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GENERAL INTEREST

Introduction

Greetings from Mons, Belgium and best hopes to all that 2011 has started the way readers of the NATO Legal Gazette may wish.

Our twenty-fourth issue of this electronic effort to improve legal knowledge sharing within the North Atlantic Alliance contains two substantive articles, two book reviews, and two updates on ongoing projects. The first article contributed by Andres Munoz-Mosquera addresses the authority and the benefit of NATO's strategic commands making binding arrangements for effective military-to-military activities. Nicoline Swinkels provides a seven page comment on the concepts contained in the newly issued Allied Joint Publication on NATO's missions that do not involve collective defence known as Non-Article 5 Crisis Response Operations.

Our most dependable contributor Vincent Roobaert reviews two books written in 2008 on a topic that continues to grow in legal significance in this issue: *Targeting Terrorists. A License to kill,* by A Plaw and *Targeted killing In International Law* by Nils Melzer. Andres Munoz-Mosquera also brings to the attention of our community the just published work Dr. Mohammed Moustafa Orfy, *NATO and the Middle East, The geopolitical Context Post-9/11.* Zoltan Hegedus describes the soon-to-be completed progress on writing a standardized agreement (STANAG) to teach the law of armed conflict in NATO as well as the recently completed *NATO Legal Deskbook (2nd edition)*.

We say good bye to departing members of our community, welcome the new ones and spotlight the new legal advisers at the NATO Communications and Information Services Agency (NCSA) and the NATO Rapid Deployable Corps-Turkey. In addition, a number of news items and upcoming events are provided in the General Interest section of this Gazette, including the ongoing experiment to build a NATO legal web portal called CLOVIS (Comprehensive Legal-Military Overview Virtual Information System and yes, the "M" is silent.)

As always, readers are invited to contact the authors of any of the articles contained in this Gazette and enthusiastically encouraged to submit their writings on topics of significance to our extended NATO legal community.

Best Regards,
Lewis

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Host Nation Support Arrangements: the NAC-approved Military-to-Military Legal Tools

Mr. Andres Munoz-Mosquera, SHAPE Legal Office

> *"By art is created that great Leviathan, called a commonwealth or state, which is but an artificial man…and in which, the sovereignty is an artificial soul."*
> Thomas Hobb, *Leviathan* (1651); Introduction.

During the September 2010 NATO Legal Conference one of the panelists noted NATO's "failure of negotiations with Bahrain, Qatar and the United Arab Emirates," and asked the audience if there was an explanation for such a failure.[1] There may be many answers to this question, as that of using NATO members' diplomatic resources *in situ* to persuade the potential host nation of the benefits of concluding agreements and arrangements with NATO. However, this paper does not explore that possibility but a military-to-military one. The paragraphs below intend to formulate a possible answer, maybe overlooked in the current process, as it attempts to employ normal and sheer diplomatic negotiation tools in seeking to reach agreements supporting NATO operations with nations in the Middle East, Africa and Asia.

"**Sovereignty** presupposes that there are no limits on the authorized exercise of state power at any point with a sovereign's jurisdiction. If there were limits the source of those limits would be the sovereign."[2] This abstract concept is powered by the different actions of governments and their administrations and manifested in all the activities of their societies, with the intention to reaffirm the independence of the sovereign state with respect to other subjects of international law. However, sovereignty[3] is not a monolithic prerogative and, is therefore, permeable, either on a voluntary basis by consent, or, in more extreme circumstances, by force. With regard to the former manner, the *quid pro quo* principle normally applies.

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[1] *Non-attributable comment. NATO Legal Conferences follow the Chatham House Rule.*

[2] *Robert Jackson. Sovereignty (Cambridge: Polity Press, 2007), 17.*

[3] *"The jurisdiction of a nation within its own territory, is exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction deriving validity from an external source would imply a diminution of its sovereignty to the extent of that restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself." U.S. Supreme Court, The Exchange v. McFaddon, 11 U.S. 7 Cranch 116 116 (1812) (accessed October 3, 2010); available from* http://supreme.justia.com/us/11/116/case.html

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Be that as it may, states often are willing to "surrender" some portions of their sovereignty in exchange for, inter alia, economic benefits, security,[4] etc.

The principle of territoriality of the law, which has been recognized since the XVI century, lays down the unconditional application of *lex situs*. This principle establishes the exclusive application of jurisdiction within a state's boundaries that is of its exclusive competence and bars other states from exercising their sovereignty unless otherwise agreed. In this state of affairs, any initiative pursuing "stripping off" layers of sovereignty from a given state should be accompanied by both perceived and actual short or long-term "compensation."

NATO in the 2000s started facing new threats and new missions that made it focus outside the Balkans and Europe. In particular the UN Security Council-approved operation in Afghanistan, International Security Assistance Force (ISAF), has continuously increased in both scope and necessity over the past seven years. This has necessitated the establishment of transit regimes, air control, and logistic bases in neighboring countries. The same is true for the NATO anti-piracy operation, Operation Ocean Shield, in the Horn of Africa. In this context, logistically speaking, the Arabic peninsula turned out to be of strategic importance for both operations, which lead NATO to initiate negotiations with some of the Istanbul Cooperation Initiative (ICI) partners, such as Qatar, Bahrain and the United Arab Emirates[5] to conclude basing agreements. Unfortunately, these have had little success. These negotiations have nearly all reached an impasse, primarily based upon irreconcilable differences regarding the exercise of criminal jurisdiction over personnel who would be stationed within or passing through the territories of these nations while carrying out their UN-mandated missions. This is also applicable with respect to a potential Mediterranean Dialogue (MD) status of forces agreement, which has remained stillborn.

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[4] Does NATO detract sovereignty from states? Czech reformers once argued that the liberal democratic norms and values of the Euro-Atlantic community represent the correct "good" model of governance, and why, far from undermining state sovereignty, joining NATO could only protect and help promote those norms. Alexandra Gheciu. NATO in the "New Europe" (Stanford: Stanford University Press 2005), 129-130. While this "formula" that worked fairly well in the European Eastern countries, due to the promise of becoming NATO members and to facilitate their entrance in the European Union, it might not work that well in the Arabic peninsula countries for the incentives they may perceive are not sufficient to "share" sovereignty. Certainly, diplomatic and geostrategic incentives have proven insufficient, but those in the military-to-military interoperability remain to be seen and therefore deserve to be explored.

[5] Istanbul Cooperation Initiative (ICI): Reaching out to the broader Middle East (accessed October 3, 2010); available from http://www.nato.int/issues/ici/index.html

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In all of these cases, lack of success might be the result of applying the wrong negotiation techniques, or simply not having prepared the other parties sufficiently. In essence NATO may have been seeking to administer "WWII medicine" to a 21st century patient. In the post-WWII context, Cold War context, concluding agreements with or among the Alliance members had a built-in benefit and helped NATO to provide a security umbrella against the common-threat presented by the Soviet-Union and Warsaw Pact. This, of course, is no longer a factor.

