



Legal Gazette

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ANDRES MUNOZ MOSQUERA

Edited by **Thomas Hughes** and **Georgina Dietrich**

ACT SEE LEGAL OFFICE

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Introduction

Dear Colleagues and persons interested in NATO,

It is our pleasure to bring to you the 29th Issue of the NATO Legal Gazette. As always, this issue is sustained by authors who wish to share their knowledge on topics of interest to our extended Alliance legal community. This issue comes on the heels of our 2012 NATO Legal Conference in Tirana, Albania. Our 7th annual conference was the largest yet. For those who were unable to attend, the *Executive Report* is contained in this issue. Many thanks to the Ministry of Defence of the Republic of Albania's Legal Office, and to the many participants who made the 2012 NATO Legal Conference so successful.

This issue of the Gazette contains four articles. The first is from the SHAPE Legal Adviser, Andres Munoz Mosquera. The article answers seven basic questions about international law, international organizations and SHAPE. This Q&A is intended for all NATO newcomers and veterans alike. The second is provided by JWC Deputy Legal Adviser, David Nauta, spotlighted in our last issue; David's article is titled *The Role of NATO in the Exercise of Jurisdiction by States*. This article explores the jurisdiction to prosecute criminal offences committed by deployed personnel.

In the next article, Thomas Hughes provides his view on tribal justice in rural Afghanistan in light of recent executions by the Taliban. Thomas is an intern in the ACT/SEE Legal Office, currently in his final year of law school at St. John's University School of Law, in New York. Andres' second piece tackles the difficult topic of the NATO SOFA Article II. In it, he discusses the application of EU law to NATO entities.

In our final article, our prolific NCI Agency colleague Mr. Vincent Roobaert shares his review of *Weapons and the Law of Armed Conflict* by William Boothby (Oxford University Press, 2009). This review is followed by spotlights of several members of our NATO Legal Community. The issue closes with the hails and farewells to our always changing colleagues as well as providing general news and information about upcoming events. Should you have an article that you believe would be of interest to the NATO Legal Community, I always welcome reviewing it for possible publication here in the NATO Legal Gazette.

Sincerely,

Sherrod Lewis Bumgardner,

Legal Adviser

Allied Command Transformation Staff Element Europe

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**Many thanks to the
Ministry of Defence of
the Republic of
Albania and to all
those who made the
2012 NATO Legal
Conference so
successful.**

NATO Legal Conference 2012 - Summary Conference Report

Georgina Dietrich
Intern, ACT/SEE Legal Office

The Ministry of Defence of Albania hosted the 2012 NATO Legal Conference entitled "Cooperating with NATO" at the Tirana International Hotel and Conference Center, Albania on 24-28 September. The 7th Legal Conference – being the first to have a five day format and also the largest of its kind with 140 participants –coincided with the 100th anniversary of the Independence of Albania.



Mr. Arben Imami, Minister of Defence of the Republic of Albania

Monday, 24 September 2012, encompassed a two-part NATO legal plenary round table held for NATO personnel only. The topics of the morning session included a CLOVIS Update, an overview on the mission, roles and authority over NATO Centres of Excellence as well as a presentation on recent developments relevant to the NATO Information Management Policy. After a short coffee break, the Afghanistan Update focussed on status and immunities of NATO and its partners in Afghanistan. Following the luncheon in the La Pergola Terrace Restaurant at the conference centre, the legal plenary round table moved on to addressing the legal requirements of NATO re-organisation. On the one hand efforts to protect and defend status, immunities and entitlements of the alliance, NATO bodies and their activities and personnel were discussed. On the other hand the issue of unity of effort amongst NATO's different juridical authority – NATO HQ, NATO Agencies, HQ SACT and SHAPE –was tackled. After a further coffee break the plenary turned its attention to the NATO Appeals Board re-organisation and finally concluded with a question and answer session recapping on the entire day's topics. Overall, the NATO day format effectively facilitated an internal exchange of ideas allowing for fruitful debates and sustainable outcomes.

Tuesday 25 to Friday 28 September another 40 participants from ministries of defence, ministries of foreign affairs, international organisations and non-governmental organisations joined the conference exemplifying their efforts in "Cooperating with NATO" on a daily basis by attending this year's conference.

An introductory policy overview and illustration of practical realities when cooperating with NATO set the tone of Tuesday morning's panel, followed in the afternoon by an EU Parliamentarian outlining the legal implications deriving from changes in today's security landscape. Furthermore, two distinguished Albanian parliamentarians shared their perspectives on the process of Albania developing from a NATO partner into a NATO member State.

Wednesday's programme consisted of three breakout sessions held in parallel: NATO cooperation in Cyber Activities, Exploring New Partners with Industry and Nations, and Evidence Based Operations. After lunch participants and speakers had the option to take part in a cultural trip to Kruja to visit the town's renowned museums and historical bazaar.

Thursday's agenda concentrated on NATO's cooperation with global partners, such as the ICRC, and NATO's cooperation with other entities in counter-terrorism. In the evening, the Palmanova Resort conference dinner provided a venue for a final roundup of all participants and speakers.

The focal point of the final conference day's discussions rested on the relationship of International Humanitarian Law (IHL) and International Human Rights Law (HRL). Firstly, the systemic correlation between HRL and IHL was identified. Secondly, the panel discerned the possible application of HRL in armed conflicts and the conditions that may attach to such an implementation. Finally, the speakers examined the practical relationship and nexus between IHL and HRL – should HRL provisions apply in practice.

To sum up, the 2012 NATO Legal Conference successfully identified the "who", the "what" and the "why" of this year's title, "Cooperating with NATO". The panels considered a diverse spectrum of NATO's partners – be it in industry, international organisations or nations – who all cooperate with NATO. Furthermore, the issues requiring cooperation – from evidence based operations, cyber activities, counter terrorism, the role of parliamentarians in security matters to information and knowledge management – were clearly identified. Lastly, the conference did not shy



Kruje, Albania

away from addressing the question of "why" cooperation is necessary – prompting a discussion of the root-causes for cooperation with NATO. By doing so, this year's panelists rendered justice to one of the key questions driving legal reasoning. Hence, the 2012 NATO Legal Conference in Tirana, Albania accomplished its aims and well prepares the

NATO Legal Community for the 2013 NATO Legal Conference on 24-28 June 2013 in Tallinn, Estonia.

THE 7 QUESTIONS ON: INTERNATIONAL LAW – INTERNATIONAL ORGANIZATIONS – SHAPE

Andrés Muñoz Mosquera¹

Legal Adviser, SHAPE
Dedicated to Steve Rose

Q&A

Q1. WHAT IS SHAPE?

NATO was founded by the 1949 North Atlantic Treaty. This treaty in its Article 9 gives the North Atlantic Council the prerogative to create subsidiary bodies. NATO is an intergovernmental organization as the governments of nation-states voluntarily join, contribute financing and make decisions within the organization. Another intergovernmental organization, with equal features, is the U.N.

SHAPE is a Supreme “International Military Headquarters,” one of the Council’s subsidiary bodies, with independent legal personality in accordance with Article 10 of the 1952 Paris Protocol that supplements the 1951 NATO SOFA. SHAPE is therefore an international organization (IO) and therefore a subject to international law. Similarly, the U.N. has established its own subsidiary bodies such as the U.N. Specialized Agencies (ILO, UNHCR, ITU, FAO, UNESCO, etc.), each enjoying the status of international organization and having specific *accords de siege*. The 1967 SHAPE-Belgium Agreement (SBA) supplements the Paris Protocol [in accordance with its Article 16] and is the *accord de siege* for SHAPE. But, what is an *accord de siege*?

An *accord de siege* is a type of treaty concluded between an IO and a State to be hosted in the territory of the latter in order to define its legal status. It is, in particular, to guarantee the independence of the IO and its personnel, which drives the fact the State host warrants privileges and immunities for both [IO and personnel] and extraterritorial rights for the premises.

Belgium did not disregard these facts of international relations and international law and SHAPE has number 390 in the Protocol Directorate registry of IOs of the Belgian Ministry of Foreign Affairs.

The evolution of the history of IOs as a field of study suggests, in the year 2011, no clear answer. The analytical shift from ‘institutional regimes’ to ‘institutions

¹ “These seven questions could not have been “answered” without the comments received by Thomas E. Randall (ACO Legal Advisor), Michele Vrydag-Johnson (Legal Advisor, SHAPE), Stein Westlye Johannessen (NATO Special Operations Headquarters Chief Legal Advisor), Matt Galas (NATO CIS Group Legal Advisor), Claire Gaudin (Assistant Legal Advisor, NCIA at SHAPE), Nikoleta P. Chalanouli (Assistant Legal Advisor, Consultant SHAPE HIT), Mette P. Hartov (HQ SACT Staff Legal Officer) and Max Johnson (former SHAPE Legal Advisor)”

processes' to 'organizations roles' to 'international regimes' have expanded the concept of IOs to include almost any type of patterned, repetitive behaviour as those of intergovernmental organizations. Today, contrary to the 1950s concept and that in the Law of Treaties [Art 2.1.i "'international organization' means an intergovernmental organization"], international organizations are many things as stated by the U.N. International Law Commission: "It should be, however, emphasized that the adoption of the same definition of the term 'international organization' as that used in the Vienna Convention has far more significant consequences in the present draft in that Convention'. In any case, NATO and [more specifically] SHAPE match with the classic definition.

Q2. WHAT IS SHAPE'S LEGAL REGIME?

A regime is the set of governing rules under which an entity operates. SHAPE operates under the "NATO SOFA family," i.e., the 1951 NATO SOFA on the status of forces, the 1952 Paris Protocol on international military headquarters, the 1967 SHAPE-Belgium Agreement (SBA), and the lower level agreements and practices developed over the years. Moreover, NAC decisions taken by the NATO nations' plenipotentiaries (PERMREPS), or met in ministerial sessions or in heads of states and prime ministers summits confirm the State practice.

SHAPE's regime provides a legal personality of a functional character and acts within the juridical capacity provided by the 1952 Paris Protocol, i.e., to permit SHAPE operating on behalf of the 28 NATO nations and for their interests. Current SHAPE prerogatives were given by the NATO nations in the Paris Protocol, which includes that any difference in the interpretation and application of the above treaties and agreements shall be settled by negotiation, i.e., neither the "Allied Headquarters" [SHAPE] nor a NATO-nation can impose on each other unilateral decisions. If negotiations do not end up in agreement, the matter has to be referred to the NAC for final resolution. This consecrates the intergovernmental spirit of NATO versus the EU and EC supranational principles, which permits them to impose on the member nations, via directives, obligations to which they [the nations] have to comply with.

Q3. WHAT IS THE PURPOSE OF THE PRINCIPLE OF AUTONOMY AND INDEPENDENCE OF IOs WITH RESPECT TO RECEIVING STATES/HOST NATIONS?

In accordance with the U.N. International Law Commission report of 1989 *"one of the prerequisites for the satisfactory performance by an international organization of the functions for which it was established is, [already stated], the enjoyment of absolute autonomy...[Without] an appropriate instrument for actions, without the means to be able to act and without the necessary material support, the international organization would be unable to perform the tasks conferred on them by their constituent and other legal instruments."* With respect to the privileges and immunities, the resources of international organizations *"are assigned exclusively*

to the fulfillment of the organization's purposes, hence the principle of intangibility and inalienability of the resources of international organizations." The Commission also states that "[A] most important privilege, and one which, in the practical life of international organizations, is essential to their full functioning, is the privilege relating to the inviolability of property and organization's premises. It is the principle which vouchsafes an international organization its autonomy, its independence and its privacy."

The Council of Europe Committee of Experts on Public International Law stated in March 1988 that "the privileges and immunities of international organizations should only be granted to meet the functional needs of international organisations. They should not be granted simply for reasons of prestige. Nor should States give undue weight to the idea of uniform treatment. Each organization should be considered on its own merits."

What about IOs' personnel? The principle of independence applies no matter if they are paid by the IO or ceded by the participating nations in secondment, as long as the personnel holds a NAC-approved international post (or PE) or the post has been agreed in a separate international agreement. These personnel are granted privileges and immunities, which together with the principles of impartiality and loyalty to the Organization permit the proper functioning of it in accordance to what is mandated by its constituents as a whole.²

Why do Belgian nationals, part of the PE, enjoy limited privileges? The SBA reflects the agreement reached in 1967 by SHAPE and Belgium, based on the principles of free consent, good faith and *pacta sunt servanda*, for the establishment of SHAPE in the territory of Belgium. The text permits Belgian nationals to enjoy certain privileges and as such has been interpreted by the parties for the last 44 years, as it is confirmed by a CISHIC (currently CIPS) letter dated 3 March 1992 with a "note documentaire" issued by the Cabinet of the Belgian Ministry of Finance. Note that this practice is consistent with international law and the treatment of international staffs.

Why? For the need of preserving the principle of independence described above.

How? Belgian and SHAPE, as subjects of international law, are obliged by the principle of *pacta sunt servanda*. Moreover, Belgium, by its constitution, is subject to "international and supranational obligations." Belgium has to respect its internal procedures, and that was done with the formal approval and publication in the *moniteur Belge* of the SBA. Therefore, the SBA became part of Belgian legal body

² Serguei Tarassenko and Ralph Zacklin, *International Administration: Law and Management Practices in International Organisations*. "Independence of International Civil Servants (Privileges and Immunities)", ed. Chris de Cooker (UNITAR: Martinus Nijhoff Publishers, 1989) III.

and it is Belgian law. Article 172 of the Belgian Constitution states that "...No exemption or reduction of taxes can be established except by law." As the Paris Protocol and the SBA are Belgian law the constitutional obligation is complies with Belgium's constitutional requirement. This principle, which applies to the fact that the Belgian members of SHAPE occupying an international post can enjoy limited privileges, has been confirmed by the Belgian Constitutional Court. The high Court, in accordance with its judgment 3 of November 1993 num. 77/93, rules that the constitutional rules of equality do not prevent a different treatment of certain categories of persons, if based on an objective criterion and can be justified and pertinent and proportionate with its objective and nature. These constitutional requirements are fulfilled by the Belgian nationals at SHAPE occupying an international post, with international functions on behalf of the 28 nations that form NATO in order to preserve their independence. It is important to note, that Constitutional Court rulings oblige Belgian administration.

