://www.nytimes.com/2012/10/14/world/middleeast/syria.html?src=recg.

62. Jon Western & Joshua S. Goldstein, *Humanitarian Intervention Comes of Age: Lessons from Somalia to Libya*, FOREIGN AFFAIRS, Nov./Dec. 2011, http://www.foreign affairs.com/articles/136502/jon-western-and-joshua-s-goldstein/humanitarian-intervention-

most likely never be the single impetus behind an intervention staged by the international community, it is not necessary to intercede on behalf of only one party in an ongoing conflict in order to protect civilians. More states and multinational regional organizations, such as the EU, must provide the UN with the means necessary to successfully stage clearly guided operations.

III. INTERNATIONAL MILITARY COOPERATION: MULTILATERAL AND REGIONAL ATTEMPTS

Since the end of World War II, the international community increasingly focused on multinational organizations as a means to protect stability and security. However, as humanitarian crises became a greater concern, it became clear that military force may be necessary when diplomacy alone proved insufficient. Albeit international military cooperation was originally implemented to ensure national security, it might also be successfully used against the security threat of gross human rights violations.

A. *Regional Multilateral Organizations*

Regional multinational organizations seek to provide defense and intervention capabilities through military cooperation. The UN Charter does not preclude regional organizations from promoting international peace and security, so long as such organizations act in a manner consistent with the purposes and principles of the UN.[63] Such regional organizations may be used by the Security Council to exercise its enforcement power under the Charter.[64] Multinational regional organizations designed to increase the security of members include the North Atlantic Treaty Organization (NATO), the Arab League, and the African Union.

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comes-of-age ("As Libya and the international community prepare for the post-Qaddafi transition, it is important to examine the big picture of humanitarian intervention - and the big picture is decidedly positive. Over the last 20 years, the international community has grown increasingly adept at using military force to stop or prevent mass atrocities.").

63.   U.N. Charter, art. 52, ¶ 1.

64.   *Id.* art. 53, ¶ 1.

1. Trans-Atlantic Cooperation: the North Atlantic Treaty Organization

NATO was established in 1949, relatively soon after the UN Charter was adopted.[65] This "Atlantic Alliance" between Western Europe and the United States was intended to deter the expansion of the Soviet Union, prevent the revival of nationalist militarism in Europe, and to provide a foundation for collective security.[66] Article 5 of the North Atlantic Treaty establishes the collective self-defense of its members, which includes the obligation of members to respond militarily when an attack on another member occurs.[67] Through its permanent military command structure,[68] NATO has undertaken operations sanctioned by the Security Council and provided support for other UN operations.[69] The UN allowed NATO to lead an intervention in the Balkans during the 1990's[70] and gave NATO control of all military operations during the 2011 intervention in Libya.[71] In 2010, NATO committed to working more closely with the UN and European Union to prevent crises, manage conflicts, and stabilize post-conflict situations around the world.[72]

2. The European Union (EU) and NATO: Relations and Agreements

The states of Europe view the Atlantic Alliance and NATO as the basis of their collective defense.[73] The demise of the Soviet Union brought

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65.   The North Atlantic Treaty was signed on April 4, 1949. *A Short History of NATO*, N. ATL. TREATY ORG., http://www.nato.int/history/nato-history.html (last visited Jan. 15, 2013). The United Nations Charter was signed on June 26, 1945, and came into force on October 24, 1945. UNITED NATIONS, CHARTER OF THE UNITED NATIONS, *Introductory Note*, *available at* https://www.un.org/en/documents/charter/intro.shtml.
66.   *A Short History of NATO*, *supra* note 65.
67.   North Atlantic Treaty, art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.
68.   *Military Organization and Structures*, N. ATL. TREATY ORG., http://www.nato.int/cps/en/natolive/topics_49608.htm (last visited Jan. 15, 2013).
69.   *NATO's Relations with the United Nations*, N. ATL. TREATY ORG., http://www.nato.int/cps/en/natolive/topics_50321.htm?selectedLocale=en (last visited Jan. 15, 2013).
70.   Henkin, *supra* note 24, at 826 ("The NATO action in Kosovo had the support of the Security Council. Twelve (out of fifteen) members of the Council voted to reject the Russian resolution of March 26, thereby agreeing in effect that the NATO intervention had been called for and should continue. And on June 10, the Security Council, in Resolution 1244 approving the Kosovo settlement, effectively ratified the NATO action and gave it the Council's support.").
71.   *Operational Media Update: NATO and Libya*, N. ATL. TREATY ORG. (Oct. 25, 2011) http://www.nato.int/cps/en/natolive/news_71994.htm.
72.   *NATO's Relations with the United Nations*, *supra* note 69.
73.   OFFICE OF THE PRIME MINISTER, SECURING BRITAIN IN AN AGE OF UNCERTAINTY: THE STRATEGIC DEFENSE AND SECURITY REVIEW, Oct. 2010, Cm. 7948, ¶ 5.11 (U.K.) [hereinafter UK SDSR]; Livre blanc sur la défense et la sécurité nationale [White Paper on Defense and National Security], PRÉSIDENCE DE LA RÉPUBLIQUE, at 23 (June 2008), http://archives.livreblancdefenseetsecurite.gouv.fr/2008/information/les_dossiers_actualites_

an increased sense of security within Europe, but also presented new security challenges including terrorism, failed states, and humanitarian and environmental crises. In responding to these new threats, the EU has emerged as a stronger advocate for multinational cooperation. The EU must further develop its defense capabilities separately from those of the U.S. in order to act autonomously in response to conflict or threats. Increased European military capabilities are intended to complement the capabilities of NATO, particularly because of the overlap in membership.[74] The American view of European capabilities has changed from concern about the "three D's" (decoupling [of Europe from NATO], duplication [of NATO capabilities], discrimination [of non-EU members of NATO]), to support of Europe's pursuit of the "three C's" ("capabilities, capabilities, capabilities").[75] EU officials have taken steps to emphasize the continuing importance to Europe of NATO and the U.S. in this ever-changing security context. When the EU High Representative for the Common Foreign and Security Policy, Javier Solana, addressed the Foreign Policy Association in New York in 2003, he emphasized both the role of the transatlantic alliance in the new security context and the importance of Europe's more equal and capable participation in the alliance:

> Today, we work together through conviction more than through geo-political necessity. . . . It is a partnership of democracies, for democracy. We are no longer a partnership against something, but a partnership for something. Our common mission is to defend and expand the boundaries of a stable, durable and peaceful liberal democracy; to share with others the rights and opportunities that we enjoy. . . . Many of the things that the United States wants from Europe can be better delivered through the European Union. . . . For it was President Bush who said in Berlin "When Europe grows in unity, Europe and America grow in security."[76]

19/livre_blanc_sur_defense_875/index.html, *available at* http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?id=156934 [English translation] [hereinafter French White Paper 2008].

74. Twenty-one countries are members of both the European Union and NATO, and European countries comprise most of the membership of NATO. John Barry, *The U.S.-EU-NATO Relationship–Addressing 21st Century Challenges*, Archive to *European Affairs*, THE EUROPEAN INSTITUTE, (Feb. 2012), http://www.europeaninstitute.org/EA-February-2012/the-us-eu-nato-relationship-addressing-21st-century-challenges.html.

75. *Id.*

76. Javier Solana, High Representative for the EU Common Foreign and Sec. Policy (CFSP), Speech at the Annual Dinner of the Foreign Policy Association: Europe and America: Partners of Choice (May 7, 2003), *available at* http://www.eu-un.europa.eu/articles/en/article_2316_en.htm.

Europe's desire to play a greater role on the international security stage has also led to new arrangements that have shifted Europe's role within the NATO alliance. The Berlin Plus agreement between the EU and NATO allows for autonomous EU action using NATO assets and capabilities where (1) there is consensus in the EU and (2) no NATO action.[77] The permanent relations framework between the EU and NATO requires transparency and discussion in order to promote efficient and rapid decision making within both organizations.[78] NATO's 2010 Strategic Concept recognizes the benefits of the increase in European capabilities.[79] It calls for closer cooperation between the EU and NATO in "operations throughout the crisis spectrum" and in capabilities development, in order to prevent duplication and promote cost-effectiveness.[80] European defense capabilities will allow for more equal participation within the alliance, a factor that can quell allies' concerns about costs and potential actions. Developing balanced European capabilities is the next challenge for the EU. Just as capabilities and costs must be balanced between NATO members, they must also be balanced within the EU.

B. Military Cooperation in the European Union

1. The Common Foreign and Security Policy of the European Union

Each European Union treaty has brought the members of the EU closer together. The Maastricht Treaty first launched the European Common Foreign and Security Policy (CFSP), which necessarily requires coordinated external civilian and military capabilities.[81] In pursuit of a common policy, the EU has developed additional guiding principles and goals. The European Security Strategy (ESS), developed in 2003, identifies the key threats facing Europe, which include terrorism, proliferation of weapons of

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77. Barry, *The U.S.-EU-NATO Relationship*, *supra* note 74; EUROPEAN COUNCIL, Background on *EU-NATO: The Framework for Permanent Relations and Berlin Plus* (last visited Feb. 22, 2013), http://consilium.europa.eu/uedocs/cmsUpload/03-11-11%20 Berlin%20Plus%20press%20note%20BL.pdf (explaining that this framework was put into action during Operation CONCORDIA in Macedonia.).

78. *EU-NATO: The Framework for Permanent Relations and Berlin Plus*, *supra* note 77, ¶ 3.

79. *See generally* Active Engagement, Modern Defence: Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization, N. ATL. TREATY ORG. (Nov. 19–20, 2010), *available at* http://www.nato.int/strategic-concept/pdf/ Strat_Concept_web_en.pdf.

80. *NATO-EU: A Strategic Partnership*, N. ATL. TREATY ORG., http://www.nato.int/cps/ en/natolive/topics_49217.htm (last visited Jan. 15, 2013).

81. EUROPA, *Summaries of EU Legislation: Treaty of Maastricht on European Union*, http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_maastricht_en. htm (last visited Feb. 22, 2013).

mass destruction, regional conflict, state failure, and organized crime.[82] The EU thus aims to more actively pursue its strategic objectives, be more capable of acting, establish more coherent policy and action, and act more in concert with other states.[83] The Petersberg Tasks, first outlined in 1992 by the Ministerial Council of the Western European Union,[84] became a part of the Treaty on the European Union (TEU) with the 1997 Treaty of Amsterdam.[85] According to Article 43 of the TEU, the EU may use civilian or military capabilities to complete these tasks, which include: joint disarmament operations; humanitarian and rescue; military advice and assistance; conflict prevention and peacekeeping; and combat forces in crisis management (including peace-making and post-conflict stabilization).[86]

The EU has tried to further this vision of closer cooperation and coordination between Member States by bringing national representatives together in new agencies and creating new posts at the supranational level to supervise such coordination. The Lisbon Treaty of 2009 created the post of High Representative of the Union for Foreign Affairs and Security Policy, responsible for the coordination of all forms of the EU's foreign policy—traditional diplomacy as well as economic and military tools.[87] The Member States have established agencies within the EU to oversee the further coordination of military and defense capabilities. The European Defense Agency (EDA), for example, is intended to act as the ultimate coordinator for the development of defense capabilities and military harmonization and cooperation within the EU.[88] The Military Committee of the EU, which is the highest military body within the

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82.   EUROPEAN COUNCIL, *European Security Strategy*, 3–4 (Dec. 12, 2003), http://consilium.europa.eu/uedocs/cmsUpload/78367.pdf [hereinafter European Security Strategy].