Now, in offering agreements, the value[6] to the non-NATO party is more defined in terms of "military-to-military cooperation to contribute to interoperability through participation in selected military exercises and related education and training activities that could improve the ability of participating countries' forces to operate with those of the Alliance; and through participation in selected NATO and PfP exercises and in NATO-led operation on a case-by-case basis."[7]

Remedies. In 2004, NATO countries were capable of identifying incentives to create a mutual beneficial relationship with the MD and ICI countries. The results [the non achieved agreements], however, speak for themselves and reflect that the applied negotiating tools were either inappropriate or inadequate for their time. The latter appears to be of significant importance with respect to the ICI countries, who perceived that NATO proposals which would result in these nations yielding sovereignty in matters of jurisdiction over NATO troops was not offset by adequate offers of "compensation", let alone the discussion on immunities stipulated in customary international law.

It is here where the incentive of interoperability[8], this element that is collectively understood as the "…prerequisites for contributing nations such as the need to communicate with each other, to operate together, to support each other, and to train together," takes on a significant importance. It would seem that the NAC-approved military-to-military tools were not sufficiently emphasized, or perceived as sufficiently valuable by the ICI countries to alter their "position." [9]

A position that should evolve by using military-to-military tools for this created value. For the sake of interoperability, this "new option" of the military-to-military tools will be seen by the parties as a mutual gain, and therefore, the issue of jurisdiction should become a "normal good" under discussion.

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[6] *Jeswald W. Salacuse, The Global Negotiator (New York: Palgrave MacMillan, 2003), 52.*

[7] *Istanbul Cooperation Initiative (ICI): Reaching out to the broader Middle East (accessed October 3, 2010); available from http://www.nato.int/issues/ici/index.html*

[8] *NAC decision at the 2004 Istanbul Summit: A more Ambitious and Expanded Framework for the Mediterranean Dialogue (accessed October 17, 2020); available from http://www.nato.int/docu/comm/2004/06-istanbul/docu-meddial.htm*

[9] *Roger Fisher and William Uri, Getting to Yes, 2nd American ed. (New York: Penguin Books, 1991), 40-55.*

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As the military-to-military contacts grow the need for better regulation grows; what is first a NATO's experienced-problem, later become common problems to be resolved and then the reconciliation of interests is sought by the parties.[10]

Although it was not true, the approach by basing agreements would have created a perception that NATO allies sought only to solve their temporary logistics problems with respect to Afghanistan and the Horn of Africa, rather than having a lasting desire to enter into durable, mutually-beneficial partnerships with some of the ICI nations. Consequently, a typical result for these negotiations for status of forces between NATO and ICI nations is failure.

Military-to-military tools. At the Strategic Command level, NATO already counts on a set of NAC-approved tools that will contribute to promote a common understanding between NATO nations and non-NATO nations, a set of tools that establish the responsibilities of nations participating in an interoperable environment. Host Nation Support Arrangements (HNSA) for exercises and operations, including natural disaster relief operations, consist of a family of overarching host nation support concluded at the Strategic level (mainly SHAPE), that starts with a Memorandum of Understanding (MOU), which is further implemented by Technical Arrangements (TAs), and, eventually, by Joint Implementing Arrangements (JIAs)[11]. These agreements are qualified by the Allied Joint Publication 4.5 as "international confidence building agreements [that] may influence NATO activities in a nation."[12]

Authority for the NATO Strategic Commands to negotiate and conclude these HNSA stems from foundational treaties confirmed by decisions of both the NAC and the MC, and is promulgated through such documents as Allied Joint Publication 4.5 (2005) on Host Nation Support Doctrine and Procedures, and Military Committee (MC) document MC 334/2 (2004), on NATO Principles for Host Nation Support.

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[10] *Ibid. 61*

[11] *Participating nations to an exercise and operation hosted in a non-NATO, non-PfP country are free to accede the standing HNS MOU through a Note of Accession/Statement of Intent. While these HNSA are signed between the Strategic Commands and the government of the concerned host nation, NAC's doctrine states that participating nations "will be encouraged to accede to these MOU as a condition of receiving HNS," 1-4; "…accession to an HNS MOU does not obligate the SN financially," 1-6; "SNs should keep the NATO Commander informed of the status of any bilateral HNSA negotiations, the final status of the document and any significant difficulties." 2-3 at Allied Joint Publication 4.5 (2005) on Host Nation Support Doctrine and Procedures, 3-3; (accessed October 17, 2020); available from* http://www.nato.int/docu/stanag/ajp45/ajp45.pdf

[12] *Allied Joint Publication 4.5 (2005) on Host Nation Support Doctrine and Procedures, 1-9; (accessed October 17, 2020); available from* http://www.nato.int/docu/stanag/ajp45/ajp45.pdf

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These policies authorize SACEUR to conclude HNSA with potential[13] nations that can host NATO exercises, or support operations and do not require, *prima facie*, a pre-existing status of forces agreement with the host nation. The implementation of these uniquely military-to-military tools clearly supplements the application of diplomatic tools, as well as specific NAC policies with respect to the MD and ICI countries. Consequently, these HNSA potentially provide a new complementary[14] approach to the new operational challenges confronted by NATO as it seeks to conclude transit and basing agreements that are key to supporting NATO's far-flung operations.

Conclusion. The improving collaboration with non-NATO countries, such as the MD and ICI, built upon cooperation in exercises and operations to include disaster-relief operations and supported by standing HNSA, might well create a framework that would support the further development, even for questions that involve sensitive issues impacting sovereignty.

At the same time and consequently, the development of a common understanding in the practice of HNSA would reinforce the mental attitude of tackling a common problem together, an important aspect of interoperability, and specifically because it requires partner nations "to communicate with each other, to operate together, to support each other, and to train together."[15] Achieving this interoperability cannot happen without the implementation of the appropriate and available legal tools, i.e., the HNSA. These tools may need to be implemented from the bottom to the top, rather than from the top down.

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[13] *"In order to save time and resources the SCs should develop Standing MOU with potential HN(s). Standing MOU remove the requirement for specific HNS MOU to be developed for each operation/exercise." Allied Joint Publication 4.5 (2005) on Host Nation Support Doctrine and Procedures, 3-3; (accessed October 17, 2020); available from* http://www.nato.int/docu/stanag/ajp45/ajp45.pdf

[14] *This complementary approach of the HNSA carries out both "programmatic and chronological burdens," i.e., the Military Training and Exercise Programme (MTEP) and the Individual Cooperation Programmes (ICP) should incorporate exercises in MD and ICI countries, that over the time should develop a common understanding [NATO and HN] of common problems of visiting forces. It is also true, as it is happening, in a bilateral basis, in certain ICI countries, that the potential HN should assure that, during the time of the exercise, the sending troops commanders will be keep, at all times, control over their troops, when in official duty, vis-à-vis discipline and jurisdiction.*

[15] *Definition of Interoperability in the NAC decision at the 2004 Istanbul Summit on A more Ambitious and Expanded Framework for the Mediterranean Dialogue (accessed October 17, 2020); available from* http://www.nato.int/docu/comm/2004/06-istanbul/docu-meddial.htm

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Therefore, the conclusion of HNSA with the MD countries should be incorporated in their Individual Cooperation Programmes and the same should be done by the Istanbul Cooperation Initiative Group in order to incorporate HNSA in the menu of practical activities with ICI interested countries; this is a means to build up confidence[16] to facilitate the conclusion of future SOFA(s) or Transit Agreements.