Q4. INDEPENDENCE OF IO. INTERNATIONAL LAW AND NATIONAL LAW (RESPECT VS OBEY): WHAT DO BELGIAN COMMENTATORS THINK? WHAT HAVE THE BELGIAN JUDICIARY (HIGH COURTS) RULED OVER THE YEARS?

The international status of an IO such as SHAPE precludes its legal status from being determined by any type of national law. This explains the difference between respecting the law and obeying/complying with the law of the receiving State or Host Nation. As Pierre Klein states in *La responsabilité des organisations internationales dans les ordres juridiques internes et en droit des gens* (The responsibility of international organizations in internal legal orders and public international law), Bruylant, ULB, 1998, p 14: "a solution of this type [complying with Host Nation's law] would imply that the organization be made subject to a State and its independence negotiated in relation to its members. As such, reference must be made exclusively to the internal law of the organization to resolve any issue related to its running..."

Note also that the Belgian Court de Cassation rightly considered (see Cassation, 12 March 1968, Immobiliara SA (company under Luxembourg law) vs Belgian state, Ministry of Finance, JT, 1968, 290 and 27 January 1977 (JT, 1977, 438 – quoted by Jean Salmon, ULB coursebook on international public law, Vol 1, 1992/93 edition, p.89) that "an international agreement cannot be interpreted unilaterally by authoritative means: since such agreements are by their very nature an emanation of the will of the high contracting parties, one of them may not bind the other by making a unilateral interpretation of the agreement through legislative channels". The second ruling of the Cour de Cassation stipulates that "the interpretation of an international agreement... cannot make reference to the national law of one of the contracting States. If the text requires interpretation, this must take place on the basis of aspects specific to the Agreement itself, in particular its object, its aim and its context, as well as the preparatory work behind it and its origins. It would be pointless to draft an agreement intended to establish international legislation if the

courts in each State were to interpret it on the basis of concepts specific to their own law". In a similar sense, the terms used by the authors of a treaty must be interpreted on the basis of their internationally-understood meaning (i.e. that jointly intended by the parties) and not on the basis of meanings that they may have in national law (Cassation/Quashing), 13 February 1911, Pas, I, 125; and above-mentioned rulings).

A good manner of visualizing this is seeing SHAPE as, once the former SHAPE Legal Advisor, Max Johnson, said it [paraphrased]: "a ...'state' in the state - it has a 'piece of geography', it directs an internal activity, it has its 'people' and it acts with elements of a 'kind of sovereignty'".

Q5. WHY IS STATE PRACTICE SO IMPORTANT IN INTERNATIONAL RELATIONS?

Article 31.3(a) and (b) of the 1969 Vienna Convention of the Law of Treaties, to which Belgium is a party, establishes the principles of practice with respect to the interpretation of international agreements: *"any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provision; any subsequent practice in the application of the treaty which establishes the agreements of the parties regarding its interpretation..."*

A change on how agreements –high or low level ones (for example the 2004 Administrative Vehicles Arrangement) – are interpreted including the way SHAPE implements the privileges and immunities, and their fiscal entitlements therein provokes a change in the practice and, consequently, the way the SBA and its subsequent agreements are interpreted by the parties. Management and execution, as well as NATO and local policies and directives, and administrative acts, related to said privileges and immunities, and fiscal entitlements, create practice and, therefore, require a deep legal review to avoid legal risks. Several commentators agree that the International Organizations powers are not solely the result of the express consent of states for this would equate to deny that institutional practice exists and is accepted,

Q6. WHAT IS A UNILATERAL DECLARATION?

This is a process of making law [legal obligations] and has the same rank as those providing for custom and treaty-making. A unilateral declaration entails obligations for the formulating State or IO. Either SHAPE, when in the context of a Supplementary Agreement (Article 16 Paris Protocol), or a NATO nation can, through unilateral acts, change their legal obligations.

Unilateral declarations can be formulated orally or in writing and have to be done by an authority vested with the power to do so (Belgium: King, Prime Minister, Ministers and the Cabinet/Council of Ministers, or other persons or organizations that have received a proper delegation of authority); SHAPE: Supreme Allied Commander Europe (SACEUR) or SHAPE Chief of Staff.

Normally a unilateral declaration is a public declaration that manifests the will to be bound, and it is of a good faith character.

A 'protest' is a unilateral declaration intended to object to an act or actions performed by a subject of international law. 'Recognition' of a situation or conduct over time turns a situation as legitimate and its legal consequences are that of the recognizing subject of international law is barred from subsequently challenging what has been previously recognized. The recognition can be explicit or tacit and may be manifested not only by inertia but also by non-exercise of a right, or mere passage of time.

'Notification' is the act by which a subject of international law makes others cognizant of a certain action; its legal effect is to preclude the others from subsequently claiming lack of knowledge. The counter-action is a 'protest.'

'Promise' is equal to establishing a new rule binding the promising subject of international law towards the others. Promise is a unilateral declaration by which a State undertakes to behave in a certain manner as states the official 2006 Belgian Hosting Policy. This obligation is assumed independently of any reciprocal undertaking by the other subjects of international law. The International Court of Justice describes the forms as "public statements and proclamations, and in other ways."³

Q7. IS THE EU REGIME DIRECTLY APPLICABLE TO SHAPE OR NATO? HOW MUCH DOES ARTICLE 307 OF THE TEC (351 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION) AFFECT ANTERIOR TREATIES?

No, SHAPE has a unique legal regime in accordance with its foundational treaties, 44-year practice and low level agreements (see Q2). Since the EU directives become, in many cases automatically the EU members' national legislation, the understanding of their implementation on SHAPE has to be referred to Q4.

Notwithstanding the above, however, there is debate related to Article 307 of the TEC (Article 351 of the consolidated version) that deserves a short analysis for sake of building a strong argument on the question of EU regime vs NATO/SHAPE regimes.

The 1951 NATO SOFA was extended to IMHQ by the 1952 Paris Protocol and this was complemented in Belgium by the 1967 SBA. Therefore, the legal framework that rules the operations of SHAPE is dated 19 June 1951. The same is true for the 1951 Ottawa Agreement and its NATO-Belgium Supplementary Agreement.

³ North Sea Continental Shelf Cases, Judgment of 20 February 1969, ICJ 1969, para 27

Article 351 (ex Article 307 TEC) of the Consolidated Version of the Treaty on the Functioning of the European Union states:

"The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties.

To the extent that such agreements are not compatible with the Treaties, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under the Treaties by each Member State form an integral part of the establishment of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States."

The EU treaties and their legal order that oblige the EU nations emanate from international law and, therefore, it has to comply with its principles and provisions. The principle of integration in international law subjects EU nations to not violate treaties applicable at the time the EC was created. This also preserves the principle of the *status quo ante* (situation as existed before) and the rule of customary law *pacta sunt servanda* (agreements must be kept).

We need to make reference, as it relates to NATO, to Article 17 of the Consolidated Version of the Treaty on European Union states:

"1...[T]he policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework."

While much debate has taken place among commentators as result of several cases ruled at the European Court of Justice on Article 307, the case of NATO has proven unique in spite of current EU trend of interpreting international law under the EU law perspective and the question of hierarchy. Therefore, the joint reading of the above articles 'clears the coast' of the existence of any obligation

from any NATO nation, member of the EU, to have an obligation to denounce any of the NATO treaties for being incompatible with EU law. This does only leave room to interpret this situation in the light of the international law, which establishes that if a State consents to be bound by a treaty, and this is done in accordance with the national procedure, then it is bound before the other States, Articles 26 and 27 of the Law of Treaties apply:

"Article 26. "Pacta sunt servanda" - Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27 Internal law and observance of treaties - A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."

Moreover, the joint reading of the above articles should not lead the reader to conclude that international law, the NATO treaties or the EU treaties explicitly or implicitly permit that the EU regime overruns that of NATO/SHAPE. If that was the case, it would require the consent, by negotiation, of all NATO countries or individually of the Strategic Commands.

As a practical example, this reasoning is a legal argument for not admitting that the Belgium Circular on Tax-Free Vehicles turned into an agreement could apply EU law overruling the NATO SOFA when referring to import and export. Note that many of the EU Directives, such as VAT and Customs, acknowledge that nations have to comply with NATO SOFA/Paris Protocol. Consequently, EU, consistent with its treaties, recognizes the status of IMHQs as IOs and the privileges established both in support of IMHQs and their staffs and of forces being sent abroad within the remit of NATO (and PfP) SOFA.

THE ROLE OF NATO IN THE EXERCISE OF CRIMINAL JURISDICTION BY STATES

David Nauta
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INTRODUCTION

The criminal responsibility of personnel deployed in military operations is a topic that gained significant attention since 2000, when reports emerged from human rights organizations signalling “widespread and systematic” human trafficking and forced prostitution in the former Yugoslavia, blaming partly the international civilian and military presence in the region. According to Non-Governmental Organizations (NGOs), the Head of Mission of the United Nations Mission in Kosovo (UNMiK) and the Commander of Kosovo Force (KFOR), failed to address the misconduct in a meaningful way.¹

Their alleged failure was ascribed to two main reasons. On the one hand, the immunity granted to UNMiK and KFOR-personnel prevented the effective enforcement of justice. The domestic courts of Kosovo did not have jurisdiction over the international civilian and military staff,² which made criminal prosecution of the perpetrators of human trafficking and forced prostitution a responsibility of the State of which the perpetrator is a national. The exercise of jurisdiction based on active personality, i.e. the jurisdiction exercised by the sending State, has certain limitations which will be discussed below.

The second cause for failure was that orders³ issued by COMKFOR were generally ineffective to address criminal behaviour of their personnel. While, COMKFOR banned certain areas to be frequented by military personnel, the enforcement of this regulation was considered “*a matter for the respective national authorities in each of the countries contributing troops to KFOR sending countries.*”⁴ The UN – for its part on UNMiK’s role – analysed the causes for the apparent inadequate response to the misconduct,⁵ and suggested certain solutions.⁶ The

¹ Amnesty International, “So does it mean we have rights?”, Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo, 5 May 2004.

² UNMiK Regulation 2000/47, 18 August 2000, Sections 2 and 3.

³ COMKFOR’s authority to issue orders is derived from the Transfer of Authority message of TCNs to NATO and UN Security Council Regulation 1244(1999). An example of a COMKFOR directive is directive 42, 9 October 2001, that sets out the criteria by which persons may be detained.

⁴ Amnesty International, “op. cit. p. 53.

⁵ UN General Assembly, A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations, A/59/710, 24 March 2005, paras. 78 and 88. Report of the Special Committee on Peacekeeping Operations and its Working Group, A/59/19/Rev.1, 2005. Ensuring the Accountability of United Nations Staff and Experts on Mission with Respect to Criminal Acts Committed in Peacekeeping Operations, A/60/980, 16 August 2006.

implementation of these recommendations are still a work in progress.⁷ The complexity in addressing criminal misconduct of personnel deployed on UN peacekeeping missions is equally existent with regard to personnel deployed on NATO-led missions. This paper analyses the jurisdiction of States and immunities accorded to NATO personnel in so far as they are relevant to redress criminal conduct in NATO-led missions. Secondly, NATO's role in the exercise of jurisdiction by States is examined. The paper will end with some recommendations.

JURISDICTION AND IMMUNITY FROM JURISDICTION

Criminal jurisdiction is the power to investigate and adjudicate criminal behaviour. The exercise of jurisdiction is an expression of State sovereignty. States may ascertain jurisdiction over persons residing within their State's borders⁸ and even over their nationals residing outside its territory.⁹ Other States extend the possibility to

⁶ The Group of Legal Experts advises that the host nation should be facilitated to exercise jurisdiction over deployed UN personnel and recommends the establishment of a hybrid tribunal that could exercise jurisdiction over UN personnel on mission regarding serious domestic crimes.

⁷ C.E. Sweetser, *Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel*, New York University School of Law Review, Vol. 83, 2008, p. 1652. As an illustration of the ongoing deliberations on the criminal accountability of UN personnel on mission, the Sixth Committee (Legal) of the UN General Assembly reported in 2008 that "[s]pecific issues identified for further deliberation included: the scope of the topic; criminal investigations; the provision of evidence and its assessment in administrative versus criminal procedures; strengthening cooperation and sharing of information; extradition; servicing of sentences; and other judicial assistance mechanisms. The importance of respecting the territorial jurisdiction of the Host State was reiterated. Some delegations emphasized the need to give jurisdictional priority to the State of nationality of the accused. The view was also expressed that military observers and formed civilian police units working for the United Nations as experts on mission were to be treated in the same manner as national contingents", *Criminal Accountability of United Nations Officials and Experts on Mission*, A/63/100, Sixty-third Session. In 2011, the same Committee acknowledged that "[d]ifferent views were expressed concerning the possible elaboration of a convention to ensure the criminal accountability of United Nations officials and experts on mission. Some delegations expressed support for such a convention, and a suggestion was made that the convention also cover military personnel. Other delegations considered that it was still premature to discuss a draft convention. The view was also expressed that such a step would require careful consideration. According to another opinion, a convention was not needed, since the problem could be effectively addressed through the adoption of appropriate domestic legislation. Furthermore, it was considered doubtful whether a convention would be the most efficient and practical way of addressing the issues at stake", A/63/100, Sixty-sixth Session.