83.   *Id.* at 11–13.

84.   EUROPA, *Summaries of EU Legislation: Petersberg Tasks*, http://europa.eu/legislation_summaries/glossary/petersberg_tasks_en.htm (last visited Feb. 22, 2013).

85.   Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Oct. 2, 1997, 1997 O.J. (C 340) 108.

86.   Consolidated Version of the Treaty on the European Union art. 43, Mar. 30, 2010, 2010 O.J. (C 83) 13 [hereinafter Treaty on the European Union].

87.   EUROPA, *European Union External Action Service*, http://eeas.europa.eu/what_we_do/index_en.htm (last visited Feb. 22, 2013).

88.   EUROPEAN DEF. AGENCY, *Mission and Functions*, http://www.eda.europa.eu/Aboutus/Whatwedo/Missionandfunctions (last visited Feb. 22, 2013); Council Decision 2011/411/CFSP, Defining the Statute, Seat and Operational Rules of the European Defence Agency, 2011 O.J. (L 183) 16; Treaty on the European Union, *supra* note 86, art. 45.

European Council, brings together the Chiefs of Defense of each Member State to give military advice and recommend action to other EU agencies.[89]

The EU Member States recognized that in order to successfully perform the Petersberg tasks and other international operations, a rapid response force was required. The Helsinki Headline Goal of 1999[90] and the Headline Goal 2010[91] were established with the goal of developing the EU's rapid response capabilities.[92] A proposed Battlegroup Concept reached full operational capability in January 2007, giving the EU the ability to undertake two separate rapid response operations nearly simultaneously.[93] A Battlegroup is "the minimum militarily effective, credible, rapidly deployable, coherent force package capable of stand-alone operations, or for the initial phase of larger operations."[94] Battlegroups give the EU a means of being more coherent, active, and capable in undertaking the Petersberg tasks and promoting the synchronization and harmonization of European military capabilities.[95] Although the Battlegroup concept is fully operational, no EU Battlegroup has been deployed and the current economic climate has resulted in fewer Battlegroups on standby.[96] Therefore, while the EU's rapid response is operational, it does not

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89. Council Decision 2001/79/CFSP, Setting Up the Military Committee of the European Union, 2001 O.J. (L 27) 4–5.

90. The Helsinki Headline Goal set a goal date of 2003 for the EU to be able to rapidly deploy and sustain operations in support of the full range of Petersberg tasks. EUROPEAN COUNCIL, *Helsinki Headline Goal* (1999), *available at* https://www.consilium.europa.eu/uedocs/cmsUpload/Helsinki%20Headline%20Goal.pdf.

91. The 2010 Headline Goal was developed after the European Security Strategy was adopted. It was prepared after the completion of EU-led operations, the most important of which was operation ARTEMIS in the Democratic Republic of the Congo. EU COUNCIL SECRETARIAT, *EU Battlegroups*, at 1 (July 2009), http://www.consilium.europa.eu/uedocs/cmsUpload/090720-Factsheet-Battlegroups_EN.pdf. The 2010 HG was therefore able to realistically address Europe's strengths and weaknesses. EUROPEAN COUNCIL, *Headline Goal 2010*, at 5 (June 18, 2004), http://ue.eu.int/uedocs/cmsUpload/2010%20Headline%20Goal.pdf.

92. *Headline Goal 2010*, *supra* note 91, at 3.

93. *EU Battlegroups*, *supra* note 91, at 1.

94. *Id.* at 2. Composed of about 1500 personnel, a Battlegroup (BG) may be formed by a multinational coalition or a single framework nation. A BG is intended to be deployable within five days, and sustainable for thirty days (or up to 120 days if re-supplied). *Id.*

95. *Id.* at 4.

96. Myrto Hatzigeorgopoulos, *EU Battlegroups – battling irrelevance?*, INT'L SEC. INFO. SERV. EUR. (ISIS EUROPE) (July 7, 2012), http://isiseurope.wordpress.com/2012/07/04/eu-battlegroups-battling-irrelevance/. For further reading on EU Battlegroups, see Claudia Major & Christian Mölling, *EU Battlegroups: What Contribution to European Defence?*, GER. INST. FOR INT'L AND SEC. AFF. (SWP) (June 2011), http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2011_RP08_mjr_mlg_ks.pdf; Gustav Lindstrom, *Enter the EU Battlegroups*, Chaillot Paper n. 97 (Feb. 2007), INST. FOR SEC. STUD. (EUISS), http://www.iss.europa.eu/uploads/media/cp097.pdf.

provide the full ability to act that European states, including the UK and France, desire.

2. *The European Consensus on Humanitarian Aid: Guidelines for Humanitarian Aid and Intervention*

The EU issued the European Consensus on Humanitarian Aid in 2008 in response to the 2003 European Security Strategy's identification of humanitarian issues as a potential security threat.[97] The document clearly expresses the European commitment to humanitarian values, both at the Member State and European Community level. The document articulates the EU's recognition of the moral imperative of providing humanitarian aid,[98] its commitment to follow the "responsibility to protect" as adopted by the UN General Assembly in 2005,[99] and the necessity for it to work cooperatively with other humanitarian aid donors and organizations.[100] The EU intends to use military assets "only . . . as a 'last resort', i.e. where there is no comparable civilian alternative and only the use of military assets that are unique in capability and availability can meet a critical humanitarian need."[101] The EU approach mirrors that of the UN and other organizations by calling for non-military options to be exercised and exhausted first.

C. *Previous Attempts by France and the United Kingdom to Develop and Integrate European Defense*

As the EU has become increasingly integrated, France and the UK have emerged as leaders, acting to implement each new facet of cooperation, particularly in the area of military cooperation. Both countries are among the biggest spenders on defense, not just in the EU, but in the world.[102]

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97.   Joint Declarations by the Council and the Representatives of the Governments of Member States meeting within the Council, the European Parliament and the European Commission, The European Consensus on Humanitarian Aid, 2008 O.J. (C 25) 1, [hereinafter The European Consensus on Humanitarian Aid].

98.   *Id.* ¶ 1

99.   *Id.* ¶ 17.

100.   *Id.* ¶ 4.

101.   *Id.* ¶ 61.

102.   STOCKHOLM INT'L PEACE RES. INST., *Military Spending and Armament: The 15 countries with the highest military expenditure in 2011 (table)* (2011), *available at* http://www.sipri.org/research/armaments/milex/resultoutput/milex_15/the-15-countries-with-the-highest-military-expenditure-in-2011-table/view. The UK spent 2.6% of its Gross Domestic Product (GDP) on defense in 2011, while France spent 2.3% of its GDP on defense

They also have similar desires to project power globally.[103] By recognizing their similarities and bringing together their strengths, the two may increase their collective and individual impact on the global stage.

1. The Saint Malo Agreement, European Common Security, and the 2003 Invasion of Iraq

The first steps to increase practical military cooperation between France and the UK occurred in 1998, after the 1997 Amsterdam Treaty. A cooperative military agreement was signed by the two states in Saint Malo, France, in December 1998.[104] That Agreement called for Europe to develop "the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises."[105] The Agreement focused on cooperation in intelligence, strategic planning, technology, and military forces,[106] capabilities intended to lessen European reliance on U.S. forces and give the EU a means of acting where NATO did not.[107]

Saint Malo was a bilateral agreement, yet it contemplated the participation of all European states in the development of such defense capabilities and organizations. The Agreement had immediate political impact. The EU launched the European Security and Defense Policy (ESDP) in 1999,[108] which later became the Common Security and Defense Policy (CSDP) of the EU.[109] The development of CSDP, which is organized within the EU structure under the umbrella of the European Common Foreign and Security Policy (CFSP), was followed by the drafting of the European Security

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in the same year. *Id.* Both countries spent approximately the same percentage of GDP on defense in 2012 (UK 2.5%; France 2.3%). STOCKHOLM INT'L PEACE RES. INST., *Military Spending and Armament: The 15 countries with the highest military expenditure in 2012 (table)* (2012), *available at* http://www.sipri.org/research/armaments/milex/ Top%2015%20 table%202012.pdf.

103. *Defense Report: The French-British Defense Treaty: Setting History Aside?*, ASS'N OF THE U.S. ARMY INST. OF LAND WARFARE (ILW) 1 (Jan. 2011), http://www.ausa. org/publications/ilw/Documents/DR%2011-1_LOWRES.pdf.

104. *UK Politics: Anglo-French Military Pact*, BBC NEWS (Dec. 4, 1998), http:// news.bbc.co.uk/2/hi/uk_news/politics/227598.stm.

105. British–French Summit, St-Malo, 3–4 December 1998 Joint Declaration on European Defense, *in* FROM ST-MALO TO NICE: EUROPEAN DEFENCE: CORE DOCUMENTS, Chaillot Paper n. 47, 8, ¶ 2, INST. FOR SEC. STUD. (WESTERN E.U.) (May 2001), http:// www.iss.europa.eu/uploads/media/cp047e.pdf [hereinafter St. Malo Declaration].

106. *Id.* ¶ 3–4.

107. *Id.* ¶ 2–3.

108. Daniel Keohane, *10 Years After St. Malo*, E.U. INST. FOR SEC. STUD. (EUISS) (Oct. 10, 2008), http://www.iss.europa.eu/publications/detail/article/10-years-after-st-malo/.

109. *Topics: CSDP: Overview*, E.U. INST. OF SEC. STUD. (EUISS), http://www.iss. europa.eu/topics/security-and-defence (last visited Mar. 5, 2014).

Strategy in 2003.[110]   France and the UK had successfully initiated the process of integrating European defense.

However, while the majority of European states continued to display the political will to integrate further, national interests began to divide the UK and France. Ultimately, the most significant fracture occurred over the issue of support for the U.S.-led invasion of Iraq in 2003. Security Council Resolution 1441, which called for Iraq to fulfill its disarmament obligations and to allow inspection for weapons of mass destruction, was unanimously adopted.[111] However, France and the UK disagreed on the best response to Iraq's material breach of its obligation to disarm. France, along with Russia and China, opposed the inclusion of an authorization for use of force in Resolution 1441, and went so far as to write an alternative draft resolution that proposed a two-step process to ensure Iraq's compliance.[112] Conversely, the UK and the United States opposed any limitation on the ability to use force against Iraq, though both states asserted that the Security Council should reassess the situation if Iraqi non-compliance continued.[113] France was willing to authorize military intervention, but only in limited circumstances,[114] and then only as a last resort.[115] French President Jacques Chirac was "deeply opposed" to any military action,[116] while British Prime Minister Tony Blair agreed with U.S. President George Bush that Security Council support for an invasion was unnecessary.[117] The security interests of France and the UK continued to be aligned, while their national leaders differed significantly on the best approach to the Iraq case—military intervention or continued diplomacy—to preserve security.