Once the HNSA are effected and based on their framework, the next logical step would be again to seek to conclude higher-level agreements with NATO, such as those related to transit and status of forces and which require some relaxation of the strict territorial sovereignty and a mutual understanding for commonly addressed topics that arise from visiting forces.

The contribution of HNSA to diplomatic efforts is a medium-long-term effort that "intends to improve [its] ability to work and coordinate more closely with [its] partners."[17] This is the intention of the NATO's Comprehensive Approach[18] *modus operandi*, that, in turn, through the different NATO "training, education and exercises… emphasiz[es] joint training of civilian and military personnel…[This] promotes the sharing of lessons learned and also helps build trust and confidence between NATO, its partners and other international and local actors, which has encouraged better coordination."

Note the character of HNSA as "international confidence building agreements [that] may influence NATO activities in a nation..."[19]

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[16] *"…international confidence building agreements [that] may influence NATO activities in a nation..." at Allied Joint Publication 4.5 (2005) on Host Nation Support Doctrine and Procedures, 1-9; (accessed October 17, 2020); available from http://www.nato.int/docu/stanag/ajp45/ajp45.pdf*

[17] *A Comprehensive Approach (accessed October 17, 2020); available from http://www.nato.int/cps/en/natolive/topics_51633.htm*

[18] *Ibid.*

[19] *Allied Joint Publication 4.5 (2005) on Host Nation Support Doctrine and Procedures, 1-9; (accessed October 17, 2020); available from http://www.nato.int/docu/stanag/ajp45/ajp45.pdf*

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In the context of the new Strategic Concept, it seems that using existing current NAC-approved military-to-military tools as HNSA, will help to "deepen the cooperation with current members of the Mediterranean Dialogue…develop a deeper security partnership with our Gulf partners…" and "develop… practical cooperation with any nations and relevant organisations across the globe[20]."

"This is an action plan … which sets out clearly the concrete steps NATO will take…It will put in place an Alliance that is more effective, more engaged and more efficient than ever before."

Anders Fogh Rasmussen, NATO Strategic Concept (2010).

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[20] 2010 Lisbon Summit Strategic Concept for the Defence and Security of The Members of the North Atlantic Treaty Organisation adopted by Heads of State and Government in Lisbon; paragraphs 30 and 35 (accessed November 29, 2010); available from http://www.nato.int/cps/en/natolive/official_texts_68580.htm

NATO's Non-Article 5 Crisis Response Operations

Ms. Nicoline Swinkels,Intern

The purpose of this article is to provide a few observations on the Non-Article 5 Crisis Response Operations (NA5CRO), as mentioned in NATO policy documents, and in connection herewith, some remarks on the recently promulgated Allied Joint Publication-3.4 (A) *Allied Joint Doctrine for Non-Article 5 Crisis Response Operations*.

NATO's Creeping Mandate

The original mandate of NATO, the core of its existence, is basically to react collectively against an armed attack in the Atlantic territory against one of its Member Countries. This is a political mandate which is granted by the NATO Member States to the organisation.[1] Missions like these would and will be based on Article 5 of the North Atlantic Treaty and Article 51 of the Charter of the United Nations (UN Charter). Article 51 of the UN Charter, which proclaims the inherent right to self-defence,[2] is therefore the legal foundation upon which the North Atlantic Treaty (in specific, article 5) could be created.

While in the beginning, there was merely the North Atlantic Treaty with some sort of a voluntary commitment, through the decades NATO evolved into a real 'regional'[3] organisation, a military alliance with one clear objective.

In a later part of NATO's existence, in the nineties, the original political mandate was confirmed in a NATO policy document: the Strategic Concept of 1991 (No. 36). Also, while it had been acknowledged that a calculated aggression against the territory of the Allies was less likely and there might be "adverse consequences of instabilities that may arise from the serious economic, social and political difficulties… which are faced by many countries in central and eastern Europe" – thus beyond the territories of the Allies – and a more broad approach to security was welcome, there is no reference in this policy document to NA5CRO whatsoever.

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[1] *The reference here to a 'mandate' implies that there is a mandate in a 'political' context from which no legal obligations or rights can be derived.*

[2] *"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. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council […]."*

[3] *In the context of NATO 2020: Assured Security; Dynamic Engagement. Analyses and Recommendations of the Group of Experts on a New Strategic Concept for NATO, p. 9.*
http://www.nato.int/nato_static/assets/pdf/pdf_2010_05/20100517_100517_expertsreport.pdf Consulted on 04 February 2011

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Accordingly, up to then the mission consisted mainly in preparedness for deterrence and defence in the event of an aggression against the Alliance.[4]

For some time now, it has been ruled out that Article 5 of the North Atlantic Treaty can be used for other sorts of military activities beyond self-defence.[5] One, and the only example of the invocation of Article 5 of the North Atlantic Treaty by the North Atlantic Council (the NAC, created under auspices of Article 9 of the North Atlantic Treaty) was after 9/11 when there was an act of aggression, the terrorist attack from abroad (by individuals of Al-Qaida headed by Osama Bin Laden, protected by the Taleban regime in Afghanistan) against the USA.[6] However, the mission based on Article 5 of the North Atlantic Treaty remained limited with a principal objective the prevention of any (further) terrorist activity.

Only after the agreement on the Strategic Concept of 1991, the objective of NATO became broader in the form of a new preparedness to get involved in crisis management (conflict prevention) and peacekeeping operations under the authority of the United Nations Security Council (UNSC).[7]

The first out-of-area mission was the IFOR mission: In 1995 NATO participated herein, in furtherance of a mandate of the UNSC[8] (which mentioned Chapter VII of the UN Charter and in which permission was given to nations and coalitions of the willing to act, also through the international organisation) to provide support in the implementation of and to ensure compliance with the (military Annex of the) Dayton Peace Accords,[9] which fell under the political direction and control of the NAC.[10]

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[4] *D.S. Yost, NATO Transformed. The Alliances New Roles in International Security, US Institute of Peace Press, Washington D.C. 2000.*

[5] *Gray 2008, p. 117-119 and B. Simma, NATO, the UN and the Use of Force: Legal Aspects, EJIL 10, 1999, p. 3 and 16.*

[6] *"Invocation of Article 5 confirmed" Statement by Secretary-General Lord Robertson http://www.nato.int/docu/update/2001/1001/e1002a.htm Consulted on 04 February 2011.*

[7] *Final Communiqué of the NAC Ministerial Meeting in Brussels, 17/12/1992.*

[8] *Point 14. UNSC Resolution 1031 (December 15, 1995) in which also the authority for operations like Deny Flight but also the authority of UNPROFOR were transferred from the UN to NATO.*

[9] *http://www.nato.int/cps/en/natolive/news_69290.htm Consulted on 04 February 2011.*

[10] *Dayton Peace Accord - Annex 1A: Article 1b.*

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At the end of December 1996, the Foreign Affairs and Defence Ministers announced[11] that IFOR would be replaced by a reduced military presence to stabilize and secure the environment (SFOR), also under Chapter VII UN Charter.[12] It stayed there until 2005.[13]

A more current example of such a mission is the UN-mandated ISAF mission in Afghanistan (which is neither based on Article 5 of the North Atlantic Treaty), which nowadays particularly focuses on "Afghan ownership and leadership in security" and implies gradual transition of responsibilities to the Afghans.[14]

The present-day mandate of NATO thus goes beyond the notion of self-defence and its legal basis, i.e. it is not necessary to have a direct threat which could affect the NATO Member Countries or their territories in the "Euro-Atlantic" area (mentioned but not further defined in the Strategic Concept of 1999 and not limited to a certain area as in Article 6 of the North Atlantic Treaty). This mandate is created in order to envision a variety of events taking place around the world, which basically can have an (indirect) effect on international security and stability for NATO and the Allies, but which is not necessarily the case. While the common notion appears to be that our security is tied to that of other regions,[15] it should not be forgotten that some might also be of the opinion that "the Balkans are more important to us than the Hindu Kush"[16].