⁸ This nature of this principle is examined in the *Lotus* case before the Permanent Court of International Justice, PCIJ, Series A, no. 10, 1927.

⁹ E.g. The Netherlands assumes jurisdiction over nationals residing abroad, for example, "*Wet Internationale Misdrifven*", (International Crimes Act), 19 June 2003, Article 2 states that the crimes apply to a Dutch citizen who commits one of the offenses as described by this law outside of the Dutch territory, ("de Nederlander die zich buiten Nederland schuldig maakt aan een van de in deze wet omschreven misdrijven."). See also US' legislation; United States Code, Section 1091, "Whoever, whether in time of peace or in time of war and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such [...] There is jurisdiction over the offenses [...] regardless of where the offense is

exercise jurisdiction to cover e.g. cases in which the victim was a national of that State,¹⁰ where the interests of the State are at stake¹¹ or may claim to have universal jurisdiction over certain serious international crimes.¹²

Immunity from jurisdiction means that the State concerned, having the power to exercise jurisdiction, chooses to relinquish that authority in respect of specific categories of individuals. Within the territorial boundaries of NATO, the agreements regulating the status of personnel employed by or placed at the disposal of NATO in most cases not accord immunity from jurisdiction. In fact, there are only few officials of the Alliance actually enjoying absolute immunity from the host State. NATO's Secretary-General, certain high-ranking officials and representatives to NATO enjoy immunity equal to that accorded to diplomats.¹³ Several other categories enjoy a more limited functional immunity, meaning that the immunity is accorded only for acts performed in the official duty.¹⁴ Moreover, that immunity can be waived by the Secretary-General if, in his opinion, this would impede the course of justice and without prejudice to the interest of the Organization.¹⁵ The NATO SOFA¹⁶ and related Paris Protocol¹⁷ applicable to most NATO-personnel within the territory of NATO member States do not enjoy functional immunity from jurisdiction from the host State.¹⁸ These agreements provide in concurrent jurisdiction of both the host and the

committed, the alleged offender is (A) a national of the United States." The principle of active personality is most strongly present with regard to military personnel. It is common that national military criminal laws apply to military personnel, wherever they might be present.

¹⁰ J.G. McCarthy, *The Passive Personality Principle and Its Use in Combatting International Terrorism*, *Fordham International Law Journal*, Vol. 13, Issue 3, 1989, p. 301.

¹¹ M.N. Shaw, *International Law*, University of Leicester, 1997, p. 468.

¹² K. Okimoto, *Violations of IHL by UN forces and their legal consequences*, *Yearbook of International Humanitarian Law*, vol. 8, 2003, p. 228.

¹³ Articles XII and XX Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa, 20 September 1951. General and flag officers are generally accorded absolute immunity through the conclusion of bilateral agreements between the International Military Headquarters and the host State. Notwithstanding the existence of immunity in the receiving State, these Officials have been subject of criminal investigations. In Serbia, NATO officials were "prosecuted" and "convicted" by a District Court in Belgrade. SACEUR was sentenced to twenty years in prison in absentia.

¹⁴ Articles XVII and XVIII Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa, 20 September 1951. The categories of officials are agreed between NATO's Secretary-General and the Member State concerned.

¹⁵ Article XXII, Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa, 20 September 1951.

¹⁶ Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, 19 June 1951.

¹⁷ Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, 28 August 1952.

¹⁸ Most authors, among D. Fleck as the main proponent, argue that as a principle of international customary law, foreign armed forces enjoy functional immunity in the host State. In fact the NATO SOFA and Paris Protocol limits this functional immunity in favour of the host State, so that it can in certain situations exercise exclusive- and in other cases 'primary' jurisdiction.

sending State, with the provision that a 'primary' right to exercise jurisdiction to the sending or host State in certain specific instances.¹⁹

The situation – and rationale – is different with regard to the status of personnel deployed outside NATO's borders on a NATO-led mission. The mission-SOFA concluded for NATO-led operations often provides in the exclusive jurisdiction of the sending State, and therefore immunity from host State jurisdiction. The provision of exclusive jurisdiction is seen as indispensable for NATO personnel operating often in fragile States where the rule of law is broken down due to hostilities. In such situations it would be difficult to motivate TCNs to send their personnel on deployment when there is a risk that the host State cannot guarantee a fair trial in case of a criminal offence. The provision leaves basically only the State of which the individual is a national (active personality) to exercise jurisdiction or – in far fewer cases – third States²⁰ claiming jurisdiction on the basis of passive nationality or universality.

There has been some criticism to the practice of according deployed personnel immunity, be it functional or absolute.²¹ In its report on human trafficking and forced prostitution committed by – allegedly – KFOR personnel, Amnesty International recommended that the authority to waive immunity in the host State should not rest at the commanders of the national contingents, rather at the UN Secretary-General. It further recommended to NATO that commanders of national contingents should be made aware of their responsibility to waive immunity in cases of suspected involvement in human trafficking or forced prosecution, so that such personnel may be subject to prosecution by the domestic authority.²² Apparently, Amnesty International remains of the opinion that jurisdiction should preferably be exercised by the host State, rather than the State of which the individual is a nation. On a similar note, the Afghan government complained to NATO that the mission-SOFA, concluded in 2002 and amended by the exchange of letters in 2004,

¹⁹ Article VII(3), Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, 19 June 1951.

²⁰ In this context third State means those States not bound by the mission-SOFA, i.e. those States not being a party to the agreement. A third State is not party to the mission-SOFA and therefore not bound by its provisions.

²¹ See in this regard generally; K. Okimoto, Violations of IHL by UN forces and their legal consequences, Yearbook of International Humanitarian Law, vol. 8, 2003, p. 226, referring to the Brocklebank case - where the Private Brocklebank accused of aiding and abetting the torture of a Somali civilian who was eventually beaten to death while in custody of Canadian forces, did not lead to any sentence – and a case before the Brussels Military Court – dealing with the alleged misconduct of Belgian troops in UNOSOM, leading to acquittal – and finally an Italian case – investigating the behaviour of Italian forces in UNITAF and UNOSOM II.

²² Amnesty International, "So does it mean we have rights?", op. cit. p. 57, recommendation 1.3. Also, Organization for Security and Co-operation in Europe, mission in Kosovo, Department of Human Rights and Rule of Law, Kosovo Review of the Criminal Justice System, October 2001, p. 66 and ICRC, Report Expert Meeting on Multinational Peace Operations, 11-12 December 2003, p. 57.

excluded the Afghan authorities from investigating possible misconduct of NATO personnel.

The perception of both Amnesty International and the Afghan government is that the repression of crimes is done more effectively by the host State instead of the sending nation. This may hold true in cases where there is a jurisdictional gap, for example, jurisdiction based on active personality often requires that the act is considered a crime in both the host State and the sending State. In some cases this may lead to a certain extent of impunity. Apart from these situations, there is no compelling argument why the exercise of jurisdiction by the host State is a more favourable choice over that of the sending Nation. In any case, NATO has no decisive authority on the waiver of immunity, nor can the Alliance as such demand the exercise of jurisdiction by its member States in cases of such crimes. The Alliance, however, does have an active role in combating crime committed by military forces placed at its disposal. In 2004, NATO issued a policy on combating trafficking in human beings.²³ It obliges NATO in Peace Support Operations to coordinate with the host nation to combat trafficking in human beings and obliges TCNs to review national legislation to ensure for appropriate prosecution and punishment and to provide details thereof to NATO. The policy furthermore requires of TCNs to conduct investigations and prosecution of those involved in human trafficking.

ROLE OF NATO IN ADDRESSING CRIMINAL CONDUCT

NATO cannot exercise criminal jurisdiction over its personnel. Meanwhile the UN pursued to establish jurisdiction through a convention over UN employed personnel, i.e. UN Officials and experts on mission and even military personnel on mission - this has yet to be concluded. Similarly, NATO is likely not to ascertain jurisdiction over personnel on mission as the member States will not have a grand appetite to transfer their sovereign right to exercise criminal jurisdiction in favour of the Alliance. Notwithstanding the lack of jurisdiction over personnel deployed on NATO-led missions, there is an important political role that NATO should play in case of misconduct. The reasons for such a role are manifold. The main reason is that the effective exercise of criminal jurisdiction by its member States is essential for the integrity of the mission and cohesion of the Alliance. Secondly, NATO, being the signatory to most mission-SOFAs, has a responsibility to ensure the correct implementation of these agreements. The immunity from host State jurisdiction is provided with the idea in mind that mission personnel committing crimes in its territory do not enjoy impunity. If a sending State does not investigate alleged criminal conduct, NATO could – as an ultimate resource – exert political pressure in order to comply with the spirit of the mission-SOFA. Another compelling reason for NATO to ensure proper actions are taken in cases of misconduct is that the failure to address misconduct by one State, will reflect on all TCNs, as well as NATO itself, and jeopardize the coherence of the Alliance.

²³ NATO Policy on combating trafficking in human beings, 29 June 2004.

The Alliance has made several attempts to ensure the effective exercise of jurisdiction by TCNs over personnel placed at NATO's disposal. In the past, NATO has made an unsuccessful attempt to combine national military police forces into a multinational force. This effort could be reinvigorated. Currently, TCNs deploy under national command their own Military Police (MP), investigators and mobile military tribunals. Criminal investigations are ordinarily conducted by Military Police detachments. The MP falls outside the NATO command structure and reports directly to their national governments. The head of the MP detachment often has the authority of an assistant public prosecutor, e.g. the power to detain and investigate. In 1988 NATO issued STANAG 2085, primarily, in an attempt to organize the highly fragmented organization of the Military Police force during missions. The creation of an International Military Police (IMP), composed of various national MPs, combined the functions of discipline and order.²⁴ Moreover, the IMP was authorized to conduct preliminary investigations, such as securing evidence and identifying witnesses in order that national authorities may interview them at a later stage.

NATO contemplated on further development of the IMP, granting them more powers, by concluding a technical arrangement among NATO members. The model-arrangement – an appendix to STANAG 2085 – includes the proposal to transfer of criminal jurisdiction and powers to the IMP organization, so that the IMP is authorized to detain members of the military force. This would be particularly practical when time or other circumstances do not allow the member of the force to be detained by someone from his or her own nation. However, these further going technical arrangements have never been concluded.

An IMP with (limited) criminal jurisdiction would solve an issue specifically with regard to personnel contracted through a commercial entity. There is often no State that has criminal investigators deployed with contracted personnel, which means that if a contractor would commit a crime, the sending State has to either request an extradition of the offender or to deploy investigators to the host Nation. Both options take considerable time.²⁵ Obviously, the State having jurisdiction based on active personality might not be in the capacity to send investigators on short notice in a possibly volatile situation.²⁶

²⁴ STANAG 2085 OP (edition 4) – NATO Combined Military Police, 24 February 1988 and Allied Procedural Publication-12, NATO Military Police Doctrine and Procedures, 28 October 2002.

²⁵ This situation has happened with regard to a contractor of ISAF where the IMP has secured evidence and repatriated the individual in coordination between the NATO Headquarters and the embassy of whom the contractor was a national.

²⁶ There are several arguments against the broadening of powers of the IMP. There is a considerable risk that the criminal process would be jeopardized by the investigations of the IMP. This problem was identified during UN-led missions where the Department of Peacekeeping Operations initiated preliminary investigations upon receiving a report of any serious misconduct, see; UNDPKO, Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers, DPKO/PD/DDCPO/2003/001, 2003, para. 11. If the TCNs could reach agreement to allow the IMP to conduct criminal investigations, the risk would be that

More successfully than the attempt to expand the powers of the IMP, is the effort of NATO to establish reporting procedures that provide situational awareness and give in an early stage information on incidents that may have happened during the operation. The existing reporting procedures in place during the ISAF-led operation provide a good basis to assess whether an incident needs further investigation.²⁷ The analysis of the reports is done in close consultation with a NATO legal adviser, which advises in cases of possible crimes or violations of NATO policy. Reporting procedures are not intended to function as a criminal investigation,²⁸ it may serve to initiate a request to the TCN concerned to start a criminal investigation.²⁹ Not only are these reporting procedures an effective tool, they do also fulfil a legal obligation which rests on commanders to ascertain themselves with possible criminal acts committed under their command. In absence of such procedures, NATO commanders may be held criminally liable for criminal conduct of which the commander could have known and failed to act against.

Finally, NATO should pursue an active policy to redress misconduct by its personnel by taking administrative measures, which complement the criminal procedure initiated by TCNs. Punitive actions in respect to personnel on NATO-led operations reach not much further than measures of suspension, temporary assignment of other duties and repatriation, however, these provide in a powerful message that certain conduct is not tolerated and is taken seriously.

NATO has far broader administrative powers with regard to civilian personnel employed by the Alliance. Clearly the differences between both categories are explained by the fact that in the latter case, NATO is the employer of the individual concerned. The differences in authority with respect to military personnel and civilian personnel are based on and reflected in policy.³⁰ Separate guidelines were

the investigations do not meet the standards of individual TCNs. There would be a need to specify each TCNs requirements with regard to criminal standards.