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110.   European Security Strategy, *supra* note 82.

111.   Tim Youngs & Paul Bowers, *Iraq and UN Security Council Resolution 1441*, HOUSE OF COMMONS LIBRARY, INT'L AFFAIRS AND DEF. SECTION, Research Paper 02/64, at 14 (Nov. 21, 2002) (U.K.), *available at* http://www.parliament.uk/documents/commons/lib/research/rp2002/rp02-064.pdf.

112.   *Id.* at 12, 17, 22.

113.   *Id.* at 22–23.

114.   *Id.* at 25.

115.   Robin Oakley, *Crucial France, UK Talks Over Iraq*, CNN WORLD, Feb. 3, 2003, http://articles.cnn.com/2003-02-03/world/france.uk.iraq.meeting_1_military-action-letouquet-french-president-jacques-chirac?_s=PM:Europe.

116.   *Iraq inquiry told France saw invasion as 'dangerous'*, BBC NEWS, June 29, 2010, http://www.bbc.co.uk/news/10437254.

117.   *Iraq inquiry hears defiant Blair say: I'd do it again*, BBC NEWS, Jan. 29, 2010, http://news.bbc.co.uk/2/hi/uk_news/politics/8485694.stm.

2. The 2003 Franco-British Summits and the Continued Push for European Defense Development and Integration

Despite the huge differences in opinion regarding the invasion of Iraq, the UK and France continued to press forward in the military cooperation arena and encourage the development of European defense capabilities. In February 2003, at a joint summit in Le Touquet, France, the two powers agreed to give new force to the defense policy of Europe.[118] The Le Touquet Declaration praised the advancements in European common security policy, but advocated for further growth of the policy to correspond with contemporary challenges, notably in three areas.[119] First, they desired an increased role for the EU in crisis management, specifically in the Balkans and Africa.[120] The Declaration asserted that the scope of ESDP should match the global ambitions of the EU and it should function in support of the EU's external policy objectives to promote democracy, human rights, good governance, and reform.[121] Secondly, the two states sought increased European solidarity in response to threats to common security. France and the UK also called for a solidarity clause to be inserted into the Treaty of the European Union, which asserted that neither party could "imagine a situation in which the vital interests of one . . . could be threatened without the vital interests of the other also being threatened."[122] Finally, the two powers again affirmed the need for EU Member States to develop military capabilities. The Declaration called for the EU to draft new capability objectives to replace the Helsinki Headline Goal, create an agency to oversee capabilities development and acquisition throughout the EU, organize EU rapid response forces, develop interoperable aircraft carrier groups, and continue development of bilateral naval cooperation.[123]

By the end of 2003, several of the Le Touquet goals were well on the way to completion. By that time, the EU had drafted a new security strategy;[124] achieved the Helsinki Headline Goal;[125] agreed to create an

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118. Franco-British Summit - Declaration on Strengthening European Cooperation in Security and Defence, Le Touquet, 4 February 4, 2003, *in From Copenhagen to Brussels: European Defence: Core Documents Volume IV*, Chaillot Paper n. 67, 36, 36–39, E.U. INST. FOR SEC. STUD. (EUISS) (Dec. 2003), http://www.iss.europa.eu/uploads/media/cp067e.pdf [hereinafter Le Touquet Declaration].
119. *Id.* at 36.
120. *Id.* at 37.
121. *Id.*
122. *Id.* at 38.
123. *Id.* at 38–39.
124. European Security Strategy, *supra* note 82.
125. Intervention by Javier Solana at the Meeting of EU Chiefs of Defence Staff, Brussels, 5 November 2003, *in From Copenhagen to Brussels: European Defence: Core*

EU-level agency to oversee defense capabilities development, research, and acquisition;[126] established the "Berlin Plus" permanent relations with NATO;[127] and launched or completed a total of three ESDP operations.[128] During a November 2003 Franco-British summit in London, the two countries applauded the progress.[129] Both states participated in the successful ESDP operations by committing their military capabilities to the operations and France played the role of the framework nation in several operations.[130] The November 2003 London Declaration established new benchmarks to strengthen European defense capabilities, particularly the acquisition of strategic lift and cooperation in the naval field, and reemphasized the need to develop EU rapid response capabilities to allow EU participation in UN crisis management operations.[131] In 2004, the UK and France, together with Germany, proposed the concept for Battlegroups that was later adopted by the EU and incorporated into the 2010 Headline Goal.[132] The three states also collaborated on a proposal for planning EU-led military operations, involving liaison with NATO and a system of national and multinational headquarters.[133] In cases

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Documents Volume IV, Chaillot Paper n.67, 250, 250, E.U. INST. FOR SEC. STUD. (EUISS) (Dec. 2003), http://www.iss.europa.eu/uploads/media/cp067e.pdf.

126.   General Affairs and External Relations Council, Brussels, 17 November 2003, *in From Copenhagen to Brussels: European Defence: Core Documents Volume IV*, Chaillot Paper n.67, 256, 261, E.U. INST. FOR SEC. STUD. (EUISS) (Nov. 2003), http://www.iss.europa.eu/uploads/media/cp067e.pdf.

127.   General Affairs and External Relations Council Meeting with EU Defence Ministers, Brussels, 17 November 2003, *in From Copenhagen to Brussels: European Defence: Core Documents Volume IV*, Chaillot Paper n. 67, 273, 273, E.U. INST. FOR SEC. STUD. (EUISS) (Dec. 2003), http://www.iss.europa.eu/uploads/media/cp067e.pdf.

128.   *Id.* These operations were: EUPM in Bosnia and Herzegovina; Operations CONCORDIA and EUPOL PROXIMA in the former Yugoslav Republic of Macedonia; and Operation ARTEMIS in the Democratic Republic of Congo. *Id.*

129.   Franco-British Summit Declaration on Strengthening European Cooperation in Security and Defence, London, 24 November 2003, *in From Copenhagen to Brussels: European Defence: Core Documents Volume IV*, Chaillot Paper n. 67, 280, E.U. INST. FOR SEC. STUD. (EUISS) (Dec. 2003), http://www.iss.europa.eu/uploads/media/cp067e.pdf.

130.   *Id.* at 280–82. France served as framework nation for Operations ARTEMIS and CONCORDIA. *Id.*

131.   *Id.* at 281–82.

132.   The Battlegroups Concept – UK/France/Germany Food for Thought Paper, Brussels, 10 February 2004, *in EU Security and Defense: Core Documents 2004 Volume V*, Chaillot Paper n.75, 10, 10, E.U. INST. FOR SEC. STUD. (EUISS) (Feb. 2005), http://www.iss.europa.eu/uploads/media/cp075e.pdf.

133.   Joint Paper on European Defence by France, Germany, and the United Kingdom, Naples, 29 November 2003, *in From Copenhagen to Brussels: European Defence: Core*

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where the UK and France have led, the EU has willingly followed. As the defense leaders of Europe, both states have seen European defense capabilities as a method to increase security while lessening the burden on themselves.

IV. THE 2010 FRANCO-BRITISH TREATY ON DEFENSE AND SECURITY COOPERATION

As two of the largest military powers in Europe, promoting military cooperation and integration sufficient to prevent duplication of capabilities throughout European states has served the interests of both France and the UK. Both countries agree that strengthened European defense capabilities benefit NATO because it reduces European reliance on the United States for its collective defense.

The UK has always placed great value on its security and defense relationship with the U.S. and NATO, and continually reiterates this westward orientation, calling the latter the "bedrock of our defense."[134] France, however, does not share the same transatlantic focus as the UK, but instead believes in European security and defense. In 1966, French President Charles de Gaulle withdrew France from the NATO integrated command structure because of U.S. dominance in the organization.[135] This exit was finally reversed in 2009 at the direction of President Sarkozy, who viewed French participation in NATO as a means to ensure France's global political power.[136] During its period outside of the integrated command structures, France could not exercise an influence on NATO proportional to its contributions.[137] Its efforts to promote and encourage further European defense integration were often met with suspicion by its European partners, who viewed these efforts instead as attempts to undermine NATO.[138] The shifting global security context and the emergence of new threats has caused France and the UK to place greater value on increased bilateral cooperation, especially as a means to ensure security and increase global influence.

Documents Volume IV, Chaillot Paper n.67, 283, 283–84 E.U. INST. FOR SEC. STUD. (EUISS) (Dec. 2003), http://www.iss.europa.eu/uploads/media/cp067e.pdf.

134. UK SDSR, *supra* note 73, at 62 ¶ 5.11.

135. *Q&A: France and NATO*, BBC NEWS (Mar. 11, 2009), http://news.bbc.co.uk/ 2/hi/europe/7938191.stm.

136. *France ends four-decade NATO rift*, BBC NEWS (Mar. 12, 2009), http://news. bbc.co.uk/2/hi/europe/7937666.stm.

137. Anne-Henry de Russé, *France's Return Into NATO: French Military Culture and Strategic Identity in Question*, Focus stratégique No. 22 bis, at 21, INSTITUTE FRANÇAIS DES RELATIONS INTERNATIONALES (IFRI) LABORATOIRE DE RECHERCHE SUR LA DÉFENSE, at 21 (Oct. 2010), http://www.ifri.org/downloads/fs22bisderusse.pdf.

138. *Id.*

A. Why Now? Changing Strategic Contexts and the Continuation of Previous Cooperation Agreements

1. International and Economic Contexts

While the U.S. has traditionally focused on the European security relationship, its strategic focus has shifted in recent years to the Asia-Pacific region. During a November 2011 speech to the Australian Parliament, U.S. President Barack Obama announced his decision to increase the U.S. role in the Asia-Pacific, even at the expense of U.S. military capabilities in other regions.[139] The U.S. intends to refocus its national strategy to the Asia-Pacific region,[140] by increasing its military presence and engaging in military and diplomatic cooperation with other states in the region.[141] This policy shift is confirmed by the relocation of U.S. naval, air, and land forces to the region,[142] and bilateral agreements to deepen military and diplomatic cooperation with Pacific states, particularly Australia.[143]

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139. Barack Obama, President of the U. S., Remarks to the Australian Parliament (Nov. 17, 2011) (transcript available at http://www.whitehouse.gov/the-press-office/2011/11/17/remarks-president-obama-australian-parliament) ("Our new focus on this region reflects a fundamental truth—the United States has been, and always will be, a Pacific nation . . . As President, I have, therefore, made a deliberate and strategic decision—as a Pacific nation, the United States will play a larger and long-term role in shaping this region and its future . . . As the United States puts our fiscal house in order, we are reducing our spending. And, yes . . . we will make some reductions in defense spending . . . I have directed my national security team to make our presence and mission in the Asia Pacific a top priority. As a result, reductions in U.S. defense spending will not—I repeat, will not—come at the expense of the Asia Pacific.").

140. Donna Miles, *Pacom: Asia-Pacific Focus Represents 'Whole of Government' Rebalance*, AM. FORCES PRESS SERV., U.S. DEP'T OF DEF. (Aug. 3, 2012), http://www.defense.gov/news/newsarticle.aspx?id=117399.