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[11] 18 December 1999 Final Communiqué : Meeting of the North Atlantic Council in Defence Ministers Session held in Brussels http://www.nato.int/cps/en/natolive/official_texts_25057.htm *Consulted on 04 February 2011.*

[12] S/RES/1088 (1996) http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N97/026/19/PDF/N9702619.pdf?OpenElement

[13] http://www.nato.int/sfor/ *Consulted on 04 February 2011.*
The NATO forces were replaced by the EUFOR. Currently NATO presence is limited to NATO HQ Sarajevo.

[14] T. Sommer in: NATO at 60. The Post-Cold War Enlargement and the Alliance's Future, NATO Science for Peace and Security Series. E Human and Societal Dynamics - Vol 63, IOS Press 2010, p. 187.
And http://www.nato.int/isaf/topics/factsheets/phase4.pdf *Consulted on 04 February 2011.*

[15] The Declaration on Alliance Security (2009).

[16] T. Sommer in: NATO at 60. The Post-Cold War Enlargement and the Alliance's Future, NATO Science for Peace and Security Series. E Human and Societal Dynamics - Vol 63, IOS Press 2010, p. 187.

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As can be found in the Strategic Concept of 1999, these missions are called Non-Article 5 Crisis Response Operations. NATO is willing to become fully involved herein, which will be decided upon on a case-by-case basis, seemingly in accordance with the Alliance's objectives and, in line with its traditional policy and the process of decision-making, that action will not be taken if there is no consensus to participate among the NATO Member States.

However, as NA5CRO are not directly related to (collective) self-defence and that legal framework, the question is whether there is any legal implication of a reference to a "non-article", in this case non-article 5?[17] Also, does it entail everything that Article 5 of the North Atlantic Treaty is not? That might be considered vague, even within the new spirit that surged in the nineties. In accordance with Article 4 of the North Atlantic Treaty, consultation could lead to consensus on the involvement herein, but this article has not been directly related to NA5CRO, as its initial use had to do with consultation in case of an armed threat prior to invoking Article 5 of the North Atlantic Treaty.[18]

This might be an example of a *creeping mandate*, if explained as a mandate; it has a long-time existence and is enlarged due to developments in the global environment through the course of time, and thus not redundant as such but which actually compels the organisation to adapt it appropriately in accordance with the particular needs of the present (and the future).

Of course, *de iure* NATO Member States do not need the North Atlantic Treaty to exercise their collective right of self-defence (article 51 UN Charter provides the legal mandate). They do not need this either for sending their national troops collectively to another country, as long as it is in accordance with international law, for example based on a UN mandate or a host-nation invitation[19]. Furthermore, there is no provision in the North Atlantic Treaty which forbids the Allies to engage in NA5CRO.

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[17] See also: Z. Hegedus, S.L. Bumgardner & D. Palmer-De Greve (Ed.), NATO Legal Deskbook. Second Edition 2010, Part XI Legal Framework And Legal Basis Of Military Operations.

[18] M. Reichard, The EU-NATO relationship: a legal and political perspective, Ashgate Publishing Ltd. 2006, p 105.

[19] As for example was the case in 2001 in the Former Yugoslav Republic of Macedonia http://www.nato.int/cps/en/natolive/topics_52121.htm Consulted on 04 February 2011.

Accordingly, the reference to a non-article 5 mission is a political commitment, in the same way as there is a political commitment among NATO Member States to get involved in an Article 5 mission. The difference between the two commitments is that the basis of the Article 5 mission can be found in the North Atlantic Treaty (which entails the political mandate), while there is no such basis for NA5CRO. NATO also confirms in its policy documents the commitment to Article 5 of the North Atlantic Treaty, so possibly – to clarify NATO's engagement – this might be done the other way around as well: The commitment to the NA5CRO, as mentioned in policy documents, might also be added to the North Atlantic Treaty as the *Non-Article* article?

An Allied Joint Doctrine for Non-Article 5 Crisis Response Operations - A Few Considerations

Apart from the question on what the legal value and implications of the reference to a non-article, if any, could be, the political engagement has been regulated as well.

Operatively, the main similarity with Article 5 missions is that there is a need for well-prepared forces and support assets. A difference is for example the dissimilar situation between a combat operation on Euro-Atlantic territory and a remote stabilisation operation beyond this territory.[20]

Although all operations can basically be approached in the same "comprehensive manner", the military approach will vary, as to the mandate, constraints and drivers which will influence mission analysis, plan development, plan selection and execution.[21] This is useful for commanders and staff on the operational level.

Here, the *Allied Joint Doctrine for Non-Article 5 Crisis Response Operations*[22] comes into play. It gives guidance on the content of the NA5CRO regarding its principles and operations.

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[20] *NATO 2020: Assured Security; Dynamic Engagement. Analyses and Recommendations of the Group of Experts on a New Strategic Concept for NATO, p. 40.* *http://www.nato.int/nato_static/assets/pdf/pdf_2010_05/20100517_100517_expertsreport.pdf Consulted on 04 February 2011.*

[21] *Allied Joint Publication-3.4 (A) – Preface.*

[22] *www.kam.lt/download/14142/ajp-3.4(a)%20rd1.pdf Consulted on 04 February 2011.*

NATO's Non-Article 5 Crisis Response Operations

An "Allied Joint Doctrine" is a standing arrangement of the organization and consists of a military-strategic doctrine based on experiences in the past with a focus on the future; it will be used as an instruction for military operations consisting of guidelines which have to be executed by the forces in order to successfully work in a certain direction to reach the objective of the mission.

The first draft of the *Allied Joint Doctrine for Non-Article 5 Crisis Response Operations* (AJP-3.4 (A)) came out in March 2005. We are now in 2011 and the latest version of ratification draft AJP-3.4 (A) has been circulating for a while now.

The agreement among nations to use this publication is registered via NATO STANAG 2180[23] and is promulgated on 15 October 2010 (Edition 2). STANAG stands for Standardisation Agreement and is used for "procedures and systems and equipment components which are developed and promulgated by the NATO Standardization Agency in conjunction with the Conference of National Armaments Directors and other authorities concerned"[24] and are accordingly ratified by Nations.

AJP-3.4 (A) consists of three chapters: (I) Context and Overview; (II) Fundamentals and Principles of Non-Article 5 Crisis Response Operations and (III) Non-Article 5 Crisis Response Operations and Related Activities. The Annex (Annex A) consists of a description of political and humanitarian organizations such as the UN, OSCE, EU, ICC, ICRC and IOM.

