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## Open Letter to the U.S. Senate

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# International law expert: No NATO intervention into Balkans!

*On May 1, Francis A. Boyle, a professor of international law at the University of Illinois at Urbana-Champaign, sent an open letter to the U.S. Senate warning them of a Bush administration plan to radically transform the North Atlantic Treaty Organization (NATO) by illegally granting it the powers to conduct peace-keeping missions, and to operate outside of western Europe. The current NATO charter limits NATO to a defensive mission within western Europe. To grant such new powers requires a formal revision of the 1949 charter by all 16 member states. The U.S. Constitution requires that any treaties or revisions of treaties, of which the charter is an instance, be approved by the U.S. Senate.*

*The occasion of Boyle's letter was an article in the International Herald Tribune of April 24, which showed that the pretext being used by the Bush administration to revise NATO's mandate was the need to stop "future Yugoslavias," referring to Serbia's bloody intervention, first into Croatia, and now Bosnia. In fact, Serbia's wars against its neighbors had been encouraged by the Bush administration. It appears that one of the reasons that the White House provoked these wars was to have the pretext to keep U.S. troops in Europe, and otherwise effect a transformation of NATO's mission.*

*On June 4, a NATO foreign ministers meeting in Oslo, Norway approved a U.S. government demand delivered by Deputy Secretary of State Lawrence Eagleburger that NATO allow the use of its forces for "peacekeeping" purposes, and outside of NATO territory. The foreign ministers chose to ignore the fact that such a decision clearly requires a revision in the NATO charter, and consequently formal treaty revision decisions by the chancelleries and parliaments of each member state.*

*According to sources at the meeting, certain European members of NATO did block a U.S. effort to have NATO immediately promise its military assistance in implementing U.N. economic sanctions against Serbia, and in delivering humanitarian aid to Bosnia. According to these same sources, the Bush administration has not given up on using the new de facto revision as the basis for a NATO strike against Serbia. Reportedly, the White House will attempt to ram through this plan at the NATO heads of state summit in Helsinki in July.*

*An edited text of Professor Boyle's letter follows.*

Dear Senator:

I am writing about a matter of grave public concern that relates to the exclusive right and power of the United States Senate to give its advice and consent to Treaties under article 2, section 2, clause 2 of the United States Constitution. As you can see from the attached article by Joseph Fitchett, entitled "NATO as Peacekeeping Force: The Momentum Builds," published in the *International Herald Tribune* of April 24, 1992, the Bush administration is attempting to transform NATO from a purely defensive alliance into some type of peacekeeping organization with supposed authorization to operate in a manner and in an area that would contradict the NATO Pact. Yet, the NATO Pact is a "Treaty" that has received the advice and consent of the Senate and therefore is the Supreme Law of the Land under article 6 of the United States Constitution. Nevertheless, the Bush administration is informally attempting to fundamentally alter its basic provisions without obtaining the further advice and consent of the United States Senate.

The NATO Pact is what international law professors call a collective self-defense agreement that is concluded under article 51 of the United Nations Charter. Pursuant thereto, the NATO Pact can only be triggered in the event of an armed attack against its member states, subject to a geographical restriction designed to exclude their colonial possessions. By definition, however, such a collective self-defense agreement does not have the legal power to engage in so-called peacekeeping operations, as is being proposed by the Bush administration here.

Under the terms of the United Nations Charter, such peacekeeping operations can only be mounted by the United Nations Organization itself, or by a so-called "regional arrangement" that is organized under Chapter 8 of the United Nations Charter. But NATO has been organized under article 51, which is part of Chapter 7. As a matter of international law, NATO could indeed be transformed into a Chapter 8 regional arrangement endowed with the legal power to engage in such peacekeeping operations. But such a fundamental transformation of NATO would require a formal amendment to the NATO Pact.

The principles at stake here can best be illustrated by reference to the legal and political situation that applies to

the Western Hemisphere. The Rio Pact is a collective self-defense agreement concluded under article 51 of the United Nations Charter, and includes most of the states of the Western Hemisphere. The Rio Pact has received the advice and consent of the United States Senate and is therefore the Supreme Law of the Land under the Constitution.

