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(JWC)

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Muñoz, (SHAPE)

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Introduction

This first issue of the NATO Legal Gazette is the result of an identified need for knowledge sharing within our NATO legal community.

The primary recommendation of the April 2006 Bi-SC Legal Conference in Bydgoszcz, Poland was to enhance cooperation between NATO Legal Advisors.

This Gazette is one specific action to increase and improve communication and information sharing across the NATO community by bringing

to each other's attention events we have recently participated in or subjects that are attracting our interest.

This first issue contains articles from NATO attorneys assigned to HQ SACT, ACT/Staff Element Europe, the Joint Warfare Centre, and SHAPE, but our community is much larger than just these four locations.

If you are working on a topic that would be of professional interest to the NATO Legal Community or have

recently returned from training that would be of interest to your NATO colleagues, please write a short article and share it with us. We are also interested in welcoming new colleagues, saying farewell to departing NATO legal personnel, and hearing about upcoming seminars or other training and education events. We look forward to your contributions!

Next issue of the Gazette will be published at the end of January 2007 (*)

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N.R.F. (NATO Response Force)

NATO Response Force (NRF) is a military capability able of conducting expeditionary, joint and combined (multinational land, naval, air and special operations forces) operations. It is comprised of a pre-identified, certified and trained joint force, and it is intended to be operating within and beyond the area covered by the North Atlantic Treaty.

The NRF will be of limited size and tailored for a specific operation.

When the NRF deploys, typically no Status of Forces Agreement (SOFA) or any other agreement regulating the conditions for a visiting military force is in place.

The rapid deployment of NRF may lead to the situation where the planners and the Commander are

formulating their Rules of Engagement (ROE) prior to knowing their status or the content of an eventual status agreement.

The geographical location of the mission must be given due consideration.

Domestic legislation and legal traditions may not be directly applicable, nonetheless they will most likely influence the mission at all levels.

When a new mission is established in a country neighboring another country or region with an existing mission, detailed de-conflict is needed along the joining Areas of Operations.

Another issue, which is interesting from a legal point of view and which is exercised quite often within the NRF training circuit, is Non-Combatant-Evacuation-operation (NEO).

Because counter terrorism operations may be seen as closely related to policing it is also worth determining whether or not the terrorist act(s) in question are state-sponsored or not.

In summary, most of the legal challenges facing the deployment of the NRF can be identified prior to deployment. Yet the actual implementation and applicability will need to be adjusted to the reality of the mission environment.

For more information, please consult: <http://jwc.nato.int/files/THE-APRIL-MAGAZINE1.pdf>

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“EBAO aims at the coherent and comprehensive application of the various instruments of [power] of the Alliance [Political, Economic, Civil and Military] to create effects that will achieve the desired outcome.

*Capstone Concept
For NATO Operations
Comprehensive
Political Guidance
(Para 17/2006)*

E.B.A.O. (Effects-Based Approach to Operations)

NATO Legal Advisors cannot consider EBAO as a strange object. Operational Law and even ordinary office work will soon be flooded by this mindset. Lately, NATO Legal Advisors have been participating in EBAO more or less intensively

In February 2003 as an Operational Lawyer to Planners, I participated in “Multinational Experiment 3” in Linnich, Germany, I have then written a paper which is available upon request.

Since that time EBAO has much evolved, especially in terminology.

A new document is now available and is trying to merge past NATO EBAO experiences with the incipient production of doctrine and stress is put on the areas where NATO Legal Advisors play a role in.

Therefore, the paper must be seen as a dynamic non-official document depending on the evolution of EBAO doctrine in NATO.

Readers are encouraged to use this document at their discretion and improve it with their experiences either in experiments, exercises or in the operational theatre.

In their role of Operational Lawyers and NATO Legal Advisors cannot afford to miss the EBAO train.