In the preface NA5CRO are defined as:

"multifunctional operations that encompass those political, military, and civil activities, initiated and executed in accordance with international law, including international humanitarian law, contributing to conflict prevention and resolution and crisis management, or serve humanitarian purposes, in the pursuit of the declared Alliance objectives."

This broad definition seems to keep the door open for any operation which does not fall under Article 5 of the North Atlantic Treaty, and is conducted in line with international law and NATO's policy documents.

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[23] www.kam.lt/download/14143/stanag%202180%20(ed2%20rd1).pdf *Consulted on 04 February 2011.*

[24] http://www.nato.int/cps/en/natolive/stanag.htm *Consulted on 04 February 2011.*

NATO's Non-Article 5 Crisis Response Operations

But, in Chapter Three an indicative list of operations is also provided, which consists of Peace Support Operations, Counter Irregular Activities, Support, Search and Rescue, Non-Combatant Evacuation Operations, Extraction Operations, Sanctions and Embargoes, Freedom of Navigation and Over flight. As indicative as it is, can this - in light of the purpose of the Allied Joint Doctrine - be considered a well-defined common threat perception with clear guidelines on the use of force which addresses all security challenges – as far as it concerns NA5CRO – that NATO wants to face?[25] It does not do so, and this is acknowledged in Chapter One where it is mentioned that the security environment continues to change and it will continue to be complex and global and subject to unforeseeable events. This does not clarify or provides a common threat perception. However, it does help in identifying the common operation considerations and their overlaps.

In Chapter Two, as outlined in AJP-01 and AJP-3, several principles are mentioned which apply to the conduct of NA5CRO. Examples hereof are the Definition of Objective, Unity of Effort, Consent but also "Legitimacy." In this principle a UN mandate is mentioned as "the most widely respected one." It might be confusing, however, that it is also stated that regional mandates from international organisations like the EU or the OSCE "can provide for more timely, preventative, or responsive action than through the United Nations." This is a tricky formulation which should not be interpreted in a wrong way.

It might be possible to base Humanitarian Assistance or Disaster Relief Operations on an EU or an OSCE mandate, but in accordance with international law, this does not suffice to justify any military operation. The use of force is prohibited in Article 2(4) of the UN Charter. The UNSC has the primary responsibility to maintain international peace and security (Article 24 of the UN Charter) and, in accordance with (Chapter VI or) Chapter VII of the UN Charter, shall decide what measures shall be taken to maintain or restore international peace and security. The legal mandate for a NA5CRO in which there will be use of force can thus only be based on a UNSC Resolution, as the UNSC is the only legal authority which can issue a mandate for this kind of mission.
Consequently, it is advisable to rephrase this in AJP-3.4 (A).

In Chapter One it is stated that "NA5CRO will only be conducted under the political control and strategic direction of the NAC", and in Chapter Three, it is stated that the NAC may agree to direct such operations but also that they could be conducted within a bilateral or multinational context. This should be understood in the context of the way it is clarified in the first chapter: in association with other international organisations, notwithstanding that the NAC does neither give away the control nor the direction at any time.

NATO's Non-Article 5 Crisis Response Operations

Further in Chapter One, the distinction has been made in "operations" between the original "Article 5 Collective Defence-Operation" and a NA5CRO, and as it is well-known that no NATO Member State is under any obligation to agree and/or participate herein, it is remarkable to read in this chapter that "one principal difference" between those two type of operations is that "there is no formal obligation for NATO Nations to take part in a NA5CRO". Such an obligation does not exist, *de iure* and *de facto*, in any kind of operation under NATO auspices, not even in the case of an Article 5 situation. Moreover, if consensus has been reached on the initiation of a mission, a NATO Member State is urged in Article 5 of the North Atlantic Treaty to assist individually and in concert with other Allies by taking (1) "such action" but only insofar (2) "as it deems necessary."

These are just a few comments made on the content of AJP-3.4 (A). Although it is still a draft and subject to alteration by NATO Member States, in general it appears to provide useful guidance for its target group and some clarification for the broader public, also in the explanation of the nature of NA5CRO.

"Non-Article 5" or "Expeditionary" – What's in a name?

With the above points in mind, it is worth mentioning that while "NA5CRO" enjoyed frequent mention in documents such as the Strategic Concept of 1999, the "Comprehensive Political Guidance" of 2006, "NATO 2020: Assured Security; Dynamic Engagement. Analysis and Recommendations of the Group of Experts on a New Strategic Concept for NATO"[26] and the NATO website[27]. Reference, however, has not been made to "NA5CRO" in the Strategic Concept of 2010, adopted by Heads of States and Governments at the NATO Summit in Lisbon in November 2010. NA5CRO seems to have been replaced by the name "Expeditionary Operations"[28] as a more functional description for NATO's Non-Article 5 Crisis Operations due to their expeditionary character. That noted, although a different name offered, the concepts underlying non-Article 5 missions remain the same.

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[26] *For example on p. 33.*

[27] *http://www.nato.int/cps/en/natolive/topics_49192.htm Consulted on 04 February 2011.*

[28] *Note that in "NATO 2020: Assured Security; Dynamic Engagement. Analysis and Recommendations of the Group of Experts on a New Strategic Concept for NATO" these two terms have been used interchangeably without any clearly indicated distinction.*

Book reviews: Targeting Terrorists and Targeted Killing in International Law

Mr. Vincent Roobaert, Assistant Legal Adviser NC3A[1]

The legality of terrorist targeting is one of the most controversial issues in international law today. Although various nations have carried these operations for decades, they had received limited attention in the legal literature. After the terrorist attacks on New York City and Washington D.C. on September 11th, 2001, the practice gained more importance and States that had not resorted to targeted killing for a long time resumed these operations.

In *Targeting terrorists*[2], Avery Plaw uses an inter-disciplinary approach to cover the topic. He first looks at the history of terrorist targeting before addressing the legality, politics and morality of terrorist targeting to determine whether a policy of targeted killing can be legally, morally and politically justified.

Mr. Plaw's historical review of terrorist targeting starts with the Israeli practice which evolved in response to the changing character of terrorism. As the author explains, the targeting of terrorists started in the 1950s but one has to wait until 1972 and the Israeli's response to the assassination of Israeli athletes during the Munich Olympics for targeting procedures to be officially established. After a decrease in the number of operations in the mid 1970s, the practice regained importance with the second Intifada. The author also addresses the attempts to prohibit the practice in court which led the Supreme Court of Israel to establish guidelines for targeting in 2006. Under these guidelines, the following must be fulfilled before an operation can be carried out:

(i) there must be convincing information regarding the affiliation of the target with terrorist activities;
(ii) targeting is an option only if no other means are available (*e.g.*, capture);
(iii) the target must be a threat for the future (*i.e.*, targeting cannot be a mean for revenge);
(iv) there must be an investigation after the operation; and
(v) there must be a minimization of civilian casualties.

After reviewing the practice of Israel, the author turns to the US position on terrorist targeting. The author mentions among others the conclusions of the Church and Pike Committees which investigated covert operations carried out in 1975 and the presidential order prohibiting assassination adopted by President Ford in 1975 and confirmed by later administrations. The author then turns to the many legal questions raised by terrorist targeting including the determination of the jurisdiction in which prosecution could take place, whether or not international humanitarian law and human rights law apply and the notion of direct participation to hostilities.