Nevertheless, as a matter of both international law and United States domestic law, the Rio Pact can provide no legal authority for its member states to engage in any type of peacekeeping operations. Rather, that authority has been formally delegated to the Organization of American States, which is a regional arrangement established under Chapter 8 of the United Nations Charter. The OAS Charter is also a Treaty that has received the advice and consent of the United States Senate.

To be sure, there is an overlap in membership between the Rio Pact and the OAS. But the diplomatic, legal, political, and indeed military practice here in the Western Hemisphere for the past 40 years has been that only the OAS has the authority to set up so-called regional peacekeeping operations. By contrast, the Rio Pact can be triggered in the event of an armed attack upon one of its member states. These same principles would also apply analogously to the NATO Pact.

I am not suggesting that it would be legally impossible to transform NATO into a Chapter 8 "regional arrangement" with the power to field peacekeeping operations. Such a transformation can occur by means of formally amending the NATO Pact. But it is a well-established principle of constitutional law that a Treaty cannot be amended without the advice and consent of the Senate to that amendment. The transformation of NATO from an article 51 collective self-defense pact into a Chapter 8 regional arrangement for peacekeeping operations would constitute a fundamental transformation of the nature of the treaty commitment that would go to the very heart of what the Senate had originally consented to when it gave its advice and consent to the NATO Pact.

What the Bush administration is trying to do here is to make an end-run around the Senate by quietly negotiating on a change in operating procedures for NATO without obtaining the further advice and consent of the Senate. If the Bush administration is allowed to get away with this fundamental transformation of NATO without receiving the advice and consent of the Senate, this maneuver will severely undermine if not subvert the constitutional right and power of the Senate to give its advice and consent to Treaties.

Indeed, what the Bush administration is really trying to do here is to make an end-run around the Senate in order to avoid a vigorous public debate over the wisdom of sending United States troops on peacekeeping missions in eastern Europe as part of their so-called "New World Order." You will note from the article that one of the key requirements of this fundamental transformation of NATO will be the participation of the United States troops in so-called NATO

peacekeeping operations in eastern Europe. But this gets into serious policy questions and considerations that the Constitution clearly delegates to the Senate, if not both Houses of Congress.

In my professional opinion, it would be total folly for United States military forces to be used as some type of component unit for NATO peacekeeping operations in eastern Europe, and perhaps within the constituent Republics of the former Soviet Union. Rather, I think the better approach would be to turn the Conference for Security and Cooperation in Europe (CSCE) into a formal regional arrangement organized under Chapter 8 of the United Nations Charter, which would then have the legal authority to deploy peacekeeping operations within its member states. It is clear that the Bush administration opposes this approach to maintaining international peace and security in eastern Europe and the former Soviet Union because the Bush administration wants to develop some rationale for keeping United States military forces in Europe.

But whether you agree with my policy analysis or not, it seems to me that such a fundamental transformation of the very meaning and purpose of the NATO Pact requires the advice and consent of the United States Senate. Under the terms of the Constitution, it is for the members of the Senate to debate and decide these weighty questions of national policy. The Senate must not allow the Bush administration to make an end-run around the Constitution and around the American People in order to keep U.S. troops in Europe and then to put them into unspecified but certainly far more dangerous circumstances than they are currently situated in. For example, do the American People really want United States military forces trying to keep the peace in the constituent Republics of the former Yugoslavia (e.g., Bosnia and Hercegovina)? Or the former Soviet Union (e.g., Nagorno-Karabakh)? I think not.

In addition, there exists a virtual plethora of other constitutional and legal issues related to this proposal for NATO that concern Status-of-Forces Agreements, congressional funding, domestic implementing legislation, etc. These problems are too numerous to list here. I doubt very seriously that the Bush administration has given serious consideration to any of them. Rather, they seem to be more interested in cutting a deal behind closed doors with their putative cohorts in Europe than they are in explaining their intentions in an honest and forthright manner to the American People and Congress.

I certainly hope that you and your colleagues in the Senate will not allow the Bush administration to get away with this proposal for NATO without a struggle. After all, that is what our Founding Fathers clearly envisioned when they drafted our Constitution with its well-considered system of checks-and-balances: a struggle for power among its constituent units. That is the only sure protection that the American People have against presidential tyranny.