²⁷ E.g. ISAF Standard Operating Procedure 302, 29 August 2007 (NATO/ISAF Restricted)

²⁸ SHAPE Legal Office, Guidance for ISAF investigations following civilian casualties, SG(2007)0840, 7 November 2007 [Restricted]

²⁹ Following the report, the Dutch government initiated a criminal investigation resulting in the conclusion by the Public Prosecutor that the use of force in the Chora valley in 2007 was within the limits of international humanitarian law and the ROE. [Het Openbaar Ministerie Arnhem heeft de geweldsaanwendingen door Nederlandse militairen in de periode 16 tot en met 20 juni 2008 [in de omgeving van Chora] beoordeeld en concludeert dat het geweld is aangewend binnen de grenzen van het humanitair oorlogsrecht en de geldende geweldsinstructie], Openbaar Ministerie, see for a more detailed description of the events: P. Ducheine and E. Pouw, ISAF Operaties in Afghanistan, oorlogsrecht, doelbestrijding in counterinsurgency ROE, mensenrechten & jus ad bellum, 2010, p. 4 and 57.

³⁰ NATO Policy on combating trafficking in human beings, 29 June 2004. Appendix 1, Guidelines for NATO staff on preventing the promotion and facilitation of trafficking in human beings, 9 July 2004; Appendix 2, NATO guidance for the development of training and educational programmes to support the policy on combating the trafficking in human beings, 9 July 2004; Appendix 3: NATO guidelines on combating trafficking in human beings for military forces and civilian personnel deployed in NATO-led operations, 9 July 2004.

promulgated for military and civilian components during deployment in Kosovo in relation to the incidents of human trafficking and forced prostitution. The policy differentiated between those not being NATO staff, participating in operations under NATO command and control, and NATO staff.

CONCLUDING REMARKS

NATO is limited in providing effective measures to address criminal conduct. During NATO-led operations, the main protagonist is the State of which the individual concerned is a national that will need to exercise jurisdiction, as mission SOFAs are likely to have excluded host nation jurisdiction. There is an important role that NATO should play in respect of redress of misconduct, separate from taking administrative actions as outlined in the previous paragraph. The risk attached to a passive role and possibly inefficient redress of criminal conduct is that the credibility of the Alliance will be undermined and the cohesiveness of the member States will diminish. Even though it is unlikely that criminal misconduct would not be properly investigated and adjudicated under the existing standards of rule of law of the NATO member States, NATO can play an important role in spotting early warning signs of misconduct through preliminary investigations. NATO can drive the cohesiveness and efficiency of the military police structure and NATO should – in exceptional cases – actively engage with the State exercising jurisdiction.

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SHARI'A, ADULTERY & EXECUTION IN AFGHANISTAN

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INTRODUCTION

The June 2012 execution of a 22 year-old Afghan woman reignited international opprobrium about how this proclaimed application of *Shari'a*¹ vitiates women's rights. Unfortunately, this keening usually frames a false choice between human rights and Islamic justice.² Far more complexity exists than this dichotomy suggests. In Afghanistan, it is the friction between tribal custom, the absence of stable governance, epidemic violence and terror tactics that created an environment where summary executions like this occur, not *Shari'a*.



The Afghan woman, known only as Najiba, was executed for the crime of adultery³ which is one of the most severe crimes under *Shari'a*. The execution occurred in the Shenwari district of Parwan province in eastern Afghanistan. Najiba was reportedly married to one of the local Taliban commanders who claimed that she was having an affair with another local Taliban commander.⁴ Najiba was found guilty of adultery after a 1 hour trial⁵ and immediately condemned to death. The video shows Najiba kneeling in front of a ditch, while a man armed with an AK-47 stands a few feet behind her. An audible reading of the *Qur'an* can be heard before the fatal shots are fired. The video of the execution received significant publicity from newspapers,⁶ blogs, diplomats,⁷ and even prompted condemnation from NATO Commander, General John Allen.⁸

¹ Muslim or Islamic law, both civil and criminal justice as well as regulating individual conduct both personal and moral. *Shari'a Law*, Muslim Law Dictionary, <http://www.duhaime.org/LegalDictionary/Category/MuslimLawDictionary.aspx> (last modified 19 July 2012)

² Asifa Quraishi, *What if Shari'a Weren't the Problem*, 22.1 Columbia J. of Gender and Law 173, 176 (2011).

³ Matthias Gebauer, *Execution Reveals Weakness of Afghan Authorities*, Spiegel Online International, <http://www.spiegel.de/international/world/taliban-execution-highlights-helpless-afghan-authorities-a-844461.html> (last modified 16 July 2012).

⁴ Id.

⁵ Basir Salangi, governor of Parwan Province stated, "The men faked a court to decide about the fate of this woman." *Supra*, note 2 Welch & Doherty.

⁶ See Dylan Welch & Ben Doherty, *Taliban execution barbaric, says Carr*, Sydney Morning Herald, <http://www.smh.com.au/opinion/political-news/taliban-execution-barbaric-says-carr-20120709-21rug.html> (10 July 2012); *Outrage Over Murder in Afghanistan*, Voice of

While such a barbaric execution warrants outrage, the shouts and cheers of over 100 villagers witnessing the event compound the disturbing nature of the video. The communal acceptance and encouragement of this execution is chilling to believers in human rights and the rule of law. Sadly, despite more than 10 years of international security activity in Afghanistan, and directives like UN Security Council Resolution 1325,⁹ incidents like this are still occurring. The first part of this paper will provide a brief overview of the sources of law and the role of adultery within *Shari'a*. The remainder of the paper will focus on the legal mechanisms in rural Afghanistan and how their application of *Shari'a* has led to such nefarious results.

SHARI'A AND ADULTERY

Shari'a has evolved into a complex legal system that has been developed and debated over centuries. *Shari'a* in Arabic actually means "the way," and is meant to provide a guide for Muslims to find the way to salvation. The sources of *Shari'a* are hierarchical in nature. Some sources are universally recognized, while others evoke serious debate.

To Muslims, the highest source of *Shari'a* is the *Qur'an*, which is the holy book of Islam. They believe the *Qur'an* was divinely inspired when the angel Gabriel revealed himself to Muhammad.¹⁰ Comprised of 114 chapters with 6,236 verses, the *Qur'an* provides Muslims with instruction on a wide variety of things from daily life to capital punishment. Another primary source of law is the *Sunnah*, which is the rule of

America News, <http://www.voanews.com/policy/editorials/asia/Outrage-Over-Murder-In-Afghanistan-163071126.html> (last modified 19 July 2012).

⁷ In a statement from the U.S. Embassy in Kabul, officials said the U.S. is committed to increasing "awareness of women's rights, to prevent and prosecute acts of violence against women, and to ensure that those responsible for such barbaric acts are brought to justice." Isolde Raftery, *US, Afghan officials condemn public murder of Afghan woman*, World News on MSNBC, http://worldnews.msnbc.msn.com/_news/2012/07/08/12627795-us-afghan-officials-condemn-public-execution-of-afghan-woman?lite (last modified 8 July 2012).

⁸ General Allen Commander ISAF – Afghanistan and Commander, US Forces stated, "Let's be clear, this wasn't justice, this was murder, and an atrocity of unspeakable cruelty." He also added, "The Taliban's continued brutality toward innocent civilians, particularly women, must be condemned in the strongest terms." Ben Farmer, *NATO prepared to hunt Taliban fighters who executed woman for adultery*, The Telegraph, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/9387477/Nato-prepared-to-hunt-Taliban-fighters-who-executed-woman-for-adultery.html> (last modified 09 July 2012).

⁹ United Nations. Security Council Resolution 1325, S/RES/1325 (October 31, 2000). (This resolution calls for special protection for women and girls in situations of armed conflict).

¹⁰ Qur'an 11:17 (Muhsin Khan Translation). "Say (O Muhammad SAW) *Ruh-ul-Qudus [Jibrael (Gabriel)] has brought it (the Quran) down from your Lord with truth, that it may make firm and strengthen (the Faith of) those who believe and as a guidance and glad tidings to those who have submitted (to Allah).*"

law derived from the practices and sayings of the prophet Muhammad.¹¹ The *Sunnah* is composed of *hadiths*, which are accepted as the actual sayings and practices of Muhammad.¹²

Recognizing that acceptance of sources beyond the *Qur'an* and *Sunnah* vary among the sects of Islam, secondary sources of law also exist within Islam. The *Ijma* is the consensus of opinion among the qualified *Shari'a* scholars. While lacking divine authority of the *Qur'an* or *Sunnah*, *Ijma* is widely accepted as law. The prophet Muhammad even stated that "My community will never agree on something wrong."¹³ *Qiyas*, or analogy, is also

Blaming Shari'a for Najiba's death is erroneous, as the problem lies with the cultural norms and traditions of rural Afghanistan rather than with the practice of Islam.

a valid secondary source of law. Similar to the development of common law in western legal systems, *Qiyas* uses prior cases and logic to determine the outcome of new cases. It was understood by many early Islamic scholars that this type of analogy would be a necessary development over time.¹⁴ Beyond the primary and secondary sources of law, there are additional sources. However, these additional sources become highly contested among the different sects and schools of

Islam. For this reason, and because Najiba's execution took place in Afghanistan, this section focuses on the Sunni Islamic tradition, which the majority of Afghans practice.¹⁵ The Sunni traditionalist view places much weight on the literal meaning of the words and instructions in the *Qur'an* and *Sunnah*.¹⁶

The *Shari'a* criminal code is comprised of three main categories: *Hudud*, *Qesas*, and *Taazir*. The *Hudud* describes the major crimes all mentioned within the *Qur'an*.¹⁷ The *Qur'an* and *Sunnah* prescribe fixed punishments for these crimes. *Qesas* describes the retaliatory punishments for homicide or injuring another.¹⁸ The

¹¹ *About Hadith*, Sunnah.com, <http://sunnah.com/about> (last modified July 2012).

¹² Sheik Nuh Ha Mim Keller, *What is the distinction between hadith and sunna?*, Islam for Today, <http://www.islamfortoday.com/keller05.htm> (last modified 1995).

¹³ Musnad 1:379 #3599, Hadith of Ahmad ibn-Hanbal.

¹⁴ Sir Abdur Rahim, *The Principles of Islamic Jurisprudence*, Luzack & Co. Publishing, p. 137-9 (1911).

¹⁵ *Country Profile: Afghanistan*. Library of Congress Country Studies. August 2008. Retrieved 2012-07-30. "Religion: Virtually the entire population is Muslim. Between 80 and 85 percent of Muslims are Sunni and 15 to 19 percent, Shia."

¹⁶ *Afghanistan Country Study: Sunni and Shia Islam*, Library of Congress, [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+af0060\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+af0060)) (1997).

¹⁷ Muslim law: divine punishments; the category of crimes most egregious and therefore most severely punished. *Hudud*, Muslim Law Dictionary, <http://www.duhaime.org/LegalDictionary/Category/MuslimLawDictionary.aspx> (last modified 19 July 2012).

¹⁸ Muslim law: the right of a person who has suffered corporal injuries by the act of another, to inflict, or have inflicted similar injuries upon the aggressor. *Qesas*, Muslim Law Dictionary,

final category is known as *Taazir*. These are lesser crimes which can be resolved with discretionary and corrective punishments.¹⁹

The crime of *zina* is described in the *Qur'an* under the category of *Hudud* crimes. *Zina* encompasses sexual activity outside of marriage such as fornication and adultery.²⁰ While there is disagreement on the exact definition of *zina*, that discussion exceeds the focus of this paper. However, the debate surrounding the prescribed punishments for *zina* must be discussed. The *Qur'an* states that the punishment for *zina* is either lashes or imprisonment for both the male and female offenders.²¹ The controversy arises when instances of Muhammad himself ordering the punishment of death (stoning) for the crime of *zina* are recounted in the *Sunnah*. One hadith states:

*Take from me as for fornication. Flog both of them with a hundred stripes and keep them away from Muslim society for a year. As for a woman and man guilty of adultery flog them with a hundred stripes and stone them.*²²

Muslim scholars and schools that support the validity of stoning, as it is outlined in the *Sunnah*, still accept that certain requirements must be met to ensure a just result. The perpetrator must be 1) a Muslim, 2) free, 3) adult, and 4) of sound mind.²³ During the trial itself, there must be corroborating testimony of four eyewitnesses or a non-coerced confession by the adulterer. This confession must actually be given on four separate occasions and may be recanted at any time.²⁴ Many of the procedural safeguards present in western legal systems such as presumption of innocence, hearsay evidence rules, and equality under the law are spoken of in the

<http://www.duhaime.org/LegalDictionary/Category/MuslimLawDictionary.aspx> (last modified 19 July 2012).

¹⁹ Muslim law: discretionary and corrective punishments for minor crimes. *Taazir*, Muslim Law Dictionary, <http://www.duhaime.org/LegalDictionary/Category/MuslimLawDictionary.aspx> (last modified 19 July 2012).

²⁰ Qur'an 17:32 (Sahih International Translation) "And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way."

²¹ Qur'an 24:2 (Sahih International Translation) "The woman and the man guilty of adultery or fornication flog each of them with a hundred stripes: let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment."

²² M. Cherif Bassiouni, *Crime and Punishment in Islam*, Chapter 10, p. 26 (2010).

²³ *Id.*

²⁴ See Sahih Bukhari, Hadith 7.63.196 (describes the prophet requiring 4 separate confessions before punishing the adulterer); Robert Postawko, Comment, *Towards an Islamic Critique of Capital Punishment*, 1 UCLA J. Islamic & Near E.L. 269, 285 (2002).