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[1] *This review does not represent the views of NATO, NC3A and/or the NATO Member nations.*

[2] A. PLAW, *Targeting terrorists. A license to kill?, Ashgate, 2008 (ISBN: 978 0 7546 4526 9).*

Book reviews: Targeting Terrorists and Targeted Killing in International Law

The next two chapters deal respectively with the politics and morality of targeted killing. The author first examines whether a policy of targeted killing is politically prudent and whether it is in the best strategic interest of the State. Turning to the moral sphere, the author critically reviews the arguments put forward by the opponents to the practice and raises some questions influencing the conclusion on the morality of targeted killing. The author concludes by making some proposals in relation to targeted killing including the adoption of a normative framework.

Mr. Plaw's approach to targeted killing is extremely interesting, especially as an introduction to the topic. His book provides a very comprehensive study on all aspects of interest to the issue, including history, law, politics and morality.

Targeted killing in international law[3], by Nils Melzer, provides an in-depth analysis of the law applicable to targeted killings. The author, who personally opposes the practice, considers that the current legal framework is sufficiently clear and satisfactory to determine the lawfulness of targeted killing. His study is divided into two areas: the law enforcement and the hostilities paradigms. The part on the law enforcement paradigm is based mainly on the right to life as enshrined in conventional and non-conventional law. Depending on the applicable legal framework, the right to life is articulated either as a prohibition of arbitrary deprivation of life (*e.g.*, Inter-American Convention) or as intentional deprivation of life (*e.g.*, European Convention of Human Rights), whose content converges according to the author. After extensively reviewing the case-law on the right to life and the possible derogations to this right, the author concludes that targeted killing can be carried out in exceptional circumstances only. Turning to the hostilities paradigm, the author investigates whether terrorist targeting is authorised in armed conflict situations. This leads him to expand on the principle of distinction and the concept of direct participation of hostilities as this leads civilians, otherwise protected by the law of armed conflict, to become lawful targets. After reviewing specific rules of the law of armed conflict such as the prohibition of denial of quarters and of perfidy and the rules limiting the use of certain weapons, the author provides some guidelines to determine in which case resorting to targeting killing could be lawful under the law of armed conflict.

Mr. Melzer's monograph is a very articulated and expert account of the legal framework governing targeted killings in both peacetime and during an armed conflict. It is recommended for those who want to expand their knowledge of the topic.

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[3] *N. Melzer, Targeted killing in international law, Oxford University Press, 2008 (ISBN: 978 0 19 953316 9).*

NATO and the Middle East - the Geopolitical Context Post-9/11

Mr. Andres Munoz-Mosquera, SHAPE Legal Office

Mohammed Moustafa Orfy, *NATO and the Middle East. The geopolitical context post-9/11* (New York and Oxon: Routledge, 2011)

Dr. Mohammed Moustafa Orfy is an Egyptian diplomat, writer and academic lecturer. With a wise practical and academic experience in various fields including mass communication, diplomacy, international law, human rights and international relations, he has published four books and written numerous articles covering a wide range of foreign policy issues.

The reason I wrote this review is no other than that of highlighting the perspective and prospective of scholars in the Middle East vis-à-vis the relationship with NATO and link it with the need to start building up bottom-up international agreements with those countries.[1]

Dr Orfy states that while the Arab-Israeli conflict continues, the "*Enhanced Dialogue* [Mediterranean Dialogue since the 2004 Istanbul Summit] *and ICI will surely only reach certain limited, if important, targets, such as increasing practical cooperation, enhancing understanding, giving tailored advice and building confidence. These efforts, however, should not be underestimated, as they are paving the way towards building more constructive relationships in the future.*" This requires much of interoperability[2] this collectively understood as the "…*prerequisites for contributing nations such as the need to communicate with each other, to operate together, to support each other, and to train together*." The way to achieve interoperability from bottom-up is through the already existing NAC-approved military-to-military tools, the Host Nation Support Arrangements (HNS MOUs).

In his book, Dr Orfy also points out that his study seeks to find out if NATO "*could help in building a broad regional security system that could be based on reciprocal guarantees and binding treaties*." The treaties may be referred to the MD SOFA or the like. However, this is a building confidence "round trip" that requires for growing military-to-military contacts, which, in turn, will make grow the need for better regulation.

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[1] *Related to my article: "Host Nations Support Arrangements: the NAC-approved Military-to-Military legal tools."*

[2] *NAC decision at the 2004 Istanbul Summit A more Ambitious and Expanded Framework for the Mediterranean Dialogue (accessed October 17, 2020); available from* http://www.nato.int/docu/comm/2004/06-istanbul/docu-meddial.htm

NATO and the Middle East - the Geopolitical Context Post-9/11

Concerns for a SOFA should start fading away as the interoperability increases for this will help to commonly identify and solve the problems that arise of working together. The parties, then, will see themselves reconciling their interests and being creative in further international agreements that enhance their cooperation. Note also the character of HNS MOUs as "*international confidence building agreements [that] may influence NATO activities in a nation...*"[3]

Dr Orfy points out that "[T]*he overall objective behind NATO's enhanced initiatives* [Mediterranean Dialogue since the 2004 Istanbul Summit] *is to allow NATO to get more involved in Middle East affairs, to increase its awareness about and – consequently – preparation for various security threats emanating from the region. In practical terms, the Enhanced MD and ICI aim at paving the way towards establishing some form of genuine security 'partnership' in the region in the future. Still, it is a yet premature to suggest when this might materialise, or how it would evolve, bearing in mind that known challenges attendant to, and possible unexpected developments within, complicated regional crises.*"

The improving collaboration with non-NATO countries, such as the MD and ICI, built upon cooperation in exercises and operations, to include disaster-relief operations, supported by standing HNSA, might well create a framework that would support the further development, even in the field of questions that involve sensitive issues impacting on their sovereignty and reciprocity.

Neither NATO nor our partners can disregard the fact that the 2010 Strategic Concept seems to be the answer to many concerns with its call to deepen in the cooperation, inter alia, with MD and ICI countries. This will require a significant dose of initiative and creativeness from both sides.

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[3] *Allied Joint Publication 4.5 (2005) on Host Nation Support Doctrine and Procedures, 1-9; (accessed October 17, 2020); available from http://www.nato.int/docu/stanag/ajp45/ajp45.pdf*

Amendment of STANAG 2449

LTC Zoltan Hegedus, ACT/SEE Legal Office

STANAG 2449 on the Training in the Law of Armed Conflict was originally approved in 2004.

At that time, after the bulk of the main operations in the Balkans, in the middle of the operations in Afghanistan, whilst the operation was still going on in Iraq, Allies recognized that a minimum set of standards were needed to harmonise the training in LOAC.

The original – and still in force – version of the STANAG 2449 focuses on the principles of the LOAC itself and gives guidance on when and how to apply the LOAC. The main text itself is no more than three pages. Annexed to it are the list of main LOAC conventions and three lists of what LOAC training programs shall contain for all military personnel, for non-commissioned officers and for officers.

Currently not all NATO nations ratified the STANAG 2449 and many of the ratifying nations had given several comments and reservations, the main reason being that the STANAG interprets the LOAC rules and tries to identify the scope of application. One problem with this approach is that it shall be kept in national sovereign realm, the other is that even in the case that NATO wishes to make a declaration on LOAC principles, it shall not be done in a relatively low-level and legally / politically non-binding tool like a STANAG.