141. Tyrone C. Marshall, Jr., *Pentagon Official Explains Asia-Pacific Focus*, AM. FORCES PRESS SERV., U.S. DEP'T OF DEF. (Sept. 24, 2012), http://www.defense.gov/news/newsarticle.aspx?id=117989. The U.S. goal for 2020 is for sixty percent of U.S. naval assets to be based in the Pacific. *Id.*

142. Donna Miles, *Obama Announces Expanded U.S. Military Presence in Australia*, AM. FORCES PRESS SERV., U.S. DEP'T OF DEF. (Nov. 16, 2011), http://www.defense.gov/news/newsarticle.aspx?id=66098. In 2011, the U.S. and Australia came to an agreement to deploy companies of U.S. Marines to Australia's Northern Territory and to allow increased U.S. use of Australian air bases. *Id.*

143. Cheryl Pellerin, *U.S.-Australia Alliance Bolsters Regional Security, Prosperity*, AM. FORCES PRESS SERV., U.S. DEP'T OF DEF. (Nov. 14, 2012), http://www.defense.gov/news/newsarticle.aspx?id=118535. In 2012, the two countries announced plans to relocate several U.S. space systems to Australia, representing what U.S. Defense Secretary Leon

U.S. officials have overcome an initial reluctance to promote separate European defense capabilities and now see the development of such as necessary. During a 2011 speech in Brussels, then-U.S. Defense Secretary Robert Gates questioned the future of NATO if European nations did not begin to be "responsible for their fair share of the common defense":

> The blunt reality is that there will be dwindling appetite and patience in the U.S. Congress—and in the American body politic writ large—to expend increasingly precious funds on behalf of nations that are apparently unwilling to devote the necessary resources or make the necessary changes to be serious and capable partners in their own defense. . . . Indeed, if current trends in the decline of European defense capabilities are not halted and reversed, future U.S. political leaders—those for whom the Cold War was *not* the formative experience that it was for me—may not consider the return on America's investment in NATO worth the cost.[144]

On all sides of the European security equation are budgetary concerns, particularly amid the global economic downturn that began in 2008, as European states implement austerity measures and slash military budgets.[145] Military expenditure has never been a large part of European budgets. Even though Europe accounts for one-third of global military spending exclusive of U.S. military spending,[146] few European states meet the NATO standard of spending 2 percent of GDP on military and defense.[147] Austerity measures, implemented in every European country, compound the traditional lack of European defense spending and capabilities, and will severely affect the future of European defense capabilities.[148]

Panetta referred to as "a major leap forward in bilateral space cooperation and an important new frontier in the United States' rebalance to the Asia-Pacific region." *Id.*

144. Robert M. Gates, U.S. Sec'y of Def., Speech to the Security and Defense Agenda (Future of NATO) (June10, 2011) (transcript available at http://www.defense. gov/speeches/speech.aspx?speechid=1581) [hereinafter Gates Speech].

145. Marko Savković, *Europe's Defence in Times of Austerity: Spending Cuts as a One-Way Street?*, BELGRADE CENTRE FOR SECURITY POL. (Oct. 29, 2012), http://www.isn. ethz.ch/Digital-Library/Articles/Detail/?id=154133.

146. EUROPEAN UNION COMMITTEE, EUROPEAN DEFENCE CAPABILITIES: LESSONS FROM THE PAST, SIGNPOSTS FOR THE FUTURE, 2010–12, H.L. 292, ¶ 6 (U.K.) [hereinafter H.L. 292].

147. Gates Speech, *supra* note 144 ("Today, just five of twenty-eight allies—the U.S., U.K., France, Greece, along with Albania—exceed the agreed two percent of GDP spending on defense."); *see* Press Release, N. Atl. Treaty Org., Pub. Diplomacy Div., *Financial and Economic Data Relating to NATO Defence*, tbl.1, PR/CP(2012)047 (Apr. 13, 2012), http://www.nato.int/nato_static/assets/pdf/pdf_2012_04/20120413_PR_CP_2012_047_re v1.pdf; *see also* H.L. 292, *supra* note 146, at 20 fig.2.

148. H.L. 292, *supra* note 146, ¶ 10 ("Following the financial crisis of 2008 all European nations have public expenditure challenges with their exchequers under pressure to reduce public programmes. The recent fiscal compact treaty signed by 25 Member States will compound this for some time. Without a near and present external threat, EU Member States will not give defence budgets preference. The dominant defence powers in Europe—

The UK and France, the de facto European defense leaders, are well aware of the impact a reduction in U.S. regional focus will have on European security. Particularly since the end of the Cold War, both countries have attempted to encourage the development of European capabilities and model effective security cooperation. France and the UK believe that such a model of cooperation is necessary so that they, like the U.S. before them, do not become the sole providers of European defense.

The security threats that have arisen in the decades after the Cold War are neither clear nor predictable. These threats include terrorism, cyber terror, environmental change, energy security, and humanitarian crises. This changing security context to which Europe must respond is mix of economic concerns, changing threats, humanitarian crises, and shifting alliances, which requires varied exercises of "hard power" (military) and "soft power" (economic and diplomatic) capabilities. Europe must build its "hard power" to complement its existing "soft power" capabilities and replace American military power in the European security and defense equation.

Collective defense has been a hallmark of the international community in the post-WWII era. The UN Charter and the NATO alliance both call for implementing collective response to various kinds of threats.[149] For decades, NATO guarantees have provided the basis of Europe's security while the states of the EU have also consistently drawn closer in response to threats. The UK and France governments are acutely aware of their role in European defense and the potential impact on the both states' treaty obligations of greater bilateral cooperation.[150] Since the mid-1990's, both countries have increasingly reframed their security in terms of the broader collective security of the EU. The 2010 Treaty for Defence and Security Co-Operation (2010 Treaty)[151] continues this trend by explicitly stating that neither could envision "situations arising in which the vital interest

France and the UK—have undertaken major defence reviews and reduced their own defence budgets respectively by around 3.7% of planned expenditure for 2011-2013 and 7.5% over the next five years from 2011.").

149.   U.N. Charter, art. 51; North Atlantic Treaty, *supra* note 67, art. 5.

150.   *See* Press Release, Prime Ministers Office, United Kingdom–France Summit 2010 Declaration on Defence and Security Co-operation, ¶¶ 1–7, (Nov. 2, 2010), http://www.number10.gov.uk/news/uk%E2%80%93france-summit-2010-declaration-on-defence-and-security-co-operation/ [hereinafter UK-France 2010 Summit Declaration on Defence and Security Co-operation].

151.   2010 Defense and Security Treaty, *supra* note 2.

of either Party could be threatened without the vital interests of the other also being threatened,"[152] language which was also used, for example, in the 1995[153] and 2003 Joint Declarations.[154] The 2010 Treaty, like the previous agreements, is intended to lead Europe by example in the field of defense and security cooperation,[155] but its provisions diverge from the prior arrangements by providing for specific bilateral arrangements to greatly benefit France and the UK on a national level.

2. *National Contexts: Expanding and Converging Views of National Security and Defense*

Both France and the UK have recently reviewed their national security and defense and identified key domestic defense objectives. Each security strategy expresses the intent to increase defense capabilities, prevent or intervene in international crises, and work multilaterally while retaining sovereignty and the ability to act unilaterally.

a. *The 2008 French White Paper*

France issued a White Paper on Defence and National Security in 2008,[156] the first official update to national defense policy in fifteen years.[157] It reframed France's national security strategy to operate on a global basis, rather than solely domestic,[158] and was designed to "provide responses to

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152. *Id.* at pmbl.
153. Martin Butscher et al., *Nuclear Futures: Western European Options for Nuclear Risk Reduction*, Basic Research Report 98.5, BRITISH AMERICAN SEC. INFO. COUNCIL, ¶ 4.3 (Dec. 1998), *available at* http://www.bits.de/public/pdf/rr98-5.pdf (quoting the Franco-British Joint Statement on Nuclear Co-operation: "We do not see situations arising in which the vital interests of either France or the United Kingdom could be threatened without the vital interests of the other also being threatened.").
154. Le Touquet Declaration, *supra* note 118, at 38 ("We reaffirm today the commitment made in 1995 that we cannot imagine a situation in which the vital interest of one of our two countries—France and the UK—could be threatened without the vital interests of the other also being threatened.").
155. Government Response to the House of Lords European Union Committee HL 292, ¶ 156, MINISTRY OF DEF. (July 5, 2012), http://www.parliament.uk/documents/lords-committees/eu-sub-com-c/EUMilitaryCapabilities/MilitaryCapabilitiesGovtResponse.pdf [hereinafter Government Response to H.L. 292] ("The UK and France continue to bear a disproportionately large share of the burden of European defence and security . . . the only real prospect of improved burden sharing . . . lies in more effective collaboration between groups of Member States with common strategic interest and military cultures . . . In this respect the UK and France aim to lead by example through their cooperation under the treaties.").
156. French White Paper 2008, *supra* note 73.
157. *Id.* at 9.
158. *Id.* at 15–16.

'all the risks and threats which could endanger the life of the Nation.'"[159] With the intent to increase France's freedom of military action,[160] the White Paper sets out five strategic functions of the new security and military strategy: knowledge and anticipation, prevention, deterrence, protection, and intervention.[161] It also identifies key strategic threats in the evolving global security climate, including transnational and cyber terror; nuclear proliferation; espionage; transnational crime; and health and environmental risks.[162] Finally, it distinguishes four strategic geographic regions—the Middle East and North Africa (the region stretching from the Atlantic to the Indian Ocean), Sub-Saharan Africa, Eastern Europe, and Asia (particularly South and East Asia)—with major implications for the security of France and Europe.[163]

Central to the security strategy is multilateral action for collective defense and protection of peace and security. The document emphasizes France's "European ambition," with the following statement, "[m]aking the European Union a major player in crisis management and international security is one of the central tenets of our security policy."[164] France wants to be a leading power within a strong, capable Europe. The White Paper advocates the drafting of a complementary European defense strategy and calls for Europe to prioritize capability expansion and crisis management.[165] Although it further advocates a "renovation of Transatlantic relations"[166] and a French return to the NATO command structures[166] (a move finally undertaken by French President Sarkozy in 2009[167]), it still stresses the continued importance of de Gaullian defense principles in this rapprochement with NATO.[168] French policy makers considered a

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159. *Id.* at 301.
160. *Id.* at 69.
161. *Id.* at 60–69.
162. *Id.* at 47–54.
163. *Id.* at 41–47.
164. *Id.* at 303; *see generally id.* at Ch. 4.
165. *Id.* at 82–85.
166. *See id.* at Ch. 5. The White Paper calls for the composition of a 'European White Paper' on Defense. *Id.* at 91.
167. *France ends four-decade NATO rift*, BBC NEWS, *supra* note 136.
168. French White Paper 2008, *supra* note 73, at 101–04, 304. The renovation of French participation in NATO must adhere to the three principles of French defense, outlined by former President Charles de Gaulle: that France retain full freedom of assessment, total nuclear independence, and the full freedom to commit its armed forces (i.e., no French forces permanently placed under NATO control in times of peace). *Id.* at 304.

full return to NATO necessary to show support for such an important multilateral defense organization and to legitimize France's ambition to lead Europe within and without the NATO structure.[169] Finally, the White Paper reaffirms France's commitment to multilateralism as practiced by the UN and to the protection of human rights through the UN framework.[170]

b. The 2010 UK National Security Strategy Update and Strategic Defense and Security Review

Following France's security strategy update, the UK began to reevaluate its national defense strategy in light of new security challenges. The 2010 Strategic Defense and Security Review (SDSR), which details how the UK will implement the National Security Strategy,[171] sets out two British defense objectives:

> (i) [T]o ensure a secure and resilient UK by protecting our people, economy, infrastructure, territory and ways of life from all major risks that can affect us directly; and (ii) to shape a stable world, by acting to reduce the likelihood of risks affecting the UK or our interest overseas, and applying our instruments of power and influence to shape the global environment and tackle potential risks at source.[172]

Like the global view of national security espoused in France's White Paper, the SDSR expands the definition of "national security" to include protection from risks that do not directly threaten the territory of the state.[173] In an interconnected, globalized world, states have come to recognize that threats to national security include more than a direct, armed attack on the home territory. They now include transnational and cyber terrorism, environmental and health threats, and international instability. The national security tasks and guidelines outlined by the SDSR focus heavily on the

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169.   *Id.* at 96.