Qur'an and *Sunnah*.²⁵ These basic rights are considered essential for justice before punishment of *Hudud* crimes.²⁶

LEGAL TRADITIONS OF AFGHANISTAN

To understand the apparent disconnect between *Shari'a* and incidents like the execution of Najiba, the legal structure and legal customs in Afghanistan must be examined. Although the Afghan Constitution of 2004 established a statutory justice system, most rural areas, like the Shenwari district, rely more on customary law than on statutory systems to resolve disputes.²⁷ Communal councils, referred to as *Jirgas*, preside over this dispute resolution process.²⁸ The members of these councils are highly respected in the community but are rarely trained in civil law or *Shari'a*.²⁹ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has estimated that 80-95% of all disputes in Afghanistan are handled by these councils.³⁰ The reliance upon customary law raises serious concerns about principles of justice like due process, uniformity of judgment and equality, especially in cases involving women.³¹

Jirgas have their roots in the Pashtun traditions of Afghanistan.³² The members of the *Jirga* can change for every dispute but the *Jirga* holds both decision-making authority and the ability to enforce their decisions.³³ The basis for the authority and process of the *Jirga* is derived from the customary legal tradition, called *Pashtunwali*.³⁴ Much like *Shari'a* is to Islam, *Pashtunwali* is considered the

²⁵ Qur'an 24:4, 6-8; Qur'an 4:135 (Sahih International Translation). (These verses outline the requirements for witnesses and describe the ability of the accused to successfully refute non-eyewitness testimony, as well as the equality of rich and poor under the law).

²⁶ Penal Code of Afghanistan Book 1, Section 1, Chapter 1, Article 1-3 (2009). Article 1 reads, "This law regulates the "ta'zeeri" crime and penalties. Those committing crimes of Hodod, Qassass, and Diat shall be punished in accordance with the provisions of Islamic religion law (The Hanafi religions jurisprudence)." Article 2 reads, "No act shall be considered crime, but in accordance with the law." Article 3 reads, "No one can be punished but in accordance with the provisions of the law which has been enforced before commitment of the act under reference."

²⁷ M. Cherif Bassiouni, *Report of the independent expert on the situation of human rights in Afghanistan*, U.N. Commission on Human Rights, E/CN.4/2005/122, para. 31, Sixty-First Session (11 March 2005).

²⁸ Christof Heyns, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, U.N. Human Rights Council, A/HRC/17/28/Add.6, para. 70, Seventeenth Session (27 May 2011).

²⁹ Penal Code of Afghanistan, *supra* note 26.

³⁰ Bassiouni, *supra* note 27.

³¹ *Id.*

³² Arab Naz & Hafeez Ur-Rehman, *Pakhtunwali Versus Islam: A Comparative Study of Women's Rights Under Islam and their Violation under Pakhtunwali in Khyber Pakhtunkhwa Pakistan*, International Journal of Humanity and Social Sciences, Vol. 1, Issue 2, p. 23 (2011).

³³ Maj. Javier Palacios, *Traditional Dispute Resolution System in Afghanistan*, DCOS STAB, Rule of Law Initiative, p. 5 (2012).

³⁴ *Id.* at 7.

“way of life of the Pashtuns”.³⁵ *Pashtunwali* operates as a code of conduct based on mediation, honor and consensus. This stands in contrast to western legal systems and that established by the Afghan Constitution which operates on sets of laws.³⁶ Also in contrast to the western legal systems’ focus on the individual, *Pashtunwali* concentrates on the well-being of the society and mainly the families involved.³⁷ Therefore, restoring balance and harmony to the community far outweighs the fate of any individual.

The rise of the Taliban movement began in the early 1990s, in response to the corruption and poor governing of the *Mujahadeen* after the collapse of the Communist regime. The Taliban considered themselves students of Islam, or *talib* in Arabic. Over the course of a decade they seized power and gained control over much of Afghanistan.³⁸ The religious orientation of the Taliban movement was strongly influenced by the extremely conservative *Salafi* and *Wahabi* sects of Islam.³⁹ Although the movement claimed to oppose the tribal and customary laws of Afghanistan, traditional culture of *Pashtunwali* was very influential. Much of the Taliban leadership was trained in rural *madrasas* of Pakistan, where advanced religious training in Arabic was unavailable. Therefore many of the gaps in their knowledge of *Shari’a* were filled with *Pashtunwali*. The result has been the continued conflation of tribal culture and religious law.⁴⁰ In 2001, a delegation of Egyptian *Shari’a* Scholars visited the Taliban and reported back that “their knowledge of religion and jurisprudence is lacking because they have no knowledge of the Arabic language, linguistics, and literature and hence they did not learn the true Islam.”⁴¹

Despite condemnation from Islamic scholars, the Taliban has been very successful in establishing a shadow government in the rural areas of Afghanistan where *Jirgas* are preferred over the constitutional courts.⁴² Although there has been an increase in the positive perception of the constitutional justice system since June 2011,⁴³ a significant percentage of Afghans polled still prefer to take their disputes to a *Jirga*.⁴⁴ The Taliban provides these dispute resolution mechanisms in rural areas more efficiently, swiftly and conveniently than the Afghan Government can. Due to

³⁵ Naz & Ur-Rehman, *supra* note 32 at 24.

³⁶ Palacios, *supra* note 33 at 7.

³⁷ *Id.*

³⁸ Rule of Law Field Force – Afghanistan, *Rule of Law Field Support Officer Deskbook*, NATO Rule of Law Field Support Mission, p. 9 (2012).

³⁹ See Thomas Barfield, *Culture and Custom in Nation-Building: Law in Afghanistan*, 60 Me. L. Rev. 347, 367 (2008); Palacios, *supra* note 33 at 12.

⁴⁰ Barfield, *supra* note 39 at 367.

⁴¹ Egypt’s Mufti Wasil Interviewed on Recent Visit to Afghanistan, BBC Summary World Broadcasts, Mar. 23, 2001 (citing the text of an undated interview with Dr. Nasr Farid Wasil by Muhammad Khali in Cairo that appeared in *Al-Sharq Al-Awsat*, a London-based Arabic journal, on March 20, 2001).

⁴² Rule of Law Field Force – Afghanistan, *supra* note 38 at 13.

⁴³ Palacios, *supra* note 33 at 10.

⁴⁴ Asia Foundation, *Afghanistan in 2011: A Survey of the Afghan People*, 150-152 (2011).

the perceived widespread corruption in the Afghan Government⁴⁵, many people consider these *Jirgas* to be more fair and trustworthy than their governmental counterparts. The Taliban has even used mobile courts to reach the most remote areas and increase their sphere of influence within Afghanistan.⁴⁶

The Taliban's reliance on custom and the lack of formal legal training has created significant human rights issues in Afghanistan. Possibly the most disturbing of these customs is that of honour killing. Honour killing is described by the UN as "the killing of a family member on suspicion of engagement in any actions deemed dishonorable, ranging from mere associations with the opposite sex to sexual relations or running away from home."⁴⁷ Although there are documented incidents of male victims of honour killings, the overwhelming majority of victims are women.⁴⁸ An interview conducted by the UNAMA Human Rights Unit found that many Afghan men and women thought these cultural practices of subordinating women were derived from the *Qur'an*.⁴⁹ Contrary to what many of these Afghans believe, subordination of females and especially honour killing have no root in the *Qur'an*. However, in many of rural and tribal regions these customs have become synonymous with *Shari'a*.⁵⁰ Unfortunately, the local populations and in many instances the communal councils have not studied *Shari'a* enough to distinguish it from the traditions of *Pashtunwali*.⁵¹

The Afghan Government enacted the Law on the Elimination of Violence against Women in August 2009, largely in response to international outrage over these honour killings.⁵² However, there still remain laws on the books in Afghanistan that reduce punishments for killings in the name of honour.⁵³ It is estimated that over 50 honour killings have occurred in Afghanistan during the months of April, May and

⁴⁵ In 2009, the Afghan Government ranked 179 out of 180 countries in Transparency International's corruption perception index. Transparency International, *Corruption Perceptions Index* (2009).

⁴⁶ Palacios, *supra* note 33 at 12.

⁴⁷ Philip Alston, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, U.N. Human Rights Council, A/HRC/11/2/Add.4, para. 63, Eleventh Session (6 May 2009).

⁴⁸ *Id.*

⁴⁹ *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, UNAMA, OHCHR Kabul, p. 1, (9 December 2010).

⁵⁰ Naz & Ur-Rehman, *supra* note 32 at 24.

⁵¹ *Id.*

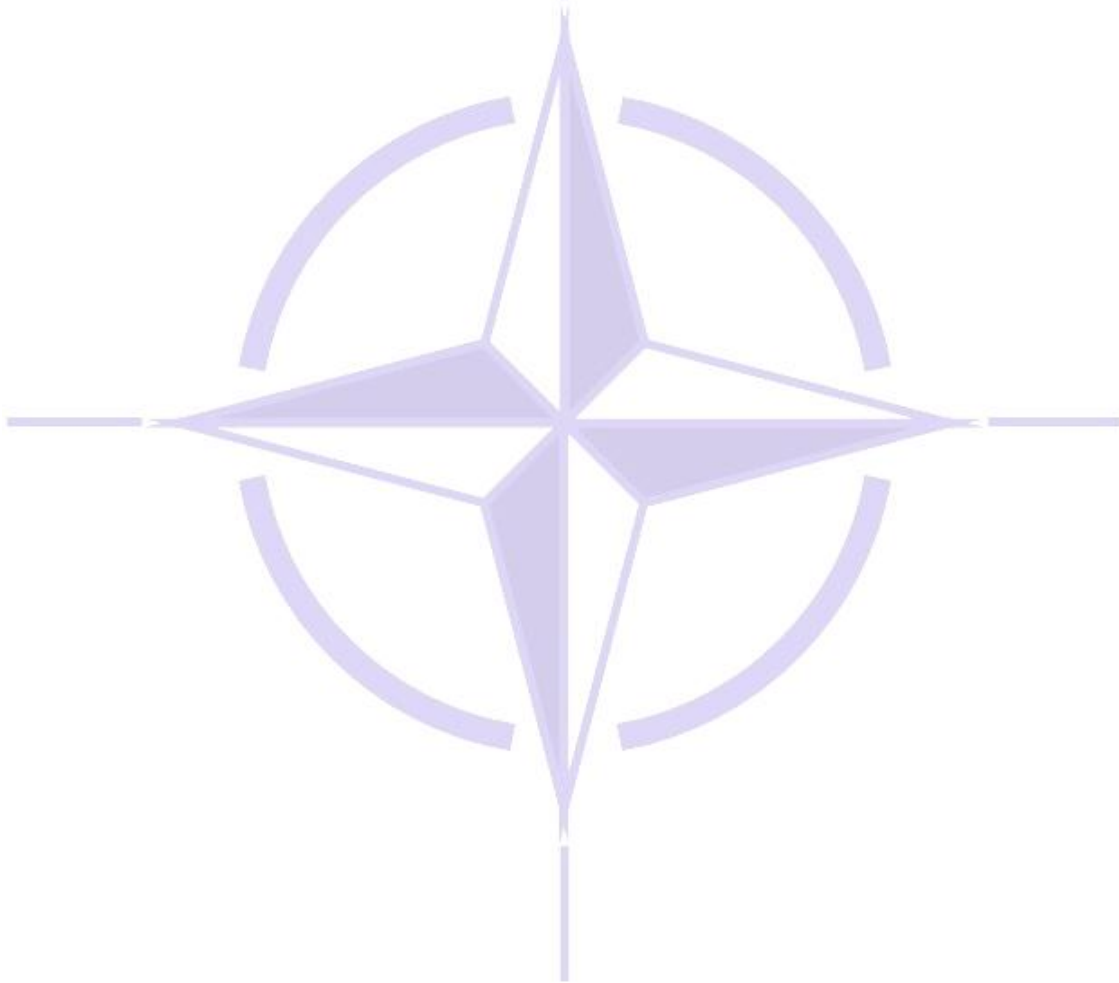
⁵² Heyns, *supra* note 28, para. 75 "The Law refers to fighting against customs, traditions and practices that cause violence against women contrary to the religion of Islam."

⁵³ Penal Code of Afghanistan Book 2, Section 2, Chapter 8, Article 398 (2009). "A person, defending his honour, who sees his spouse or another one of his close relations, in the act of committing adultery or being in the same bed with another and immediately kills or injurs one or both of them shall be exempted from punishment for laceration and murder but shall be imprisoned for a period not exceeding two years, as a "Tazeeri" punishment."

June 2012.⁵⁴ Women's rights groups and the United Nations continue to pressure the Government of Afghanistan to repeal the laws that reduce punishment for honour killing and to eliminate holes in the Law on the Elimination of Violence against Women.⁵⁵

CONCLUSION

In the end, Najiba's execution was an act of tribal justice rather than Islamic justice. The lack of procedural safeguards, denial of any appeal and swift nature of the execution all violated *Shari'a* not fulfilled it. Blaming *Shari'a* for Najiba's death is erroneous, as the problem lies with the cultural norms and traditions of rural Afghanistan rather than with the practice of Islam.



⁵⁴ The AIHRC condemns the killing of a woman in Shenwari district of Parwan province – Press Release, The AIHRC, <http://www.aihrc.org.af/en/press-release/1101/the-aihrc-condemns-the-killing-of-a-woman-in-shenwari.html> (last modified 8 July 2012).

⁵⁵ Heyns, *supra* note 28. "The Law itself, however, has been criticized because it requires a victim or her relative to file a complaint before State institutions for it to take action. This implies that, when a victim withdraws a complaint or fails to file one owing to family pressure or fear of reprisal, the State is not required to investigate or prosecute a crime of violence against women. Furthermore, women's rights activists have criticized the law for failing to criminalize honour crimes and for not defining crimes clearly."

