

## Special Interest Articles

**Legal Aspects of  
Host Nation Support**  
By **LTC Jo Bowen**  
(SHAPE)

**NATO Chief** calls for  
a new NATO-EU  
Chapter  
by **Mr. Lewis  
Bumgardner**  
(ACT/SEE)

**NATO Legal  
Advisers and Rule  
of Law Operations**  
by **Mr. Andrés  
Muñoz** (SHAPE)

## Spotlight

## General Interest



## Introduction

This third edition of the NATO Legal Gazette benefits from two important articles from the SHAPE Legal Office and spotlights the NATO School Legal Advisor, LTC Jeff Sattler. Electronic links to the current discussion on the state of NATO-EU relations and the recently released United Nations Counter-Terrorism Online Handbook are also included.

All NATO Legal Offices should have received the invitations and administrative details of the NATO Legal Conference that will be conducted in Stavanger, Norway, 24-26 April. If you have not received this information, please contact Col Jody Prescott at JWC – [jody.prescott@jwc.nato.int](mailto:jody.prescott@jwc.nato.int). We hope to publish issue #4 at the end of March. Short articles for issue #4 are solicited, requested, and encouraged and may be sent to [sherrod.bumgardner@shape.nato.int](mailto:sherrod.bumgardner@shape.nato.int). These articles should be topical and written in a manner to inform and assist other members of our large –32 legal offices in 19 countries- NATO legal community about issues of common interest.

### REMINDER !!

A reminder to all legal advisors, both those within the NATO system and those working for their national offices.

The NATO School has two upcoming legal courses. The "NATO Legal Advisors' Course," Course P5-34 which aims at providing active duty and civilian NATO and PfP Legal Advisors with an in-depth introduction to legal aspects of multinational military operations including the plans, policies, operations, and procedures of the Alliance. The course will be offered during the week of 4-8 June 2007 and again from 15-19 October 2007.

The second course is a new one: "Advanced NATO Operational Law (OPLAW) Course", Course N5-68. The aim of this Course is to ensure that Legal Advisors deploying as part of an operational or tactical level operational staff possess

a broad understanding of the complex legal issues that arise in the context of modern NATO military operations, are familiar with the operational planning process and creation and execution of operational plans, and possess familiarity with current operational experiences. The pilot course is scheduled for the week of 9-13 July, 2007.

School website:  
[www.natoschool.nato.int](http://www.natoschool.nato.int)  
under the pull-down menu "Academics."

# Legal Aspects of Host Nation Support

Host Nation Support is a topic that most lawyers dread. I recall during my deployment to Skopje in 2002 how I broke into a sweat every time HNS was mentioned.

Although I had been advised to read Allied Joint Publication (AJP) 4.5A – the document looked so long and complicated and my time was so precious that I avoided it at all costs! I managed to avoid it for my entire tour.

I was then posted to SHAPE and discovered on my first day that I was responsible for HNS !! Since my arrival I have read AJP4.5 a number of times and I am now an ardent supporter ! It is an excellent guide to all aspects of HNS and is a very helpful document. Please take the time and read it !!!! It will make your life so much easier.

By way of background, since 2002 SHAPE has been endeavouring to obtain standing HNS MOUs with all NATO and PFP nations. The standing HNS MOUs cover both operations and exercises – they remain extant and do not need to be activated. They need to be supplemented by a TA, which is negotiated at the operational level. Unfortunately, the negotiation of these MOUs takes a considerable amount of time, but approximately 18 have been concluded to date. A table showing a list of the HNS MOUs is attached below.

Please note that before an exercise can begin, a HNS MOU must be in place between SHAPE and the HN. If there is no standing HNS MOU, an exercise specific HNS MOU must be concluded based on the template MOU contained in AJP- 4.5 (A). SHAPE can delegate authority to a subordinate command to negotiate and conclude an exercise specific HNS MOU but there must be a formal written request for delegation from the command concerned.

Once the HNS MOU has been concluded, either the HN or the NATO command invite SNs to accede to the HNS MOU. This ensures that the provisions of the HNS MOU bind all SNs and not just the signatories. It also ensures complete uniformity and transparency.

We have recently encountered a few difficulties with HNS arrangements, which I want to share with you:

## Failure to conclude HNS MOU

At the end of last year, 2 exercises took place in the absence of a HNS MOU. Although authority had been delegated and negotiations had been progressing well, the HN involved failed to finalise and sign the MOU. This goes against NATO policy and doctrine, which all nations have formally agreed and approved.