170.   France "[s]upports regional security organisations which will be able to act on a complementary scale to the United Nations in favour of peace-keeping, disarmament, the fight against terrorism, civil security, and conflict prevention." Livre blanc sur la défense et la sécurité nationale [White Paper on Defense and National Security], press kit (English), PRÉSIDENCE DE LA RÉPUBLIQUE, at 36 (Jun. 2008), http://archives.livreblancdefenseet securite.gouv.fr/2008/IMG/pdf/white_paper_press_kit.pdf [hereinafter White Paper Press Kit].

171.   OFFICE OF THE PRIME MINISTER, A STRONG BRITAIN IN AN AGE OF UNCERTAINTY: THE NATIONAL SECURITY STRATEGY, 2010, Cm. 7953 (U.K.) [hereinafter UK National Security Strategy]; Press Release, Ministry of Defense, Strategic Defence and Security Review Published (Oct. 19, 2010), https://www.gov.uk/government/news/strategic-defence-and-security-review-published—2.

172.   UK SDSR, *supra* note 73, ¶ 1.4.

173.   UK National Security Strategy, *supra* note 171, pt. 1.

UK's ability to prevent and restore international stability. The SDSR identifies, among other goals, the intent to:

1. Identify and monitor national security risks and opportunities . . .
2. Tackle at root the causes of instability . . .
3. Exert influence to exploit opportunities and manage risks. . . .
6. Help resolve conflicts and contribute to stability. Where necessary, intervene overseas, including the legal use of coercive force in support of the UK's vital interests, and to protect our overseas territories and people. . . .
8. Work in alliances and partnerships wherever possible to generate stronger responses . . .[174]

The SDSR lays out specific steps to achieve these goals ranging from proposed government programs to increased capabilities, particularly intelligence capabilities and naval and air forces.[175] In order to achieve these security goals, the UK must expand its global influence. Such expanded global influence requires increased military capabilities.

The SDSR also re-emphasized the UK's "group-first" orientation, meaning that the UK will preserve its ability to act alone, but would prefer to work multi-nationally—either bilaterally or through an international, multilateral organization—to achieve or preserve international peace and security.[176] It identified five priorities within the context of international cooperation to maintain peace and security: first, the defense relationship with the U.S.; second, "new models of practical bilateral defense and security cooperation with a range of allies and partners"; third, effective UN action; fourth, NATO; and fifth, "an outward-facing European Union that promotes security and prosperity."[177] These priorities complement the British view of engaging in multinational defense to promote interoperability and efficiency, reduce duplication, permit nations to contribute to capabilities they cannot sustain individually, and promote unified action.[178] Like the White Paper, the SDSR emphasizes the necessity for flexibility within the armed forces and distinguishes five types of operations in order to facilitate planning, deployment, and organization of forces in support of a range of operations: standing commitments,

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174.   UK SDSR, *supra* note 73, at 11–12.
175.   *Id.*
176.   *Id.* ¶ 2.10.
177.   *Id.* ¶ 5.2.
178.   *Multinational Defence Co-operation*, Policy Paper No. 2, at 5–6, MINISTRY OF DEF. (Feb. 2001) (U.K.), *available at* http://gcdi.tripod.com/Publications/UK-polpap2.pdf.

interventions, stabilization, non-enduring, and enduring.[179] The UK must turn to Europe as a defense partner in the face of increased European integration and U.S. strategic shift away from the region.

c. Shared Views on Security and Defense

Both France and the UK recognize the complementary nature of the EU and NATO. While non-EU NATO members, particularly the United States, were initially hesitant about the development of EU capabilities, the EU Member States have made clear their intention to develop complementary, not competing or duplicative, capabilities. The White Paper declines to strictly define the tasks of each organization and instead focuses on the value of each organization in maintaining international peace and security:

> NATO is an organisation for collective defence which unites North America and Europe, in particular when faced with the risk of major aggression. The Alliance must also provide a response to the diverse new threats that face the allies. The European Union is unique in that it has the capability of mobilizing a full range of crisis management tools: military, humanitarian, diplomatic and financial to serve the Common Foreign and Security Policy. The EU must not be considered as the civilian agency of NATO; it is a full-fledged participant in crisis management.[180]

The UK Government compared the two organizations in a similar vein in 2012: "The EU's CSDP has an increasingly civilian-military focus, acting where NATO cannot or chooses not to, using its unique set of comprehensive tools (civilian, military, legal, developmental and financial). This differing focus should better support the complementarity of development programmes."[181] This shared view of the overlapping but complementary nature of the roles of the EU and NATO make France and the UK natural partners in defense capability development and military cooperation. The push to develop European defense capabilities led by these two states is not only a way to relieve some of the defense

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179.   UK SDSR, *supra* note 73, at 18. Standing commitments are "permanent operations essential to our security or to support key British interest around the world"; intervention operations are "short-term, high-impact military deployments"; stabilization operations are "longer-term mainly land-based operations to stabilize and resolve conflict situations primarily in support of reconstruction and development and normally in partnership with others." Non-enduring operations last less than six months and "typically require[e] a force to be deployed and then withdrawn without replacement," while enduring operations "last for more than six months and normally require units to carry out a tour of duty and then be replaced by other similar units." *Id.*
180.   White Paper Press Kit, *supra* note 170, at 31.
181.   Government Response to H.L. 292, *supra* note 155, ¶ 165.

burden on themselves and NATO, but also a way to perform interventions where NATO support and assistance is not forthcoming.

Neither the EU nor NATO has established a framework for international intervention. In contrast, France and the UK have individually set out guidelines for intervention by their national armed forces. Both guidelines clearly reserve national control of the decision to intervene, retaining such sovereign power even when military cooperation occurs. The commitment of French forces abroad is governed by the following considerations:

> The seriousness of the threat to our national security or to international peace and security;
>
> Consideration of other possible measures, prior to the use of armed force, without prejudice to the urgency of legitimate defence or the responsibility to protect;
>
> Respect for the international rule of law;
>
> Sovereign appreciation by the French political authorities, freedom of action, and the capability to assess the situation at all times;
>
> Democratic legitimacy, implying transparency regarding the goals and the support of the nation, notably as expressed by its representatives in Parliament;
>
> Capacity to commit French forces at a sufficient level, national control of the deployment of our forces, and a political strategy seeking a lasting settlement to the crisis;
>
> Definition of the commitment in time and space, with a precise evaluation of cost.[182]

Similar factors guide the deployment of UK forces:

> But we will be more selective in our use of the Armed Forces, deploying them decisively at the right time but only where key UK national interests are at stake; where we have a clear strategic aim; where the likely political, economic and human costs are in proportion to the likely benefits; where we have a viable exit strategy; and where justifiable under international law.[183]

The guidelines for intervention established in the ICISS Report—right authority, just cause to intervene, right intention, last resort, proportional means, and reasonable prospects of success[184]—are all represented in some manner in each of the UK's and France's formulations. Both sets of

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182. French White Paper 2008, *supra* note 73, at 71.
183. UK SDSR, *supra* note 73, ¶ 2.10.
184. ICISS Report, *supra* note 23, at 32.

guidelines assert a primary intention to observe international law.[185] France unambiguously places international peace and security on par with national security.[186] While the UK's guidelines purport to limit intervention to instances that threaten national interests,[187] the security strategy elsewhere expands what constitutes "national interests" to threats and further to international peace and security.[188] The UK expressly requires proportionality and chance of success to be considered,[189] while France relies on the democratic process—including an evaluation of cost—to ensure that interventions are undertaken with proportional means and with a reasonable chance of success.[190] Both nations intend to intervene as a last resort. France requires "other possible measures" to be explored before resorting to force,[191] while Britain's "justifiable under international law" standard can be interpreted to include its commitment under the UN Charter to first attempt pacific resolutions.[192] Both nations have articulated a balancing test to apply within its existing international commitments.[193]

185.   French White Paper 2008, *supra* note 73, at 71 ("Respect for the international rule of law . . ."); UK SDSR, *supra* note 73, ¶ 2.10 (". . . [W]here justifiable under international law.").

186.   French White Paper 2008, *supra* note 73, at 71 ("The seriousness of the threat to our national security or to international peace and security . . .").

187.   UK SDSR, *supra* note 73, ¶ 2.10 ("[O]nly where key UK national interests are at stake . . .").

188.   UK National Security Strategy, *supra* note 171, ¶ 1.21 ("Globalisation in all its forms has made the world more interconnected . . . This means that it is much harder to isolate the UK from shocks occurring outside our own territory, whether they are economic or geopolitical."); UK SDSR, *supra* note 73, ¶ 1.4 ("The National Security Strategy sets out two clear objectives . . . (ii) to shape a stable world, by acting to reduce the likelihood of risks affecting the UK or our interests overseas, and applying our instruments of power and influence to shape the global environment and tackle potential risks at source.").

189.   UK SDSR, *supra* note 73, ¶ 2.10 ("[W]here the likely political, economic and human costs are in proportion to the likely benefits; where we have a viable exit strategy . . . .").

190.   French White Paper 2008, *supra* note 73, at 71 ("Democratic legitimacy, implying transparency regarding the goals and the support of the nation, notably as expressed by its representatives in Parliament; Capacity to commit French forces at a sufficient level, national control of the deployment of our forces, and a political strategy seeking a lasting settlement to the crisis; Definition of the commitment in space and time, with a precise evaluation of the cost.").

191.   *Id.*; UK SDSR, *supra* note 73, ¶ 2.10.

192.   UK SDSR, *supra* note 73, ¶ 2.10.

193.   The recognition of considerations such as use of military force as a last resort mirrors the obligations identified in Article 2 of the UN Charter, and The European Consensus on Humanitarian Aid, *supra* note 97, ¶ 61. European Security Strategy, *supra* note 82, at 7 (emphasizing that no crises may be solved by a purely military approach).