RESPECT VERSUS OBEY:

When the longstanding debate needs to be seen under the Receiving State's International Law Obligations

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Dedicated to Serge Lazareff

INTRODUCTION

The unmatched tandem “Respect versus Obey” has spent litres of ink. The debate has been ‘enriched’ with the evident difference that can be appreciated between the English and French versions of these words. It has been recently revisited after the push for the EU law, which has supposed an increase in the exorbitant claims coming from those who believe that national legislation informs the interpretation of the NATO SOFA¹ and so it does the EU Law when it applies directly (regulations and decisions) or by implementation (directives).

The fact that a receiving State has provided its consent to have a “peaceful occupation”² [or “peacetime garrison”]³ of its territory by means of an international [multilateral] treaty as that of the NATO SOFA, entails also yielding certain portions of territorial sovereignty and therefore assuming self-imposed obligations to create, and maintain, the right social, administrative and legal atmosphere for the *accueil* of visiting forces.

The question that arises is how much the receiving State has to yield in terms of sovereignty; how much can it give away of the legal and actual control it has over individuals, materials and activities in its territory? How reasonable is it for a receiving State to give away when those are related to the visit of foreign forces? How much respect or obedience to the receiving State's laws is expected from the visiting force to carry out its mission? What are the parameters to measure it?

VIENNA CONVENTION ON DIPLOMATIC RELATIONS ARTICLE 41

Comparing is an intellectual exercise that permits creating points of reference that take us to a better and balanced understanding of a situation. Therefore, it is proper to call upon Article 41.1 of the 1961 Vienna Convention of Diplomatic Relations, which was drafted in a short, direct and unconditional manner:

¹ NATO SOFA refers to the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces done in London on 19 June 1951.

² Serge Lazareff, *Status of Military Forces Under Current International Law* (Leyden: Sijthoff, 1971), 7.

³ ‘NATO Status of Forces Agreement: Background and a Suggestion for the Scope of Application.’ Mette Prasse Hartov (Baltic Defence Review no. 10, Vol 2/2003) 47.

"1. Without prejudice of their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State."

We have to note that the Vienna Convention does not establish actual derogations from the law of the receiving State, which helps Denza to argue that absolute immunity cannot be understood from said Article 41.1: "where overseas activities of most States are multifarious and complex and they have numerous agencies abroad engaged in purchasing, investing, tourist promotion, immigration control...transmission of their culture and language. Many of these activities are no longer protected by state immunity from the jurisdiction of local court."⁴ This argument makes certain sense and does not downgrade the importance of sovereign and diplomatic immunity as long as cited activities are not the means a sending State may have to exercise its immunity; a fact that is up to the sending State to determine as long as it is not an abuse of such a diplomatic immunity. This can only be understood in a context crowned by the principles of good faith, and reciprocity or comity. Denza sees Article 41.1 as a good tool to control abuse, but she states so after having affirmed that receiving State courts have to treat foreign sovereigns as capable of "acquiring rights or incurring obligations under their own laws."⁵ There is also a downside to Denza's argument for the abuse can also happen the other way around, coming from the receiving State organizations, particularly in bilateral relationships versus multilateral ones. Besides, the last reason why foreign sovereigns have representations abroad is also disregarded. We then notice that Article 41.1 does not help on this regard and permits that receiving States issue memos stating that: "Diplomatic immunity in no way absolves members of diplomatic missions or their families from their duty to obey the law."⁶

NATO SOFA ARTICLE II

On the other hand, Article II of the NATO SOFA states that:

"It is the duty of a force and its civilian component and the members thereof as well as their dependents to respect the law of the receiving State, and to abstain from any activity inconsistent with the spirit of the present Agreement, and, in particular, from any political activity in the receiving State. It is also the duty of the sending State to take the necessary measures to that end."

Contrary to the Vienna Convention, the NATO SOFA actually derogates and adapts parts of the law of the receiving State in an explicit manner.⁷ It also does so

⁴ Eileen Denza, *Diplomatic Law* (Oxford: Oxford Press University, 2008), 461.

⁵ *Ibid.*, 462.

⁶ *Ibid.*

⁷ Serge Lazareff, 102.

implicitly by adding in the above Article II the sentence: “inconsistent with the spirit of the present Agreement”, i.e., it will be consistent with the NATO SOFA if the relationship with the receiving State law is in accordance with the purposes for which the force is present in its territory, in the sense that receiving State law cannot contravene the full effect of the treaty-approved reason of visiting forces. On this note, Denza's analysis on Article 41.1 of the Vienna Convention cannot be transferred to Article II of the NATO SOFA. The SOFA requires an independent and autonomous analysis based not only on its own provisions, but also, and most importantly for the purpose of the present paper, in the treaties that originated it.

The above sentence, “inconsistent with the spirit of the present Agreement”, is the object of a detailed analysis by Lazarreff⁸ that will not be repeated in this paper. However, we have the intellectual obligation to elaborate on the fundamentals⁹ of the NATO SOFA, i.e., the final reason why a State sends troops to serve in the territory of another State. A first approach takes us to see that the reason resides within the sovereign will of the States, as modulated by the international treaties that originated the NATO SOFA. Therefore, we need to analyze those treaties in order to unveil the purposes for which the force is present in a given receiving State and, consequently, the obligation that receiving State has taken with free consent. This makes that receiving State approach the “Respect versus Obey” in terms of obligations derived from a set of binding international treaties.

THE CRADLE OF THE NATO SOFA – THE UN CHARTER?

Countries around the world, led by the United States, decided to put an end to “...the scourge of war” after the deadly toll of the two World Wars. The result of that decision was the UN Charter. Without entering into a debate on the UN Charter, it is matter of fact that it guides the practice of States in their international relations and inextricably the way they apply international law. The UN Charter revolves around the notion of respect for the rule of law. The principles that inspire this ‘motto’ are based on the purpose of preventing war and addressing threats to the international peace and security. The central piece stays in Article 2 from where two points need to be highlighted: a) Members shall refrain from the use of force (Article 2.4);¹⁰ and b) Members shall fulfill their obligations in the Charter in order to ensure to each other the rights and benefits from membership (Article 2.2).¹¹

One of the rights (Article 2.2.) that the UN Charter guarantees is that of the right to resort to individual and collective self-defence if an armed attack takes

⁸ Lazarreff, 100-105.

⁹ 60th Anniversary of the Status of Forces Agreement, June 2011, Tallinn (Estonia). Non-attributable (Chatham house rules).

¹⁰ “All Members shall refrain in their international relations from the threat or use of force...”

¹¹ “All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligation assumed by them in accordance with the present Charter.”

place (Article 51)¹². As it is well known, certain nations decided to conclude a multilateral treaty, the North Atlantic Treaty, based on the “purposes and principles of the Charter of the United Nations.”¹³ In this regard, Article 51¹⁴ consecrates self-defence as a right agreed to be protected by the UN Members. Consequently, all Members have agreed, following the basic principles of good faith, *pacta sunt servanda*, and free consent, to make the UN Charter obligations prevail in order to ensure themselves the rights and benefits from membership over other obligations taken by them by means of other international agreements (Article 103).¹⁵

Consequently, the North Atlantic Treaty Organization¹⁶ was created as an instrument to guarantee the aforementioned rights¹⁷ but, how?

¹² “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations...restore international peace and security.”

¹³ “The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.” (Article 1). North Atlantic Treaty Organisation. The North Atlantic Treaty original text: available from:

http://www.nato.int/cps/en/natolive/official_texts_17120.htm

¹⁴ Note the U.S. Senate Resolution 239, 80th Congress, 2nd Session, 11th June 1948 (The Vandenberg Resolution): “[4]. Contributing to the maintenance of peace by making clear its determination to exercise the right of individual or collective self-defence under Article 51 should any armed attack occur affecting its national security.”

¹⁵ “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

¹⁶ Note that the North Atlantic Treaty Organization (NATO) was not mentioned in the North Atlantic Treaty and that its origin has to be searched in its Article 9: “The parties hereby establish the Council...[T]he Council shall set up such subsidiary bodies as may be necessary...”

¹⁷ It cannot be ignored that NATO has evolved over the 1990s to also be an organization that undertakes collective actions for the purpose of maintaining international peace and security under UNSCRs. It might be argued that these collective actions distort the concept of the right of self-defence and therefore empty the meaning of NATO as an organization created to fulfil the purposes and principles of the UN Charter. However, collective actions are yet part of the prerogatives of the centralized use of force the Security Council has under Article 24 of the UN Charter. It has to be noted that the principle of collective security as Hans Kelsen says: “In the Charter of the United Nations the principle of collective security is placed ahead of all its provisions. Article 1, paragraph 1, states it to be a purpose of the United Nations ‘To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for suppression of acts of aggression or other breaches of the peace...’ [T]he...” Along these lines, NATO, apart from the Kosovo campaign, and as a group of nations members of the United Nations has acted under the obligation of Article 42 of the Charter, i.e., “enforcement actions are to be performed by the member states, in conformity with the decisions taken by the Security Council under Article 39, 41, and 42.” (for the quoted sentences see in “Collective Security under Charter of United Nations” , American Journal of International Law vol. 42, 1948 p. 783 Accessed August 25, 2011. Available from HeinOnline).

During the discussions on the draft of the North Atlantic Treaty, the participants said that “a series of regional security pacts ‘to the ultimate end that Article 51 security arrangements would be obtained for all free nations’, and that this might lead to a ‘world-wide pact¹⁸ of self-defence based on Article 51.’”¹⁹ During the negotiations of the North Atlantic Treaty the idea to base it on Article 51 became the lighthouse for the drafters: “[I]t is clear that the ultimate conclusion of some world-wide system based on Article 51 to which Mr. St. Laurent²⁰ has recently drawn attention can only be practicable if the way is prepared by a defence arrangement in the North Atlantic area.”²¹ The conclusion reached after reading the account of the works of the North Atlantic Treaty done by Escott Reid, a first-hand witness of the San Francisco Conference for the UN Charter and the 60 meetings that took place in Washington for the conclusion of the North Atlantic Treaty, is that the nations desired to implement Article 51 through the North Atlantic Treaty adhering to the purposes and principles of the UN Charter and so they reflected it in their preparatory works, statements and finally in the preamble, Articles 1, 5, 7 and 12 of the North Atlantic Treaty. On the other hand, the inclusion of the purposes and principles of the UN Charter does not circumscribe the NATO nations to use the Organization for self-defence purposes only. This principle will be used by NATO nations when Article 5 of the North Atlantic Treaty is applied, but not only in the area defined in Article 6, for nothing impedes that an attack comes from outside the area defined by this article. The same is true for collective actions authorized by the Security Council under Articles 24.2 and 39 of the UN Charter, for when the Council authorizes the use of force under Article 42, the [United Nations] Members will use for that purpose their “air, sea and land forces” and they will make them available to the Security Council under Article 43. Nothing is said, in Chapter VII of the Charter, against the possibility of making those forces available through regional organizations,²² to the contrary, this has been implicitly recognized in the Council Resolution 1674 (2006)²³ and in almost all Security Council resolutions when applied under Chapter VII, being the most recent example Resolution 1973 (2011):

¹⁸ Escott Reid, *Time of Fear and Hope* (The Canadian Publishers McClelland and Stewart Ltd, Ontario 1977) page 186. Footnote 2: Foreign Relations of the United States, 1948, III, 122-123.

¹⁹ *Ibid.*, page 101. Footnotes 8 and 9: Foreign Relations of the United States, 1948, III, 67 and 60.

²⁰ United Nations (Regional Collective Security) *HC Deb 12 July 1948 vol 453 cc832-3*

²¹ *Ibid.*, Draft treaty, March 19, 1948 NASP., file 283(s), part 1. and UK, USA, and Canada papers submitted to the tripartite talks, March 23, 1948, NASP., file 283(s), part 1 respectively.

²² Article 12 of the North Atlantic Treaty says: “After the Treaty has been in force for ten years, or at any time thereafter, the Parties shall, if any of them so requests, consult together for the purpose of reviewing the Treaty, having regard for the factors then affecting peace and security in the North Atlantic area, including the development of universal as well as regional arrangements under the Charter of the United Nations for the maintenance of international peace and security.” North Atlantic Treaty Organisation. The North Atlantic Treaty original text: available from: http://www.nato.int/cps/en/natolive/official_texts_17120.htm. Note that NATO is not a regional organization in the understanding of the UN Charter

²³ “Reaffirming its resolutions 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflict, its various resolutions on children and armed conflict and on women, peace and security, as well as its resolution 1631 (2005) on cooperation between the United Nations

"4. Authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations..."

Between September and December 1950 two sessions of the North Atlantic Council took place, the fifth and sixth sessions respectively, and "it was clear that the military security of the NATO countries required the creation of an integrated military force under a Supreme Commander...[I]t was this development of the North Atlantic Treaty Organization which created the necessity for some form of multilateral agreement to define the status of NATO personnel, both civilian and military, in the countries where they were present for the performance of their official duties."²⁴ Consequently, the NATO nations promptly identified the need to provide status to activities of the Alliance. The agreements, including the NATO SOFA were accordingly clearly based on the North Atlantic Treaty and therefore also adheres to the purposes and principles of the UN Charter (see above comments to Articles 2.2; 2.4; 51; and 103).