Without an MOU there is no agreement on certain tax exemptions such as VAT, as the NATO SOFA does not cover this specific exemption. The HNS MOU provides the agreement for VAT exemption !

Furthermore, in the absence of an agreed HN MOU, there is no standardisation, no uniformity and no visibility. If there is no HNS MOU in place at the time the HN is chosen, the HN should be asked for an undertaking that it will conclude a HNS MOU prior to the exercise commencing.

## Participation by Non NATO/PFP Nations

More and more often non-NATO/PFP nations such as Mediterranean Dialogue or Istanbul Cooperation Initiative nations participate in NATO exercises. These nations do not have their own SOFAs and they do not automatically benefit from the NATO/PFP SOFA. To ensure transparency and parity of dealing, we always try and argue that personnel from non-NATO/PFP nations are considered as NATO-led forces for the purposes of the exercise as defined in the HNS MOU that they therefore enjoy the same status and privileges as NATO forces. Some HNs have rejected the above argument and will not accept the non-NATO/PFP nations as NATO-led forces.

## Legal Aspects of Host Nation Support

Therefore to avoid this being raised as a problem at a late stage in the planning process, early consideration must be given to the status of those personnel from non-NATO/Partner nations at the beginning of the exercise planning. If an HNS MOU is being concluded specifically for an exercise, then the definition of NATO-led forces should include "all forces from nations approved by the NAC". If a standing HNS MOU has already been concluded then the OCE should make a declaration that all forces participating in the exercise (including those from non-NATO nations) are NATO-led forces for the purposes of the exercise. A list of all those nations participating in the exercise should be contained in the declaration. A similar declaration and list should also be included in the TA.

### Conclusion

AJP4.5A is an excellent guide to all issues relating to HNS. Not only does it provide background and explanation but it also provides practical details with examples of the documents you need. I would urge you all to read it. Bi-SC 15-3 Preparation and Control of International Documents is also a very helpful guide to drafting MOUs etc.

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### STANDING HNS MOU NATO members

COUNTRY	HNS REQUEST LETTER SENT	NEGOTIATIONS	SIGNATURE
BELGIUM	19-Jul-04	Complete	2-May-06
BULGARIA	14-Nov-02	Complete	16-Aug-04
CANADA	19-Jul-04	Pending	
CZECH REPUBLIK	19-Jul-04	Complete	9-Oct-06
DENMARK	19-Jul-04	Ongoing	
ESTONIA	-	Complete	22-Jan-04
FRANCE	19-Jul-04	Initiated	
GERMANY	8-Aug-03	Complete	10-Nov-03
GREECE	8-Apr-03	Complete	12-Aug-04
HUNGARY	19-Jul-04	Ongoing	
ICELAND	19-Jul-04	Pending	
ITALY	21-Feb-03	Complete	1-May-04
LATVIA	19-Jul-04	Complete	28-Jun-06
LITHUANIA	1-Feb-02	Complete	5-Apr-05
LUXEMBURG	19-Jul-04	Pending	
NETHERLAND	19-Jul-04	Pending	
NORWAY	-	Complete	22-Jun-97
POLAND	13-May-03	Complete	26-Sep-05
PORTUGAL	19-Jul-04	Complete	16-Aug-05
ROMANIA	19-Jul-04	Complete	10-Apr-06
SLOVAKIA	19-Jul-04	Ongoing	
SLOVENIA	19-Jul-04	Initiated	
SPAIN	-	Complete	8-Apr-02
TURKEY	19-Jul-04	Initiated	
UNITED KINGDOM	-	Complete	10-Feb-03
UNITED STATES	19-Jul-04	Pending	

### PFP nations

ALBANIA	24-Jul-06	Initiated	
AZERBAIJAN	14-Oct-04	Pending	
CROATIA	24-Jul-06	Initiated	
GEORGIA	1-Dec-04	Complete	11-May-06
KAZAKHSTAN	6-Feb-04	Pending	
UKRAINE		Complete	9-Jul-02
UZBEKISTAN	6-Feb-04	Pending	

## NATO Chief calls for a new NATO-EU Chapter

In Berlin on 29 January 2007 the Secretary General of NATO, Jaap de Hoop Scheffer, addressed a Conference on European Security and Defence Policy organised by Germany who currently holds the rotating six-month Presidency of the European Union.