The R2P doctrine has become an implicit part of the security and defense posture of both countries. France's inclusion of "the responsibility to protect" in its intervention guidelines is strong evidence of an emerging international norm of interventions applying the R2P doctrine. Recognition by a major power, able to engage in future interventions and likely to cite the doctrine as a justification for doing so, gives the concept more force than an abstract recognition by the General Assembly, a body that includes many small nations which cannot lead, much less undertake, an intervention. Though the UK's guidelines do not expressly refer to the R2P doctrine, they do require that intervention be "justifiable" under international law. This characterization conceivably incorporates the R2P doctrine, just as it has been recognized as a justifiable use of force by the UN. Support for the R2P doctrine by states that are willing and able to undertake interventions gives the doctrine stronger force of law and, in turn, legitimizes any interventions that apply the doctrine to humanitarian crises.

B. *Terms of the Treaty*

In 2010, France and the UK (the Parties) signed the Defense and Security Co-operation Treaty (2010 Treaty), which entered into force in 2011.[194] This Treaty represents the continuing desire of both countries to encourage military and defense cooperation, but goes farther than any previous agreement to achieve interoperability and collaboration. Where previous joint agreements and declarations were merely aspirational, the 2010 Treaty specifies the objectives and scope of the cooperation, including a Letter of Intent that identifies specific programs necessary to increase interoperability and coordination that will be implemented over the next several years.[195]

1. *Objectives and Scope*

Article 1 clearly defines the purpose of the 2010 Treaty. The Parties reiterate their intent to function within the scope of the UN, NATO, and the EU to strengthen the complementary capabilities of NATO and the EU.[196] The overarching objective of the Treaty is to clearly maximize

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194. 2010 Defense and Security Treaty, *supra* note 2.
195. *Id.*
196. *Id.* art. 1, ¶ 5.

capabilities by coordinating development, acquisition, and deployment.[197] Through the effective coordination of capabilities, the Parties seek the ability to perform "the full spectrum of missions, including the most demanding missions,"[198] and to participate and sustain deployment in support of UN, NATO, EU, multilateral, or bilateral operations.[199] Additionally, the Parties aim to promote the growth of the defense industries in their respective territories, as well as Europe as a whole,[200] and to work together to "ensur[e] the vitality and safety" of the nuclear arsenals of both states.[201]

While previous joint declarations and agreements, such as the 2003 Le Touquet Declaration, did include specific objectives to bring about greater coordination,[202] the 2010 Treaty focuses exclusively on bilateral cooperation and does not call for any European action in any of the objectives set forth in Article 1. It is not intended to be "Saint Malo II," and function exclusively as a vehicle to promote European coordination.[203] This bilateral Treaty, while accomplishing many of the long-standing European defense goals held by the Parties, also provides a great benefit by allowing both parties to achieve key national security goals established in their respective security strategies, and to increase their security and defense capabilities while reducing costs and military budgets.

The scope of the cooperation under the Treaty is set out in Article 2.[204] It includes joint exercises and training activities to facilitate closer cooperation of armed forces; exchange of military doctrine and personnel; pooling of materials, equipment and services; and cooperation in contributing forces and capabilities to military operations.[205] It also promotes cooperation in procurement and development of capabilities,[206] joint building and operation of facilities,[207] and the exchange of personnel,[208] policy, and

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197.   *Id.* art. 1, ¶ 1.
198.   *Id.*
199.   *Id.* art. 1, ¶ 3.
200.   *Id.* art. 1, ¶ 2.
201.   *Id.* art. 1, ¶ 4.
202.   Le Touquet Declaration, *supra* note 118.
203.   Nick Harvey, UK Minister for the Armed Forces, Speech to the Franco-British Council Defense Co-operation Conference: Natural Partners, Necessary Partners – UK-France Defence Co-operation 4 (Mar. 31, 2011) (speaker's notes available at https://www. gov.uk/government/speeches/2011-03-31-natural-partners-necessary-partners-uk-francedefence -co-operation—2) ("This is not St. Malo 2. This is a bilateral agreement between the sovereign nations of Britain and France.").
204.   2010 Defense and Security Treaty, *supra* note 2.
205.   *Id.* art. 2, ¶ 1.
206.   *Id.* art. 2, ¶ 2.
207.   *Id.* art. 2, ¶ 3.
208.   *Id.* art. 2, ¶ 6.

planning information for operations,[209] and classified data related to the performance of defense systems and equipment.[210] This Treaty fosters closer integration of the military forces, capabilities, and intelligence than has been seen in previous attempts at international military cooperation. While governments traditionally guard military capabilities and intelligence jealously as a part of national security, the Parties agreed to deviate from the norm to protect the national interest of each state. As a result of economic downturn and other domestic pressures, both governments must cut spending on military and defense, while capabilities must be upgraded and increased to protect national security and expand global influence. The contradictory process must be accomplished nearly simultaneously and thus success is made more likely by sharing the cost with another state.

2. Composition of the Joint Initiatives

The general objectives of the 2010 Treaty are accompanied by specific joint military initiatives. These joint measures are intended to improve defense capabilities while decreasing military expenditures in both countries. Central to the expansion and improvement of the land, sea, and air forces of both countries is the creation of a Combined Joint Expeditionary Force (CJEF). This non-standing bilateral force is intended to maximize the ability to participate in the full spectrum of missions, in support of UN, NATO, EU, and other multilateral or bilateral operations.[211] The CJEF arrangement is expected to foster closer integration in military performance and planning, as well as a greater coherence in military doctrine, training, and equipment requirements.[212] Increased cooperation between maritime forces is essential for the ability of both countries to deploy in support of many types of operations.[213] Deployment of an integrated carrier strike group by 2020 will be a crucial step towards the

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209.   *Id.* art. 2, ¶ 7.
210.   *Id.* art. 2, ¶ 8.
211.   *See* Press Release, UK Ministry of Defense, UK-France Defence Co-Operation Treaty Announced (Nov. 2, 2010), http://www.mod.uk/DefenceInternet/DefenceNews/ DefencePolicyAndBusiness/UkfranceDefenceCooperationTreatyAnnounced.htm.
212.   UK-France 2010 Summit Declaration on Defence and Security Co-operation, *supra* note 150, ¶ 8.
213.   *Id.* ¶ 9. Particularly necessary is the compatibility of each state's aircraft carriers compatible with the aircraft used by the other.

global exercise of power by either state.[214] This intent to deploy both French and British forces on the same aircraft carrier is the clearest example of the level of increased cooperation and interoperability envisioned by the 2010 Treaty. Besides the physical integration of their military assets, the Parties agreed to jointly develop military doctrine and training programs, acquire and develop defense technologies and equipment, coordinate logistically, and defend against common security threats such as cyber terrorism.[215] Specific capability areas in which development is to be focused include coordination of transport aircraft fleets, submarine systems, satellite systems, strategic lift and air-to-air refueling, and unmanned drones.[216] These new capabilities will allow the Parties to operate in conjunction with the other, yet each retains the ability to act individually,[217] a necessary provision to preserve each state's sovereign power.

C. The Implementation of the Treaty

1. Combined Joint Expeditionary Force (CJEF) Capability

The CJEF capability is scheduled to be fully operational by 2016.[218] Several important steps towards its implementation have taken place since the signing of the 2010 Treaty. In 2011, preliminary joint exercises took place between French and British troops to assess the interoperability of the two militaries and identify areas in which further work was necessary.[219] Then, in October 2012, the first CJEF exercises were conducted in the Mediterranean.[220] The practice operation involved naval and amphibious capabilities, simulating an intervention under international

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214.   *Id.*; Press Release, UK Ministry of Defence, UK-France Defence Co-Operation Treaty Announced, *supra* note 211.

215.   *See* UK-France 2010 Summit Declaration on Defence and Security Co-operation, *supra* note 150, ¶¶ 7–9.

216.   *See id.* ¶¶ 10–17.

217.   2010 Defense and Security Treaty, *supra* note 2, art. 5, ¶ 1.

218.   Press Release, UK Ministry of Defense, Major Anglo-French Exercise Gets Underway in the Mediterranean (Oct. 26, 2012), https://www.gov.uk/government/news/major-anglo-french-exercise-gets-underway-in-the-mediterranean; Franco-British Summit 2012 Declaration on Security and Defense, ¶¶ 10–12, Feb. 17, 2012, *available at* http://ambafrance-uk.org/Franco-British-summit-2012.

219.   Press Release, France Ministère de la Défense, Exercice Flandres 2011 (June 7, 2011), http://www.defense.gouv.fr/terre/exercice-flandres-2011/flandres-eng; *Flanders 2011: Franco-British military exercises*, AMBAFRANCE, http://ambafrance-uk.org/Flanders-2011-Franco-British (last visited Feb. 21, 2013).

220.   *France and UK conduct joint military exercise off Corsica*, AMBAFRANCE (Nov. 11, 2012), *available at* http://ambafrance-uk.org/France-and-UK-conduct-joint. The operation was named the 'Corsican Lion.' *Id.*

mandate in a politically weak country ravaged by piracy.[221]   The two-month long exercise involved several thousand British and French military personnel, a French aircraft carrier, and several British warships.[222]   Until the CJEF capability is fully operational, the rapid response capability of the Parties will be an Intermediate Combined Joint Expeditionary Force (i-CJEF), which will be deployable in Spring 2013.[223]   Joint exercises between the Parties' military units allow for training on each other's weaponry and machinery[224] and practice in side-by-side command and control of operations,[225] which are important to help overcome language and cultural barriers.   The CJEF and i-CJEF exercises have shown that successful interoperability is possible.

2. *Aircraft and Drones*

Air capabilities are essential to the effective exercise of power on a global scale.   Under the 2010 Treaty, France and the UK will jointly fund the development and acquisition of manned and unmanned air capabilities.[226]   Initially, the UK intends to refurbish its aircraft carriers to enable French aircraft to operate from them.[227]   Both countries will then acquire the same aircraft and develop a common support plan to reduce costs and increase interoperability.[228]   Cooperation in air-to-air refueling

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221.   *Id.*
222.   Press Release, UK Ministry of Defence, Major Anglo-French Exercise Gets Underway in the Mediterranean, *supra* note 218.
223.   Press Release, UK Ministry of Defence, UK and French Troops Increase Interoperability (Oct. 19, 2012), https://www.gov.uk/government/news/uk-and-french-troops-increase-interoperability.
224.   For example, British paratroopers practiced jumping from French aircraft with French parachutes and equipment, and vice versa. Press Release, UK Ministry of Defence, British and French Troops Parachute Together (July 10, 2012), https://www.gov.uk/government/news/british-and-french-troops-parachute-together. Another exercise allowed the paratroopers to train on the others' standard weaponry, and practice joint urban fighting skills. Press Release, UK Ministry of Defence, Paratroopers Train with French Airborne Cavalry (Mar. 15, 2012), https://www.gov.uk/government/news/paratroopers-train-with-french-airborne-cavalry—2.
225.   Press Release, UK Ministry of Defence, UK and French Troops Increase Interoperability, *supra* note 222.
226.   UK-France 2010 Summit Declaration on Defence and Security Co-operation, *supra* note 150.
227.   *Id.* ¶ 9.
228.   *Id.* ¶ 10.

is being investigated[229] as it is a necessary capability to increase the global reach of both states. The UK and France also plan to jointly fund the study of combat unmanned aerial vehicle (UAV) capabilities by French and British engineering companies[230] and procure UAV technology, including Medium Altitude Long Endurance (MALE) capabilities.[231] In 2013, France will evaluate its need for the Watchkeeper drone, a British UAV system,[232] which could provide even further opportunities for cooperation and cost sharing.