Certainly it is difficult to deny the immediate relationship between the NATO SOFA and the UN Charter. As simplistic as this statement may look, the facts are that the NATO SOFA was primarily created not only from the need to implement the exception to the prohibition of use of force laid down in its Article 2.4, ruled by Article 51 of the UN Charter, but also to contribute to help its members, as members of the United Nations, as obliged to contribute to maintaining international peace and security (see Articles 42 to 45 of the UN Charter). Since this is irrefutable, it is worth reiterating the obligations that the UN members have given themselves with respect to the rights established by the UN Charter. Article 51 codifies the inherent self-defence as a right; Article 48 lays down that UN Members will contribute with their forces for actions to be taken against threats to the peace, breaches of the peace, and acts of aggression; Article 2.2 establishes that the obligations set up in the UN Charter shall be fulfilled in good faith in order to ensure the rights of the UN members, and Article 103 lays down that if a conflict occurs between the provisions of the UN Charter and other international agreements, the Charter prevails. Moreover, the UN Charter is law in the signatory countries and superior in hierarchy to national law. On the other hand, the NATO SOFA is an instrument that certain nations have concluded to implement an already existing right²⁵ protected in the UN Charter and that complies with the purposes and principles of the UN Charter and therefore the signatories have freely consented upon a double obligation when implementing the NATO SOFA, i.e., to honour the UN Charter, part of the national legislation, and avoid

and regional organizations in maintaining international peace and security, and further reaffirming its determination to ensure respect for, and follow-up to, these resolutions".

²⁴ Naval War College, International Law Studies 1961, *NATO Agreements on Status: Travaux Préparatoires*, Edited and Annotated by Joseph M. Snee, S.J. (Newport, Rhode Island, Washington: US Government Printing Office, 1966) 2.

²⁵ D.W. Bowett, "Collective Self-Defence under the Charter of the United Nations", *The British Year Book of International Law* 32, 1955-1956. Accessed August 25, 2011. Available from HeinOnline.

the natural temptation, when acting as receiving States, of having exorbitant claims on the application of their national law upon NATO visiting forces, specially noting that their presence within their territories is consented²⁶ and aimed to carry out the purposes of the NATO SOFA that are none other than implementing those of the UN Charter.

VIENNA CONVENTION OF THE LAW OF TREATIES

The negotiating history of the 1969 Vienna Convention of the Law of Treaties has significant points that will help us also to keep taking the perspective that the obligations the signatories of the NATO SOFA have freely consented to, need to be observed from a broader perspective. This instead of that related to a self-centric understanding of an exorbitant application of the municipal law to all activities of visiting forces to the point to put at risk the mission for which the receiving State provided its consent to deploy within its territory. However, most importantly is that the receiving State might, with this behaviour, constrain the rights that the UN Charter confirms onto it.

The Convention's technical side of the treaty-making was covered by customary law and not disputed during the negotiation. However, and not relevant for the present paper, the part related to the termination of treaties became very controversial.²⁷

It is indisputable that the UN Charter, the Washington Treaty and the NATO SOFA are international treaties of a multilateral character that have followed the principles of the *pacta sunt servanda*, good faith and free consent. On this note, it is of much significance to highlight Article 27 of the Convention and remind that “a party [to an international treaty] may not invoke the provisions of its internal law as justification for its failure to perform a treaty...” as long as they have been concluded in accordance with the proper internal law.²⁸ In this regard the high courts of receiving States have confirmed this well established principle of customary law codified by the Convention.²⁹

²⁶ “The Preamble [of the NATO SOFA] makes it clear that the Agreement merely defines the status of these forces when they are sent to another NATO country; it does not of itself create the right to send them in the absence of a special agreement to that effect.” Naval War College, 3.

²⁷ United Nations. *Audiovisual Library of International Law, Vienna Convention on the Law of Treaties*, Vienna, 23 May 1969. Accessed September 1, 2011: available from <http://untreaty.un.org/cod/avl/ha/vclt.html>

²⁸ Article 46 - Vienna Convention on the Law of Treaties.

²⁹ “an international agreement cannot be interpreted unilaterally by authoritative [imposing] means: since such agreements are by their very nature an emanation of the will of the high contracting parties, one of them may not bind the other by making unilateral interpretation of the agreement through legislative channels...it would be pointless to draft an agreement intended to establish international legislation if the courts in each State were to interpret it on the basis of concepts specific to their own law.” Quotation from Belgian Cour de Cassation

In light of the foregoing, we can affirm that the NATO SOFA obligations have, in conjunction with the UN Charter provisions, another pillar in the Vienna Convention of the Law of Treaties.³⁰ The Convention reaffirms that claims on respecting and obeying the national law need to be modulated by international obligations, otherwise it would make the treaties inapplicable and would, therefore, empty their object. This rationale needs also to be born in mind when "regional" international law [EU law] is argued in favour of reinterpreting "general" international law. Consequently, we may well conclude that the Convention provides a procedural pillar that avoids receiving States invoking their internal law not to implement a treaty or certain of its provisions, while the UN Charter re-confirms well established rights by customary and positive law in international relations.

EU AND THE NATO SOFA

In 2007 the European Union concluded a treaty reform, the Treaty of Lisbon, that confirms that "EU law shall not affect the obligation of the member states under the North Atlantic Treaty or under the United Nations Charter" in accordance with certain documents as the Protocol on Permanent Structural Cooperation established by Article 28A of the Treaty of the European Union and Declarations 13 and 14 of the Final Act.³¹ This has to be also read in conjunction with Article 42 of the Treaty of the EU (TEU)³², which neutralizes any attempt to use the *lex posterior* rule argument.³³

In spite of the above, there is a dangerous trend taken by some negotiators of NATO countries that are also members of the EU who use EU law arguments to interpret the provisions of the NATO SOFA, which, in the end, is questioning the UN Charter.³⁴ On this note, it needs to be restated that Article 351 of the Treaty of

judgments : a) JT, 1968, 290; and b) 1977, 438. Reference taken from Jean Salmon, *ULB coursebook on international public law*, Vol 1, (1992/93 edition) 89.

³⁰ See Article 30 "Application of successive treaties relating to the same subject-matter" and Article 31 "General rule of interpretation" of the 1969 Vienna Convention on the Law of Treaties.

³¹ Jan Klabbbers, *Treaty Conflict and the European Union*. (Cambridge, Cambridge University Press 2009) p. 119.

³² Article 42.2 "...The policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organization (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework."

³³ This argument used by EU would be dangerous too for the foundational treaties as these could be resolved by a later treaty.

³⁴ Note the European Court of Justice decision on Case T-315/01 Yassin Abdullah Kadi v Council of the European Union and Commission of the European Communities that confirms a dangerous path with respect to the validity of the United Nations Security Council Resolutions and in Kadi, the ECJ gives itself power "to check, indirectly, the lawfulness of the resolutions of the Security Council in question with regard to *jus cogens*, understood as a body of higher rules of public international law binding on all subjects of international law,

Functioning of the European Union (TFEU), former Article 307, relates to conflicting treaty commitments. Article 351 TFEU gives priority to those treaties that have been concluded by EU member states with third parties before 1 January 1958, if original members of the EU, and the date of accession for those states that joined the EU later.

Without entering in the doctrinal debate, Article 351, per its nature, cannot contradict Article 30 of the Vienna Convention of the Law of Treaties that protects anterior treaties. For this reason and at the risk of simplifying this question, the Article was likely intended to legally encourage the EU's integration process as Klabbers points out,³⁵ but not to provide the EU law with overall supremacy even on top of the principles of international law that will operate mainly, depending on the arguments used by negotiators, by reminding either Article 30 or Article 27 of the Vienna Convention of the Law of Treaties.

CONCLUSION

The "Respect versus Obey" debate equates to a tornado that absorbs all those who approach it with a final objective to champion for one or the other doctrinal position. Tornadoes cannot be tamed, but they can be studied scientifically and even better if a scientist could be placed in the center, in the "eye" of it. The equivalent of such analogy is that of studying the object of this paper under the [international] obligations a [NATO] State has with respect to a visiting force operation within its territory under the provisions of the NATO SOFA. The international

including the bodies of the United Nations, and from which no derogation is possible." The curiosity of this statement is that it is made immediately after having recognized the following: *"In light of the principle of the primacy of UN law over Community law, the claim that the Court of First Instance has jurisdiction to review indirectly the lawfulness of decisions of the Security Council according to the standard of protection of fundamental rights as recognised by the Community legal order, cannot be justified either on the basis of international law or on the basis of Community law. First, such jurisdiction would be incompatible with the undertakings of the Member States under the Charter of the United Nations, especially Articles 25, 48 and 103 thereof, and also with Article 27 of the Vienna Convention on the Law of Treaties. Second, it would be contrary to provisions both of the EC Treaty, especially Articles 5 EC, 10 EC, 297 EC and the first paragraph of Article 307 EC, and of the Treaty on European Union, in particular Article 5 EU. It would, what is more, be incompatible with the principle that the Community's powers and, therefore, those of the Court of First Instance, must be exercised in compliance with international law."* Available from:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62001A0315:EN:HTML>

The whole case is also available from: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurftp=jurftp&numaff=&nomusuel=kadi&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docdecision=docdecision&docor=docor&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoor=docnoor&docppoag=docppoag&radtypeord=on&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typeord=ALL&domaine=&mots=&resmax=100&Submit=Rechercher>

³⁵ Jan Klabbers, 118.

obligations are the parameters that inform the amount of territorial sovereignty that needs to be voluntarily yielded to make that visiting force functional and operational, permitting it to carry out its mission without impediment. If this resulted in an exorbitant application of the receiving State law that would make the NATO SOFA provisions, *de facto*, null and void. On this note, it is necessary to say that the EU law when applied by its members takes the same consideration as national law. Additionally, the NATO SOFA in more cases identifies receiving State law as the governing legal regime.

The UN Charter and the Vienna Convention of the Law of Treaties³⁶ rules are *ius cogens* applied to all States. The obligations are incorporated in the North Atlantic Treaty and by extension in its follow-on treaties that supplemented it [NATO SOFA and its Protocol and Supplementary Agreements]. NATO members and Partnership for Peace countries signatories of the NATO SOFA and the PfP SOFA³⁷, respectively, are all bound by those obligations.

Be that as it may, Article II of the NATO SOFA can only be seen from the “eye” of the tornado, i.e., can only be interpreted in the context of the fundamentals, the “international law cloud”, for local interpretations, mainly inspired by erroneous, unreasonable and misled fiscal pretensions, disregard well established principles of positive and customary international law, dismissing, with this attitude, the relevance of stupendously networked instruments of international law such as the NATO SOFA.

“...collective security is, upon analysis, nothing else than the expression of the effective reign of law among States, just as its absence is the measure of the deficiency of international law as a system of law.”

Hersch Lauterpacht

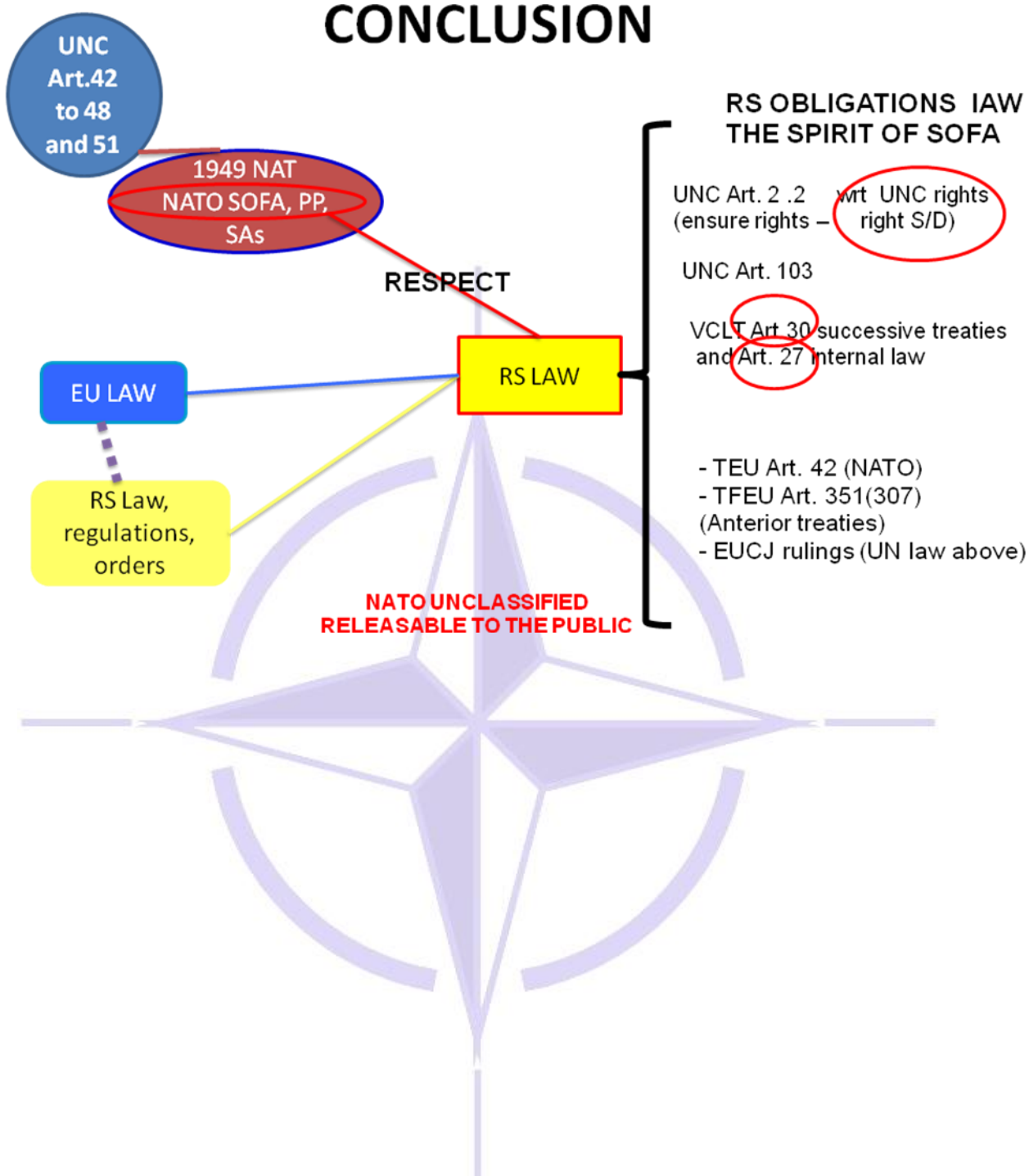
1936³⁸

³⁶ This due to being originally based on well established and accepted international customary law. United Nations. *Audiovisual Library of International Law, Vienna Convention on the Law of Treaties*, Vienna, 23 May 1969.