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Protocol on Explosive Remnants of War comes into effect

On 12 November 2006, while the Third Review Conference of the 1980 **Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW)** occurred in Geneva, the **Protocol on Explosive Remnants of War** of 28 November 2003 came into effect as **Protocol V** to the **CCW**. State parties agreed to **Protocol V** on November 28, 2003, but it needed ratification by 20 countries – which it achieved earlier

this year—to become binding. Presently twenty-seven States have ratified the Protocol including NATO members: Bulgaria, Czech Republic, Denmark, France, Germany, Lithuania, Luxembourg, Netherlands, Norway, and Slovakia.

The Protocol provides generic preventive measures through voluntary best practices specified in a Technical Annex for improving the reliability of munitions and thereby reducing the occurrence of explosive remnants of war. Topics addressed by the technical

annex are:

- 1) recording, storage and release of information for Unexploded Ordnance (UXO) and Abandoned Explosive Ordnance (AXO);
- 2) warnings, risk education, marking, fencing and monitoring, and
- 3) generic preventive measures.

For a full text of the Protocol go to:

<http://www.icrc.org/ihl.nsf/FULL/610?OpenDocument>

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Industrial Property Issues for Government Officials and Information Administrators

LIVE FROM MUNICH . . . well maybe not "live" but certainly fresh from Munich where I participated in the European Patent Academy Public Seminar, "Industrial Property Issues for Government Officials and Information Administrators" from 6 to 10 November, 2006 at the European Patent Office.

This was an outstanding course that, in my opinion, was taught at the proper level for the NATO legal advisors. Legal courses on intellectual property often focus on litigation strategies for protecting a patent or simply provide an update on recent development in intellectual property -- neither of which is particularly helpful to our very basic

involvement in the intellectual property discussions. In contrast, this course provided an excellent overview of the patent scheme in Europe, with discussions focusing on the European Patent Convention (EPC), the European Patent Office (EPO) and the cost-benefit analysis necessary to determine whether the pursuit of a patent makes financial sense.

The method of instruction was primarily lecture, supplemented with a healthy dose of questions from the students. Any LEGAD that supports NATO organizations involved in R&D and/or experimentation should be at least familiar with the intellectual property schemes of the member nations. While I would

not expect NATO organizations, as a matter of routine, to apply for patents, consideration should be given to doing so in the right context - i.e., if we don't patent an invention, is there a risk that industry will do so and thereafter charge the nations a license fee to use what was really created with common funds.

I don't purport to be an IP expert after a one week course, but if anyone has any questions with respect to this course, the European Patent Academy or IP in general, I'd be happy to help navigate towards the correct answer.

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Rule of Law Operations

I attended the US Army Civil Affairs and Psychological Operations Command (Airborne) and US Army Peacekeeping and Stability Operations Institute Third Rule of Law Operations Workshop, held on 16 - 20 October 2006 at Ft. Bragg, North Carolina.

The course was an extremely well-organized and well-run one. It was primarily designed for and attended by judge advocates assigned to Civil Affairs units. It was provided in a lecture setting, although there was ample time for discussion during each session. Many of the presenters provided an organization-specific perspective on Rule of Law Operations as a component to Civil Affairs (CIMIC) operations, while there was also a significant

emphasis on explaining the comparative law aspects and substance of Islamic law and in particular the legal structures of Iraq and Afghanistan. The UN increasingly views Rule of Law as a necessary component of Peace Support Operations, even though there is no single and commonly accepted definition of what "the Rule of Law" is.

It is increasingly considered that there are 5 Types of Rule of Law Operations :

1. Restore order after combat;
2. Restore/improve routine police functions;
3. Restore/Improve Court systems;
4. Restore/reform legal system; and
5. Restore/improve corrections system.

What is clear is that much of the work being done in Afghanistan is, in one form or another, connected to Rule of Law Operations, and legal advisors are heavily relied upon to assist.

I have summarized the conference in a memo that can be provided separately, along with a CD of the presentations.

Please let me know if you desire a copy. This workshop is expected to be given twice a year, in the spring and fall.

I strongly recommend that legal advisors and CIMIC personnel attempt to attend future iterations of the workshop.

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Workshop

US Army Civil Affairs and Psychological Operations Command (Airborne) and US Army Peacekeeping and Stability Operations Institute