V. Application of the 2010 Security and Defense Cooperation Treaty to Humanitarian Interventions

Even in the early stages of the implementation of the 2010 Treaty, France and the UK were given several opportunities to practice joint military intervention. The improvements in military capability and coordination brought about by the 2010 Treaty have already allowed France and the UK to undertake a greater role in humanitarian interventions. These enhanced capabilities will facilitate future interventions led by France and the UK under the R2P doctrine.

A. Lessons from Libya (2011)

UN authorization of intervention in Libya to protect civilians[233] provided the first opportunity to test the new military cooperation. France and the UK were at the forefront of the decision to intervene, by leading the call for intervention[234] and jointly drafting the UN resolution

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229. *Id.* ¶ 15.
230. In the summer of 2012, France and the UK announced a joint $15.7 million research study on combat UAV's to be undertaken by the British company BAE Systems and the French company Dassault. Pierre Tran, *France, U.K. Sign Deals on Watchkeeper, UCAV*, DEFENSENEWS (July 24, 2012), http://www.defensenews.com/article/20120724/ DEFREG01/307240007/France-U-K-Sign-Deals-Watchkeeper-UCAV.
231. Franco-British Summit 2012 Declaration on Security and Defense, *supra* note 218, ¶ 16.
232. Linda Verhaeghe, *Coopération militaire et Europe de la Défense au menu de la visite de M. le Drian à Londres*, FRANCE MINISTÈRE DE LA DÉFENSE (July 26, 2012), http://www.defense.gouv.fr/actualites/articles/cooperation-militaire-et-europe-de-la-defense-au-menu-de-la-visite-de-m.-le-drian-a-londres.
233. S.C. Res. 1973, *supra* note 59.
234. Dominique Moisi points to "France's seemingly natural propensity to intervene" in addition to domestic concerns (particularly France's close ties to the region, including the large immigrant population from the Maghreb), and the personalities of President Sarkozy and Qaddafi, as reasons for France's push for intervention. Dominique Moisi, *France had a duty to intervene in Libya*, THE GUARDIAN (Mar. 23, 2011), http://www.guardian.co.uk/commentisfree/2011/mar/23/france-libya-sarkozy. In the UK, intervention was supported across the leadership of political parties. David

authorizing a no-fly zone over Libya and air strikes for the protection of civilians.[235] Prior to the UN authorization of the use of force, the two countries even held bilateral talks on their military options during an EU summit on Libya.[236] Because both governments so strongly supported military action, French and British air and naval capabilities were heavily used in the operation.[237] France was the first state to officially recognize the legitimacy of the rebel leadership in Libya after the military operation began,[238] while the UK waited a few months to do so.[239]

Resolution 1973 invoked the R2P doctrine as justification for the intervention in Libya, marking it the most significant application of the new doctrine to date. The Resolution noted "the responsibility of the Libyan authorities to protect the Libyan population" and their failure to do so.[240] It also authorized other states to take "all necessary measures . . . to protect civilians and civilian populated areas under threat of attack."[241] Commentators are split on how strongly the action in Libya reaffirmed

Owen, *We Have Proved in Libya That Intervention Can Still Work*, THE TELEGRAPH (Aug. 23, 2011), http://www.telegraph.co.uk/news/worldnews/africaandindian ocean/libya/8717986/We-have-proved-in-Libya-that-intervention-can-still-work.html.   However, some observers believe that British support for intervention was based primarily on energy concerns. STRATFOR, *France, U.K. Have Differing Motives for Intervening in Libya*, FORBES (Mar. 29, 2011), http://www.forbes.com/sites/energysource/ 2011/03/29/france-u-k-have-differing-motives-for-intervening-in-libya/.

235.   S.C. Res. 1973, *supra* note 59; *Libya: UK and French No-Fly Zone Plan Gathers Pace*, BBC NEWS AFRICA (Mar. 8, 2011), http://www.bbc.co.uk/news/world-africa-12672640; Ewan MacAskill et al., *Libya Crisis: Britain, France, and US Prepare for Air Strikes Against Gaddafi*, THE GUARDIAN (Mar. 17, 2011), http://www.guardian.co.uk/world/2011/mar/17/libya-no-fly-zone-united-nations.

236.   *See France, UK Flex Muscles at EU Summit on Libya*, EURACTIV (Dec. 22, 2011), http://www.euractiv.com/global-europe/france-uk-flex-muscles-eu-summit-news-503030.

237.   *Libya: US, UK and France Attack Gaddafi Forces*, BBC NEWS AFRICA (Mar. 20, 2011), http://www.bbc.co.uk/news/world-africa-12796972.

238.   *Libya: France Recognises Rebels as Government*, BBC NEWS EUROPE (Mar. 10, 2011), http://www.bbc.co.uk/news/world-africa-12699183; Alan Cowell & Steven Erlanger, *France Becomes First Country to Recognize Libyan Rebels*, N.Y. TIMES (Mar. 10, 2011), http://www.nytimes.com/2011/03/11/world/europe/11france.html?_r=1&.

239.   Ian Black, *Libyan Rebels Win Recognition and Promise of Financial Support*, THE GUARDIAN (July 15, 2011), http://www.guardian.co.uk/world/2011/jul/15/libyan-rebels-recognition-financial-support; *Libya Condemns UK for Recognising Rebels as Sole Power*, BBC NEWS AFRICA (July 28, 2011), http://www.bbc.co.uk/news/world-africa-14320199.

240.   S.C. Res. 1973, *supra* note 59.

241.   *Id.* ¶ 4.

and strengthened the R2P doctrine for use in future interventions.[242] However, France and the UK view the operation as a success. Avoiding a veto in the Security Council for authorization of the use of force was a victory in itself, since China and the Russian Federation declined to use the veto in light of regional support for intervention.[243] Additionally, France and the UK demonstrated their increasing capability to undertake such an operation without the U.S. taking the lead.[244]

Although the air campaign highlighted weaknesses in the bilateral alliance's ability to undertake interventions without U.S. help, France and the UK still have the opportunity to address those flaws. The U.S. had to use Tomahawk cruise missiles on some targets to allow French and British bombing flights, but once the bombing campaign began, the European members of NATO ran critically low on bombs, requiring a purchase from the U.S. in the middle of the operation.[245] The U.S. had also provided most of the aerial refueling and reconnaissance, usually

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242. Gareth Evans, co-chair of the ICISS, argues that the R2P doctrine "came of age" in 2011, and the doctrine now enjoys "overwhelming consensus . . . on [its] basic principles" in the international community. Gareth Evans, *End of the Argument: How We Won the Debate over Stopping Genocide*, FOREIGN POLICY (Nov. 28, 2011), http://www.foreignpolicy.com/articles/2011/11/28/gareth_evans_end_of_the_argument? page=0,0. In contrast, Saira Mohamed notes the importance of U.S. recognition of and apparent adherence to the R2P principle, but states: "While the intervention may appear at first glance to be a shining moment for the responsibility to protect, a closer examination reveals both the narrowness of the principle as represented in the Libya intervention and the limited role the responsibility to protect appeared to play in the U.S. government's decision to support military action." Saira Mohamed, *Taking Stock of the Responsibility to Protect*, 48 STAN. J. INT'L L. 319, 330 (2012). Stewart Patrick argues that the success of the Libyan intervention, which met the doctrine's benchmarks for legality, strengthened the doctrine. Stewart Patrick, *A New Lease on Life for Humanitarianism: How Operation Odyssey Dawn Will Revive RtoP*, FOREIGN AFFAIRS (Mar. 24, 2011), http://www.foreignaffairs.com/articles/67674/stewart-patrick/a-new-lease-on-life-for-humanitarianism?page=show. He also argues that, because of the unique factors at play in the Libyan case, such success is unlikely to be repeated and the doctrine is unlikely to be applied universally by the U.S. and its allies. Stewart Patrick, *Libya and the Future of Humanitarian Intervention: How Qaddafi's Fall Vindicated Obama and RtoP*, FOREIGN AFFAIRS (Aug. 26, 2011), http://www.foreignaffairs.com/articles/68233/stewart-patrick/libya-and-the-future-of-humanitarian-intervention?page=show.
243. The implementation of a no-fly zone over Libya was supported by the Arab League, and the regional members (Lebanon, Gabon, and Nigeria) of the Security Council. Press Release, Sec. Council, Security Council Approves 'No-Fly Zone' Over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions, U.N. Press Release SC/10200 (Mar. 17, 2011), *available at* http://www.un.org/News/Press/docs/2011/sc10200.doc.htm.
244. "European powers carried out the vast majority of the air strikes and only one of the 18 ships enforcing the arms embargo was American." Eric Westervelt, *NATO's Intervention in Libya: A New Model?*, NAT'L PUB. RADIO (Sept. 12, 2011), http://www.npr.org/2011/09/12/140292920/natos-intervention-in-libya-a-new-model.
245. *Id.*; Owen, *supra* note 234.

drone, flights.[246]   These weaknesses—a lack of weaponry and air capabilities—were all identified in the 2010 Treaty, and this "real world" illustration of their significance will provide even greater impetus for France and the UK to act cooperatively to improve their capacities in these areas.   However, the most difficult issue raised by the Libyan intervention cannot be solved by agreement between France and the UK. Other than the U.S., France, and Britain, support for the intervention within NATO was weak,[247] again demonstrating the looming difficulty for France and Britain – that they, like the U.S. in NATO, will be solely responsible for European defense.   Although both countries plan to slash their national defense budgets, the 2010 Treaty's bilateral cooperation will allow both to increase their global participation.   France and the UK have chosen to proceed bilaterally to strengthen and increase defense capabilities, because prior attempts, such as Saint Malo, to encourage the rest of Europe to move forward with them, have not resulted in matching capabilities from other European nations.

B. Mali (2013)

In January 2013, France sent troops to fight Islamist rebel groups in northern Mali.[248] France declared that its legal basis to do so arose from a specific request for military aid from the Malian president[249] since UN Security Council Resolution 2085 authorized only an African-led International Support Mission in Mali.[250] Under Article 5 of the 2010

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246.   Westervelt, *supra* note 244.

247.   Only eight of twenty-eight NATO members participated in the Libyan intervention, while Germany, a leader within the EU in some respects even more powerful than France and Britain, refused to participate. Owen, *supra* note 234; Westervelt, *supra* note 244.

248.   *See* Jean-François Bayart, *Mali: le choix raisonné de la France*, LE MONDE (Jan. 22, 2013), http://www.lemonde.fr/idees/article/2013/01/22/mali-le-choix-raisonne-de-la-france_1820680_3232.html.