³⁷ Signed on 19 June 1995 and incorporates by reference the NATO SOFA, see Article I “Except as otherwise provided for in the Present Agreement and any Additional Protocol in respect to its own Parties, all States Parties to the Present Agreement shall apply the provisions of the Agreement between Parties to the North Atlantic Treaty regarding the status of their forces, done at London on 19 June 1951, hereinafter referred to as the NATO SOFA, as if all State Parties to the Present Agreement were Parties to the NATO SOFA.” North Atlantic Treaty Organisation. The Agreement among the States parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace regarding the status of their forces (PfP SOFA). Available from: <http://www.nato.int/docu/basic/txt/b950619a.htm>

³⁸ ‘Neutrality and Collective Security’, 2 *Politica* (1936) 133. Taken from Martti Koskenniemi “Lauterpacht: The Victorian Tradition in International Law” *European Journal of International Law* (EJIL 1997 215-263). 134.

CONCLUSION



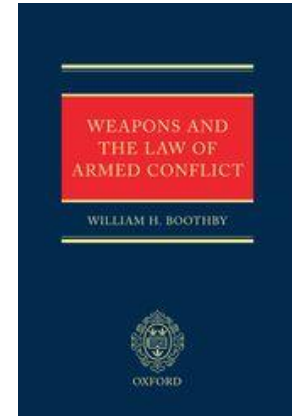
Book review; Weapons and the Law of Armed Conflict

by William Boothby¹

Vincent Roobaert
Assistant Legal Adviser, NC3A

Concerns regarding the use of certain weapons – such as poisonous weapons – have been raised since centuries. The importance of this topic for the military, policy makers and the public at large also explains that means and methods of warfare have been regulated very early on by what we know today as international humanitarian law.

While there have been many short publications on means and method of warfare, there were until recently only a limited number covering this topic in a comprehensive manner. This gap is now filled with the book from William Boothby, *Weapons and the Law of Armed Conflict*, which provides a quite comprehensive and up to date overview of the contemporary law of weaponry.



The structure of the book is pretty standard. Starting from the history of the law of weaponry, the author successively looks at the general principles governing means and methods of warfare, such as the prohibition of superfluous injury and unnecessary sufferings, before reviewing specific weapons in detail. In each specific case, the author has examined whether the rule in question has attained the status of customary law. The author wanted each of the chapters of his book to constitute a self-contained examination of each specific topic. While this induces some repetition for those that will read the book from start to finish, it provides the reader in a hurry with a comprehensive overview of each topic.

The first chapter contains an overview of the evolution of the law of weaponry since the 19th century, although some of the prohibitions and regulations are of much older origin. The review of the Lieber Code, the Saint-Petersburg declaration of 1868 and what is known as the Martens clause are particularly interesting considering that the current rules still embody these principles or slight variations thereof, such as the prohibition of unnecessary sufferings.

After a review of the source of international law, the author quickly reviews the law of targeting, as this topic is closely related to the rules governing weapons². Indeed, the law of targeting and the principle of distinction, for example, set out additional constraints on the war fighter. It follows from these rules that certain uses of a weapon which is not banned per se may be illegal. An example of this would be indiscriminate shooting with a rifle.

¹ W. H. Boothby, *Weapons and the Law of Armed Conflict*, Oxford University Press, 2009.

² The same author is currently preparing a book on targeting, to be published in 2012.

Turning to the law of weaponry, one notes that it is composed of two types of rules. The first are generic principles which do not prohibit a specific type of weapon per se but which do impose limitations and constraints on the design of weapons. These rules include the prohibition of weapons that cause superfluous injuries and unnecessary sufferings, the prohibition of indiscriminate weapons and the rules governing the protection of the environment. The second type of rules covers the prohibition of specific weapons such as the conventional weapon convention and the Ottawa treaty banning anti-personnel landmines.

The existence of specific prohibitions alongside the general principles raises questions of normative character, such as the applicability of the general principles. If indiscriminate weapons are prohibited based on the general principle, for example, one can wonder why there was a need to adopt a specific instrument prohibiting anti-personnel landmines. The author also questions whether or not the general principles are workable. He refers to an attempt by the International Committee of the Red Cross to give more substance to the notion of unnecessary sufferings through the Sirius project, which was subsequently withdrawn.

The book then turns to the specific prohibitions, including the Weapons Convention, poisonous weapons, biological and chemical weapons, firearms and bullets, mines and booby traps, cluster weapons and unexploded ordnances. A specific chapter is also devoted to nuclear weapons which many nations consider as falling outside the scope of the rules contained in Additional Protocol I to the Geneva Conventions. The two advisory opinions of the ICJ are also examined.

The author also discusses the legal status of weapons which are not covered by specific prohibitions by applying the general principles mentioned above. This includes missiles, UAV, computer network attack, directed energy weapons and non-lethal weapons.

To conclude, William Boothby's book offers a comprehensive and up to date overview on the contemporary law of weaponry. It will certainly constitute the authority on the topic for the years to come. The choice of the author to ensure that each chapter is self-contained makes the book very easy to read.

NATO SPOTLIGHT



Name: Brian Bengs

Rank/Service/Nationality: Lt Col, USA – AF

Job title: NATO School Legal Advisor/Operational Law Instructor

Primary legal focus of effort: NATO School courses

Likes: Mopar muscle cars, dogs, travel, beer

Dislikes: Death by Powerpoint in boring presentations

When in Oberammergau, everyone should: get out on the trails to go biking or hiking and enjoy some Schweinshaxe und Weiss bier.

Best NATO experience: NATO School – Teaching international law & NATO operations. Of course, the 2012 NATO Legal conference was truly a life-changing event.

My one recommendation for the NATO Legal Community: Use the international exposure to ask questions and learn how & why other perspectives differ from your own.



Name: David Bales

Rank/Service/Nationality: CDR, FRA N

Job title: Assistant Legal Advisor (Operations)

Primary legal focus of effort: ISAF and maritime issues

Likes: Good food and wine, Sports (Basket-Ball, Rugby and diving in particular), Travelling (with a special mention for the following areas: Australia, French Polynesia, Spain, South of France and Tuscany).

Dislikes: Dishonesty and negative people

When in Brunssum, everyone should: Enjoy the possibility to spend good time in a peaceful and green area, located very close to Germany and Belgium.

Best NATO experience: Operation Unified Protector in 2011 during 6 months as LEGAD of the Admiral commanding the French Carrier Strike Group

My one recommendation for the NATO Legal Community: Work as a team and exchange experiences and ideas as much as possible

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Name: Enrico Benedetto Cossidente

Rank/Service/Nationality: CAPT, ITA A

Job title: Legal Advisor (Operations)

Primary legal focus of effort: All legal issues, mostly ISAF related

Likes: Long runs (30 km a week), mountain walking/trekking, reading

Dislikes: "Yes men"

When in Brunssum, everyone should: Come over to the LEGAD Office and have a real Italian cup of coffee from Capt Cossidente.

Best NATO experience: The one I am living right now at JFCBS. Good team and very professional colleagues. I enjoy the working context because it is an occasion for me to learn and grow professionally.

My one recommendation for the NATO Legal Community: Share legal information and knowledge, join the "team" and be open to hear other's opinion. It will let you grow as a professional and as a person.

HAIL & FAREWELL

BIENVENUE...

ACT SEE:	Ms. Allende Plumed (ESP CTR) Ms. Galatia Gialitaki (GRC CIV)
ARRC:	COL Nigel Jones (GBR A)
HQ KFOR:	COL Jens Kessemeier (DEU A)
JFC HQ Brunssum:	CDR David Bales (FRA N) CPT Enrico Cossidente (ITA A)
JFC HQ Naples:	CDR Henriette Broekhuizen (NLD N) LCDR April Inglis (CAN N) LTC Wilfried Troiville (FRA A)
NATO HQ:	COL Chris Lozo[IMS] (USA AF)
NATO School:	MSG Björn Klaiber (DEU A)
NCI Agency:	Ms. Dominique Palmer-De Greve (BEL CIV)

BON VOYAGE...

ACT SEE:	Ms. Dominique Palmer-De Greve left in June 2012
ARRC:	COL James Stythe left in Fall 2012
HQ KFOR:	COL Michael Schultz left in Fall 2012
NATO HQ:	COL Jim Wise [IMS] left in July 2012
JFC HQ Naples/NCIA : (Larissa- Greece)	Ms. Galatia Gialitaki (GRC CIV) left in October 2012

Upcoming Events

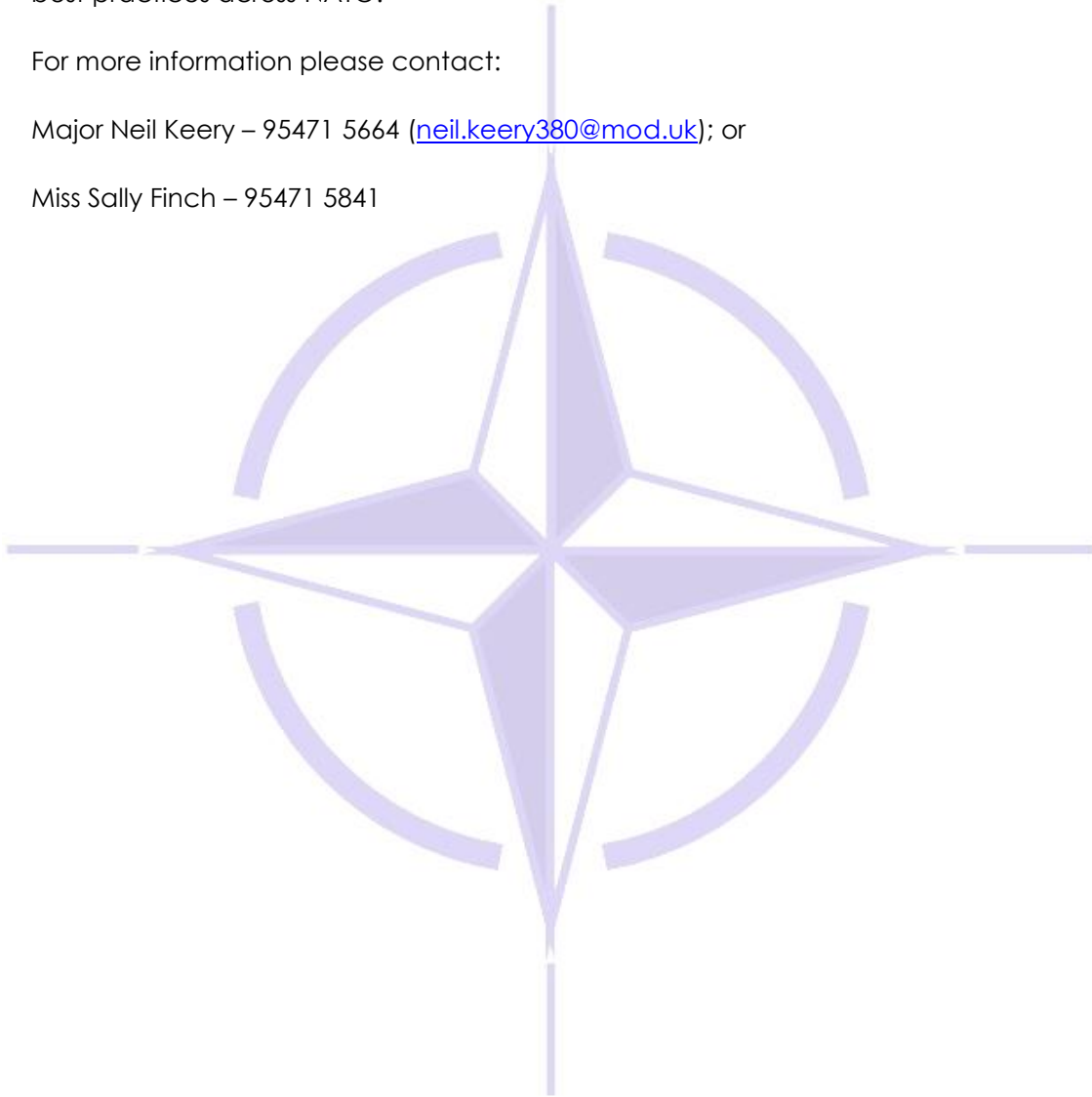
"It is often for an excuse that we say things are impossible."
François de la Rochefoucauld

- Exercise ARRCADÉ BRIEF, the HQ Allied Rapid Reaction Corps study period, will be held on March 26-27, 2013 at HQ AARC, Imjin Barracks, Gloucester, England. The study period is designed to update legal advisors by way of a series of briefings and discussions on areas of operational law with the aim of encouraging a common approach and the development of best practices across NATO.

For more information please contact:

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Miss Sally Finch – 95471 5841



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