Work on the amendment of the STANAG 2449 started in 2008 with one meeting in Brussels; it was put on hold for one year sleep and in November 2009 an extensive work re-started within the framework of the LOAC Working group with delegates representing eight NATO nations, two PfP nations (Switzerland and Sweden), and the representative of the ICRC. The following meetings were hosted by the Czech MOD in Prague in May 2010 and by ACT Staff Element Europe in September 2010. The next meeting will be in March 2011 in Oslo, hosted by the Norwegian Defence Staff College, where we expect at least 22 persons from 16 nations.

ACT/SEE proposed the concept for the amendment and it was based on the approach that the STANAG 2449 shall not repeat and re-interpret the principles of LOAC, rather it shall give real and practical guidance on how to train personnel and what we shall expect from a trained personnel.

Under the new concept the main text of the STANAG will radically change and will be slightly extended, while amending the old annexes and adding new annexes. New Annexes will include:

- Personnel categories with specialized LOAC training requirements,
- Guidelines for evaluation,
- LOAC Training Module Template.

Amendment of STANAG 2449

The LOAC Training Module Template is designed to be a detailed training manual of all the issues listed in the Annexes on the LOAC training program. It aims at offering a full scale of the minimum LOAC knowledge, while the national trainers and instructors will be free to use and change this template according to their own national LOAC interpretation, training principles and methodology.

The plan is to finalize the draft in March and then initiate the approval at the level of NATO's standardisation authorities.

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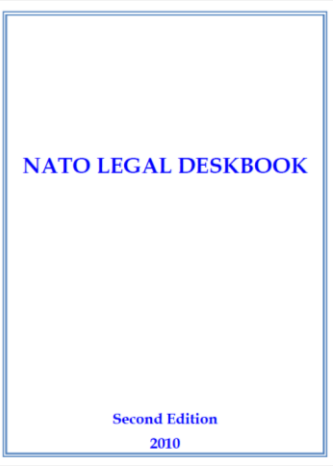
NATO Legal Deskbook

LTC Zoltan Hegedus, ACT/SEE Legal Office

The Legal Office of ACT Staff Element Europe published the second edition of the NATO Legal Deskbook in September 2010.

The first edition, finalized and issued in February 2008, was created and edited by Commander Jaimie Orr, HQ SACT, Mr Sherrod Bumgardner and Mrs Dominique Palmer-DeGreve of ACT/SEE. The initial work had started a few years earlier, when ACT and SHAPE legal advisors agreed that the information provided during lectures at the NATO School had to be captured and shared beyond the lecture hall. Beginning 2006, all the lectures from the Legal Advisor Courses in Oberammergau, in addition to other legal training materials were transformed into a coherent sequence of chapters, completed with additional information useful for every legal advisor.

In 2009 we realized that the legal challenges either in the "peacetime" functioning of NATO or in the "wartime" areas like operations necessitated a thorough review of the Deskbook and inclusion of new topics. We literally went through it word by word and made comments, suggestions, changes, and then asked the designated contributors to work on their chapters. The result has become a longer Deskbook (by about 50 pages) with more but generally shorter chapters, updated references and annexes.



Among the contributors were legal advisors from both HQ SACT and SHAPE, NATO interns, retired judge advocates, NATO agency legal advisors, legal advisors from the EU and colleagues in national positions. All contributors worked on a non-honorary basis and provided their best experiences.

The Deskbook is aimed equally to the newcomer military legal advisor who rotates in three years, to the experienced colleague in NATO civilian post, as well as to the many national legal advisors who either on a daily basis or from time to time have to deal with NATO legal issues. Therefore we had to keep the balance between basic and advanced knowledge, have short introductions, but detailed practices as well, and make it transparent in the structure of the text what is the minimum we all should know and what needs to be added to that.

The Deskbook has a detailed summary and an extensive list of reference materials to each chapter, as well as a full list of all the multilateral NATO treaties to which all the Member States are supposed to be a Party.

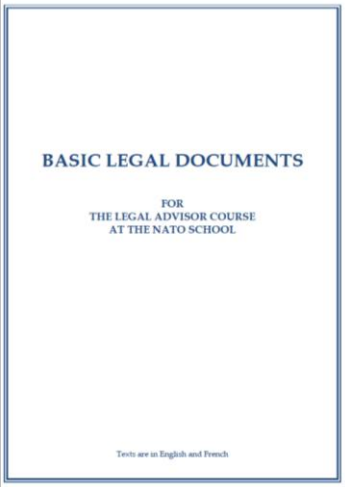
The Deskbook is available in electronic version for anyone who is interested; it has no classification and can be used freely in work, training and/or education, with the limitation that reference shall be made when it is directly utilised.

NATO Legal Deskbook

Work on the next, hopefully 2011 edition has already begun. The 2011 edition is planned to have an extensive annex or supplement on the basic NATO treaties in English and French. NATO published the Basic Treaties many years ago; then HQ SACT Legal Office maintained and regularly printed a consolidated version. A first draft of the latest version edited by ACT/SEE Legal Office will be updated and used for the Deskbook. As a test, it was already used at the Legal Advisor Course in October 2010.

In parallel with the traditional methodology, there will be an internet based technique for possible contribution: the Comprehensive Legal Overview Virtual Information System (CLOVIS), led by the ACT/SEE Legal Office, will have a feature, namely the Deskbook in a Wikipedia format, where NATO legal advisors will be able to comment and complement the Deskbook wiki pages, which in turn, can be used in the hardcopy edition.

(If you wish a copy of the Deskbook or the Basic Legal Documents, please send an email to zoltan.hegedus@shape.nato.int)



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Spotlight

Ms. Claire Gaudin, Assistant Legal Advisor NCSA Sector Mons

Name: Ms. Claire Gaudin

Rank/Service/Nationality: French civil servant in an OF-3 PE position

Job title: Assistant NCSA Legal Adviser

Primary legal focus of effort: Law of International Organisations, merger of entities endowed with international legal status in the framework of the NATO reform, legal status of the Deployable CIS structure

Likes: 5 months old baby Jeanne

Dislikes: Silver spoon cafeteria

When in Mons, everyone should: Taste Marcolini's Belgian chocolate and Dandoy speculoos

Best NATO experience: Great effort of pedagogy from everyone when I arrived in this position

My one recommendation for the NATO Legal Community: Longue vie a C.L.O.V.I.S.!

Claire.gaudin@ncsa.nato.int

Spotlight

Major Ibrahim Korkmaz, Legal Advisor

NRDC-T

Name: Ibrahim KORKMAZ

Rank/Service/Nationality: Major / Turkish Army

Job title: Legal Advisor NRDC-T, Istanbul

Primary legal focus of effort: Operations and International Law

Likes: Travel, spending quality time with family and friends

Dislikes: Very hot weather

When in Istanbul, everyone should: Take a boat ride on the Bosphorus , visit Topkapi Palace and shop at the Grand Bazaar

Best NATO experience: Working in an international environment

My one recommendation for the NATO Legal Community: Less usage of acronyms and abbreviations especially to the people new to NATO!