249.   Natalie Nougayrède, *La lettre du président malien, base légale de l'intervention français*, LE MONDE (Jan. 25, 2013), http://www.lemonde.fr/afrique/article/2013/01/25/la-base-legale-de-l-action-francaise-une-lettre-de-m-traore_1822493_3212. html; *see La mission au Mali et la légalité "onusienne",* LE MONDE (Jan. 26, 2013), http://www.lemonde.fr/idees/article/2013/01/26/la-mission-au-mali-et-la-legalite-onusienne_1822959 _3232.html.

250.   S.C. Res. 2085, U.N. Doc. S/RES/2085 (Dec. 20, 2012); Press Release, Sec. Council, Security Council Authorizes Deployment of African-Led International Support Mission in Mali for Initial Year-Long Period, U.N. Press Release SC/10870 (Dec. 20, 2012), *available at* http://www.un.org/News/Press/docs/2012/sc10870.doc.htm.

Treaty, by which the deployment of armed forces remains a national decision,[251] Britain had publically stated support for the French intervention but refused to participate in any way other than logistical support.[252] The UK will not send its own troops to Mali in a combat role,[253] but has agreed to send surveillance[254] and transport aircraft to be used in the French operation.[255] The U.S. has also agreed to support the mission, pledging in-flight refueling, satellite intelligence capabilities,[256] and providing logistical support and transport of French troops and equipment to the African nation.[257] The French intervention was intended to last until the force authorized by Resolution 2085, composed of troops from neighboring African countries, could be organized and deployed.[258] This intervention demonstrates the flexibility of the 2010 Treaty, because neither France nor the UK is forced to commit its troops to an intervention unsupported by national decision makers. In January 2014, French President Francois Hollande announced that, as the "key objectives of the mission have been accomplished," the troop size would be reduced.[259]

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251.   2010 Defense and Security Treaty, *supra* note 2, art. 5, ¶ 1.

252.   Official Statement, UK Office of the Prime Minister, Statement on PM Call with President Hollande (Jan. 12, 2013), https://www.gov.uk/government/news/statement-on-pm-call-with-president-hollande; Press Release, UK Foreign & Commonwealth Office and Ministry of Def., UK to Provide Logistical Military Assistance to Mali (Jan. 14, 2013), https://www.gov.uk/government/news/uk-to-provide-logistical-military-assistance- to-mali.

253.   Official Statement on PM Call with President Hollande, *supra* note 252.

254.   Press Release, UK Ministry of Def., RAF Sentinel Aircraft Deploys to Africa (Jan. 25, 2013), https://www.gov.uk/government/news/raf-sentinel-aircraft-deploys-to-africa.

255.   Press Release, UK Foreign & Commonwealth Office, United Kingdom Assistance for French Mali Operation (Jan. 13, 2013), https://www.gov.uk/government/news/united-kingdom-assistance-for-french-mali-operation.

256.   Edward Cody, *French Military Intervention in Mali Expands*, WASH. POST (Jan. 13, 2013), http://articles.washingtonpost.com/2013-01-13/world/36311896_1_malian-army-islamist-militias-french-deployment.

257.   *French-Led Intervention in Mali Picks Up Speed*, ASSOCIATED PRESS (Jan. 27, 2013), *available at* http://www.nprberlin.de/post/french-led-intervention-mali-picks-speed. The U.S. supports an intervention in Mali to combat the terrorist rebel groups in the northern part of the country, but will not participate directly in the intervention alongside France because Mali's democratically elected president was overthrown in a March 2012 coup. *Id. See also Mali: logistique américaine et troupes tchadiennes*, LE MONDE, (Jan. 22, 2013), http://www.lemonde.fr/afrique/article/2013/01/22/mali-logistique-americaine-et-troupes-tchadiennes_1820735_3212.html.

258.   Cody, *supra* note 256. French President Francois Hollande has said that the military deployment in Mali will last "as long as necessary." *France Confirms Mali Military Intervention*, BBC NEWS AFRICA (Jan. 11, 2013), http://www.bbc.co.uk/news/world-africa-20991719. The intended strength of the African contingent has already been increased from 3,200 to 5,700 troops, in addition to 2,200 troops promised by Chad. *French-Led Intervention in Mali Picks Up Speed*, *supra* note 257.

259.   *France to Cut Troop Numbers in Mali*, AL JAZEERA (Jan. 9, 2014), http://www.aljazeera.com/news/africa/2014/01/france-cut-troop-numbers-mali-2014191453076573. html.

C. *Possible Intervention in Syria*

Civil strife in Syria, which began in the spring of 2011,[260] is a likely candidate for an international intervention in the coming months. France, Syria's former colonial power, has been at the forefront of international condemnation of the actions of the government. In fact, France was the first Western power to formally recognize the legitimacy of the Syrian opposition coalition.[261] France has also been vocal in calling for UN action, including military action if the Syrian government continues its noncompliance with international human rights standards.[262] As of January 2013, Russia and China had vetoed three separate proposed UN Security Council resolutions that impose sanctions and allow for the possibility of intervention in Syria.[263] Despite these setbacks, the UK and France remain publically committed to halting the human rights abuses in Syria and support a regime change within the state.[264] The impact of the Syrian crisis on Turkey, a NATO member, also creates a great deal of pressure on France, the UK, and other NATO members.[265] The UK has pledged money

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260. James Robbins, *How Syria sank into all-out civil war*, BBC NEWS MIDDLE EAST (Jan. 17, 2014), http://www.bbc.com/news/world-middle-east-25755987.

261. Steven Erlanger & Rick Gladstone, *France Grants Its Recognition to Syria Rebels*, N.Y. TIMES (Nov. 13. 2012), http://www.nytimes.com/2012/11/14/world/middleeast/syria-war-developments.html?pagewanted=all&_r=0. "I announce that France recognizes the Syrian National Coalition as the sole representative of the Syrian people and thus as the future provisional government of a democratic Syria and to bring an end to Bashar al-Assad's regime." (quoting French President Francois Hollande). *Id.*

262. *Syria crisis: France Raises Use of Force*, BBC NEWS MIDDLE EAST (Apr. 25, 2012), http://www.bbc.co.uk/news/world-middle-east-17847584.

263. Russia and China were the only two Security Council members to vote against the resolution in July 2012, which would have imposed economic sanctions on Syria for failing to implement the UN and Arab League peace plan. Russia's representative stated that the Western countries wanted to use Syrian sanctions and a possible regime change to decrease Iran's regional influence. Rick Gladstone, *Friction at the U.N. as Russia and China Veto Another Resolution on Syria Sanctions*, N.Y. TIMES (July 19, 2012), http://www.nytimes.com/2012/07/20/world/middleeast/russia-and-china-veto-un-sanctions-against-syria.html?_r=0; *see also* MacFarquar, *supra* note 61.

264. Press Release, UK Foreign & Commonwealth Office, Foreign Secretary's Remarks with French Foreign Minister Fabius in New York on the Situation in Syria (Aug. 30, 2012), https://www.gov.uk/government/news/foreign-secretarys-remarks-with-french-foreign-minister-fabius-in-new-york-on-the-situation-in-syria?view=News&id=805304 082.

265. Turkey is experiencing a dramatic influx of Syrian refugees—over 120,00 people have fled Syria for Turkey. Turkey has called for assistance in establishing 'safe zones' along the border with Syria to protect the refugees, most of whom are in camps. Jeremy Bowen, *Turkey: Risk Worth Taking for Syria Safe Zones*, BBC NEWS MIDDLE EAST (Sept. 27, 2012), http://www.bbc.co.uk/news/world-middle-east-19753795. In

to help Syria's neighbors cope with the influx of refugees,[266] while France continues to be a leading supporter of the Syrian rebel coalition.[267] Ultimately, the application of the R2P doctrine to the humanitarian crisis in Syria is clear, but the Security Council veto stands in the way of any intervention to halt the suffering.

VI. CONCLUSION

The parallel ambitions of France and the UK have continually driven the two countries to participate in unprecedented military cooperation and integration. While these two countries in particular have been moving towards such collaboration during the last several decades, it is an unlikely model for success in any other situation. France and Britain, the leaders of European defense, have previously attempted to encourage the rest of the EU to develop their defense capabilities. When both states realized they might soon be the sole providers of European defense, they cooperated to increase their capabilities and reduce their individual defense costs. This form of deep integration is possible because of the history of integration between these states within the EU framework. The bilateral agreement is intended to work within the multilateral frameworks in which both participate—the United Nations, NATO, and the EU. An increase in Franco-British military capability reduces the pressure on the United States, within the UN and NATO, to act nearly unilaterally to halt humanitarian crises. This increase in capabilities will also allow for the EU to exercise its power on a global scale, particularly if other EU Member States follow the lead of France and the UK in working together to acquire and develop military capabilities and technologies.

France and Britain, strong proponents of humanitarian intervention, are willing to take the lead on such operations where other actors do not commit themselves to the effort. The increase in capabilities driven by the 2010 Treaty allows France and the UK to have more influence in the military decisions of NATO and the EU, since they may now contribute meaningful capabilities to any multilateral military operation. Both France and the UK remain proponents of the R2P doctrine, and are capable of

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December 2012, NATO approved the move of Patriot missiles into Turkey to increase security against a missile attack from Syria. NATO and Turkey also fear the use of chemical weapons by Syria. *Syria Crisis: NATO Approves Patriots for Turkey*, BBC NEWS MIDDLE EAST (Dec. 4, 2012), http://www.bbc.co.uk/news/world-middle-east-20590129.

266. *Syria Conflict: Britain to Provide Extra £21m in Aid*, BBC NEWS UK (Jan. 26, 2013), http://www.bbc.co.uk/news/uk-21208956.

267. *See Syrie: reunion de l'opposition à Paris le 28 janvier*, LE MONDE (Jan. 20, 2013), http://www.lemonde.fr/proche-orient/article/2013/01/20/syrie-reunion-de-l-opposition-a-paris-le-28-janvier_1819667_3218.html.

undertaking future interventions under the doctrine more easily because of the joint development of their military capabilities.

Humanitarian interventions require both the capability and political will to intervene. With the implementation of the 2010 Treaty, France and the UK now possess, or are in the process of developing, the requisite military capabilities to intervene in humanitarian crises across the globe. The largest hindrance to any potential intervention is the lack of political will to do so in the domestic structures of competent states. France and the UK are more focused on humanitarian crises and issues, like the rest of Europe, than other dominant military powers, and are seemingly more willing to intervene. Previously, as separate actors, these two states were incapable of leading interventions, but often called for interventions in humanitarian crises. France in particular has often been vocal about its desire to intervene, and it now possesses the capability to enable it to do so essentially on its own. Still, both states are adamant that a case-by-case balancing of domestic issues must guide the decision to intervene, and intervention will only occur where there is a clear political objective. Both France and the UK have begun to consider national security more on a global scale, so that events in other states, including humanitarian crises, are now deemed a matter of national import. Both states desire to expand their global influence, and the "interventionist" niche in the international community is not currently occupied by any other military power. Europe, led by the UK and France, is the most likely candidate to take the lead in this field, because the 2010 Treaty gives France and the UK the military capabilities to enforce their humanitarian values on a global scale.