In his speech entitled, "NATO and the EU: Time for a New Chapter," the Secretary General stated, "NATO-EU relations have not really arrived in the 21st century yet. They are still stuck in the '90s." He concluded that, "Strategic partnership between NATO and the

EU has never been more important than it is today. The challenges of our times demand a comprehensive approach to security, in which military and civil means are employed together and in a coordinated way. There is no stronger civil player than the European Union. And there is no stronger military alliance than NATO. There is therefore in my view only one conclusion – we must finally get serious with the strategic partnership!"

Full text of these remarks is available on the NATO HQ webpage: <http://www.nato.int/docu/speech/2007/s070129b.html>

With the headline, "There is no excuse for the failure of NATO and the EU to talk to each other" in its 8 February 2007 issue, the magazine, *The Economist*, commented on the Secretary-General's observations. This article is available at: [http://www.economist.com/world/europe/displaystory.cfm?story\\_id=8669193](http://www.economist.com/world/europe/displaystory.cfm?story_id=8669193)

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**"Why are NATO-EU relations still so problematic? Why do both institutions find it so hard to make the much-talked-about "strategic partnership" a reality?"**

# NATO Legal Advisors and Rule of Law Operations

## Introduction

Rule of Law Operations have been neglected until recently when NATO Operations in the Middle East sprung up. Bosnia and Kosovo were just an appetizer compared to the challenges faced by NATO in Afghanistan and in some way in Iraq. Legal Advisors, and in particular NATO LEGADs, have a significant role to play in today's Rule of Law Operations which are becoming an integral part of Operational Law. The traditional role of CIMIC is not exclusive any longer and the number and type of institutions to be reconstructed are so vast that CIMIC has to rely on new techniques that go beyond its current capacities. Modern democratic, humane, orderly society, such as we know it, is in large part made possible through the governmental processes and structures. Bureaucracies build roads, maintain sewers, inspect food and drugs, light streets, educate children, regulates commerce, enforce law and order and do much more that is essential to civil life (1). These needs may find justification for Legal Advisors' intervention.

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 (1) BROWN Brack, "Public organizations and policies in conflict: Notes on theory and practice" in "Conflict Resolution Theory and Practice. Integration and application" Sandole and van der Merwe. Manchester University 1993. Page 162.

They understand legal systems and can analyse them to find strengths and weaknesses, the needs to improve the institutions of a given State, the influence of international legal instruments, etc. They can intervene to provoke the desired changes. Organisations are intentionally created constructs within which planned, specific and recurring forms of human actions take place.

What are the topics ?

Terminology is important, but when NATO is the player and steps into a new business, standardisation can wait for years. Therefore, it is my intention to use terms taken from the Academic and Military realms, with the intention of clarifying concepts.

Types of Rule of Law Operations may be categorized in the following manner:

- Rebuilding Rule of Law in a Post-conflict Environment. Restore Order after Combat. Peace Support Operations.
  - Policing. Restore/improve Police functions.
  - Constitution Making. Human Rights. Law of Armed Conflicts. Regional and International Treaties.
  - Transitional Justice. Restore-Improve Reform Legal System. Corruption, Organised

Crime, Trafficking, Terrorism.

- Prisons and Corrections. Restore/Improve Correction Systems.

Once we know what Rules of Operations will focus on, it is important for the purpose of this paper to identify where NATO Legal Advisers need to be heavily involved in, but not limited. In accordance with the above, we should see the NATO Legal Advisors in the following roles:

- a) Reforming the Legal System;
- b) Deploying as judges, Prosecutors, defense advocates and prisons/corrections officials;
- c) Assisting in selecting, training, mentoring and producing internal regulations for personnel part of the judiciary, police and prison staff as well as training in management and use of specific-function equipment;
- d) Assisting in judicial and investigation procedures;
- e) Assisting in creating special courts for serious crimes;
- f) Providing training necessary for the judiciary, police, and;
- g) Advising local authorities being embedded in local institutions as part of reconstruction teams.

## NATO Legal Advisors and Rule of Law Operations

The Host Nations factor cannot be disregarded in Rule of Law Operations. The “one and only” principle must be followed: **each Host Nation is unique**. This factor must be studied in an interdisciplinary manner, and NATO Legads have to be a part thereof. Any activity related to Rule of Law Operations will pay special attention to elements such as historical, social/ethnic and cultural/religious aspects as some nations or peoples may see international intervention as something to be hampered, while others may welcome it. In the nations where international intervention is seen as an imposition, NATO Legads must be aware and take in due account that personnel from certain NATO Nations may be more rapidly accepted than personnel from others. Most of the Host Nations prefer to see international personnel performing roles of advisors, trainers, and providers of technical assistance. In post-conflict situations this can also vary in the different ethnic groups. In Kosovo and Bosnia, it was a normal procedure to have international judges and prosecutors dealing with local matters, while in Afghanistan this is a “no go” issue. However, they were welcome in a mentoring way.