HAIL

&

FAREWELL

Hail

NCSA : Ms. Claire Gaudin (FRA) joined in November 2010.

NRDC-T : Maj Ibrahim Korkmaz (TUR A) joined in November 2010.

CC-Air izmir : CMSGT Dursun Oncel (TUR A) joined in November 2010.

NATO HQ Sarajevo : LTC Kim Ludwig (USA AF) joined in January 2011.

Civil-Military Cooperation Centre of Excellence : CPT Anne-Marij Strikwerda joined in February 20

Farewell

CC-Air Izmir : MSGT Luftu Top (TUR A) left in October 2010.

JWC : Col Geir Fagerheim (NOR A) left in January 2011.

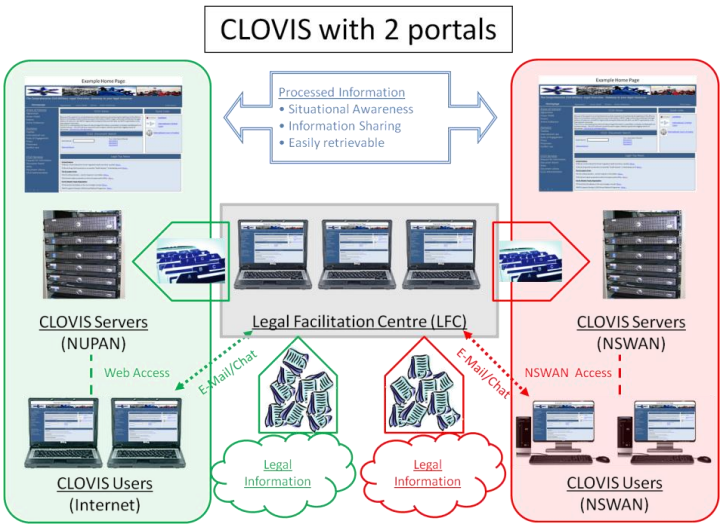
NATO HQ Sarajevo : LTC Diane Boldt (USA AF) left in January 2011.

Civil-Military Cooperation Centre of Excellence : CPT Arn Oosterveer left in January 20

GENERAL INTEREST/NATO IN THE NEWS

CLOVIS (**C**omprehensive **L**egal **O**verview **V**irtual **I**nformation **S**ystem)

The North Atlantic Alliance requires the capability to reliably access legal documents and knowledge in an era where rapid responses are vital, versatility is critical, and resources are constrained. To move beyond traditional approaches of knowledge sharing Allied Command Transformation is pursuing ways to encourage an interactive professional dialogue among legal advisers within NATO that ultimately may involve outside partners and civil society actors.



The Comprehensive Legal Overview Virtual Information System (CLOVIS) concept is part of an experiment to improve the maintaining, sharing and use of collective legal knowledge that is valuable to NATO, its member and partner nations, and potentially other international organizations and selected non-government organizations. CLOVIS is a tool to improve institutional awareness of controlling law and legal guidance, encourage collaboration for problem-solving.

The experiment intends to be a highly customized answer to the unique challenges facing the NATO legal community by connecting resources that better enable the NATO legal community to support Alliance goals, activities, and operations.

A repository of legal documentation and knowledge will be an important element of the community support; however, the central element of the portal will be the creation of a coherent community that actively engages together on the common issues it addresses.

The portal will facilitate a move from static knowledge collecting and mere display of information, to a dynamic tool that will facilitate interactive information sharing, interoperability and user centered approach. Users themselves will be invited to contribute to the content of the portal, to discuss contemporary legal issues relevant to the community and add value for the benefit of the entire community.

If you have any questions or comments about CLOVIS, please contact:

Lewis Bumgardner, Sherrod.bumgardner@shape.nato.int, (+32) 65 44 5499; or
Laurent Zazzera, Laurent.zazzera@act.nato.int, (+1) 757 747 3684

"It is by universal misunderstanding that all agree. For if, by ill luck, people understood each other, they will never agree."

Charles Baudelaire

GENERAL INTEREST/NATO IN THE NEWS

- Call for papers for the 2011 Lieber Society Military Prize. Papers submitted in this competition must be in English (or translated into English if written in another language) and not more than 35 pages long if printed with single line spacing or 70 pages if written with double line spacing, including footnotes. For more information :

  http://www.asil.org/index.cfm

- Indefinite Detention Under the Laws of War – article on the recent acquittal of the first Guantanamo Bay detained to stand trial in US federal court.

  http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1729221

- An article on the semantic legal ordering can be found at :

  http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1729301

- Atlantic-community.org is the first online platform for transatlantic debate on key issues of international politics and globalization.

  http://www.atlantic-community.org/index/

- An article on the foundations and the legacy of the contested independence of Kosovo can be read at:

  http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1730708

- Sources of international law including treaties, customs, general principles of law, resolutions and declarations of international organizations, and writings of judges and legal scholars can be found at the following site:

  http://www.hg.org/international-law.html

GENERAL INTEREST/NATO IN THE NEWS

- Case Study on Transitional Justice in Ancient Athens published by Harvard Law School :

  http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1740623

- Speech on "Building Security in an Age of Austerity" given by NATO Secretary General at the 2011 Munich Security Conference can be found at :

  http://www.nato.int/cps/en/SID-B23FEA35-6702C377/natolive/opinions_70400.htm?selectedLocale=en

- NATO Multimedia Library's Libguides that provide assistance for research, subject guides and useful resources compiled by the NATO Librarians.

  Please go to : http://natolibguides.info/welcome

- In line with Secretary General Rasmussens's call for smart, modern defence, senior representatives from NATO Nations met on 7 February at the NATO Consultation, Command and Control Agency (NC3A) to discuss boosting multinational cooperation in the area of cyber defence.

  http://www.nato.int/cps/en/SID-25D8EF6E-8F7D3C6E/natolive/news_70519.htm

- The Training Synchronisation Conferences will consolidate Education Training Exercise & Evaluation (ETEE) efforts across the Nations and partners by harmonising conferences to ensure maximum efficiency without loss of output. They will amalgamate the following four ETEE conference events:
  - The NATO Training and Exercise Conference (NTEC)
  - The NATO Individual Training and Education Conference (NITEC)
  - The Steering Group NATO Training Group (SGNTG) meeting
  - The NATO Partner and Education Training Network (NPETN) Conference

  http://www.act.nato.int/trainingsync

"*Science is organized knowledge. Wisdom is organized life.*"

Immanuel Kant

UPCOMING EVENTS

- The next Operational Law Course will be held at the NATO School from April 11 to 15, 2011. The next Legal Adviser's Course will be held at the NATO School from May 23 to 27, 2011.

  For more information on courses and workshops, please visit

  http://www.natoschool.nato.int

- The Second Biennial War Crimes Conference will be organised in London at the Institute of Advanced Legal Studies on 3-5 March 2011. The conference will explore themes surrounding judicial roles and responses to war crimes. For enquiries please contact l.r.charlesworth@ljmu.ac.uk or Judith.rowbotham@ntu.ac.uk

- The International Security Law Conference will take place at the NATO School from 20 to 24 June 2011. The conference will examine the domestic and international legal framework that shape NATO, EU and UN policy and international relations. More information at:

  http://www.natoschool.nato.int

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