Post-conflict societies need to have the rule of law re-established. Without the rule of law, insecurity, corruption, impunity, and criminal acts undermine stability and democracy, and threaten a return to conflict. A plethora of organisations deal with “chunks” of Rule of Law Operations, NATO is one of those that leads and assists in establishing the rule of law in several countries.

### Conclusion

Why is Rule of Law included in current Operational Law?

Until very recently Rule of Law was an exclusive realm of CIMIC on the field and politicians back in their states as well as some International Organisations.

However, without disregarding the need of strategic planned policies to confront the minimum existence of Rule of Law in post-conflict states, personnel on the ground have to implement these policies and therefore knowledge and training are extensively needed.

NATO Legads have proven themselves as a good asset to promote the Rule of Law on the terrain, together with specialised International Organisations and NGOs. Kosovo, Afghanistan and in some way, Iraq are the recent live examples of the importance of implementing Rule of

Law policies promoting them from the early stages of the post-conflict phase and from the lowest level of the local institutions to the highest ones. All other initiatives to bring peace, work and wealth to a post-conflict society are condemned to a fiasco if they are not supported by a steady institutional skeleton, muscled by sound and appropriate laws and regulations founded in international recognised principles of law and justice and local traditions or procedures that respect them.

A more detailed paper on the subject is available; if interested, please contact Mr. Andrés Muñoz Mosquera

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## Spotlight



**LTCol Jeffrey**

**Sattler,**

**Legal Advisor**

**NATO School**



Name: Jeff Sattler

Rank/Service/Nationality: LtCol/Air Force/U.S.

Job title: NATO School Legal Advisor

Primary legal focus of effort: I have three roles at the school.

First, I provide legal advice and support to the Commandant and the school.

Second, I am the course director for the NATO Legal Advisor Course and the brand-new NATO Operational Law Course.

Finally, I provide basic legal lectures for many of the other courses the school runs and the occasional METT.

When I'm not otherwise occupied, I make coffee.

Likes: Lecturing, traveling, and the view outside my office window.

Dislikes: Warm winters

When in Oberammergau, everyone should: bring their hiking boots

Best NATO experience: Being posted to Oberammergau. I have reached the zenith of my military and legal career!

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## GENERAL INTEREST

Of interest to NATO legal community is the newly launched United Nations Counter-Terrorism Online Handbook <<http://www.un.org/terrorism/cthandbook>>.

This handbook showcases the system-wide resources of the UN and activities in the field of counter-terrorism and is a collaborative effort of the UN Counter-Terrorism Implementation Task Force that brings together 24 UN departments, programmes, funds, offices and agencies that have a counter-terrorism related mandate as well as outside partner organizations. The Handbook may be searched according to broad themes such as preventing a terrorist attack, technical assistance, mitigation and response.

Other searches allow users to focus on areas such as financing of terrorism; promoting education, tolerance and dialogue; protecting nuclear, biological, chemical or radiological materials; assisting victims; preventing travel by terrorists; providing training to law enforcement entities; assisting with drafting of anti-terrorism legislation; defending human rights; or dealing with hostage situations; and protecting key infrastructure. Participants in multinational negotiations may find particularly useful the short *Treaty Reference Guide* <http://untreaty.un.org/English/guide.pdf>, available in English and French and the *Treaty Handbook* <http://untreaty.un.org/English/TreatyHandbook/hbframeset.htm> and the *Final Clauses of Multinational Treaties Handbook* <http://untreaty.un.org/English/FinalClauses/english.pdf>, which are available in the six official languages of the UN: English, French, Arabic, Spanish, Russian, and Chinese.



*The field of legal scholarship is as large and diverse as the social phenomena which legal scholars attempt to map and interpret; and the forms and styles of scholarly output are many and varied (The Oxford handbook of Legal Studies)*

Articles/Inserts for next newsletter can be addressed to Lewis Bumgardner ([Sherrod.Bumgardner@shape.nato.int](mailto:Sherrod.Bumgardner@shape.nato.int)) with a copy to Dominique Palmer-De Greve ([Dominique.Degreve@shape.nato.int](mailto:Dominique.Degreve@shape.nato.int)) and Kathy Bair ([bair@act.nato.int](mailto:bair@act.nato.int))