



Legal Gazette

Issue 30



Inside This Issue

Allegations, Denials and
Investigations – Preparing for
the Inevitable

CHARLES GARRAWAY

Capturing NATO Knowledge
through Information
Management

CATHERINE GERTH

INEKE DESERNO

PETRA OCHMANNOVA

ISAF Operational Records:
Preserving information
critical to history, analysis,
and the law

DOUGLAS ROBERTS

Book Review:

International Military
Missions and International
Law; Ed. by Marco Odello

& Richard Piotrowicz

VINCENT ROOBAERT

NATO INFORMATION MANAGEMENT

OPERATIONAL RECORDS

INVESTIGATIONS & INQUIRIES

+

HQ SACT & INT. LAW

DEDICATED TO MR. STEVE ROSE

ALLIED COMMAND TRANSFORMATION

LEGAL ADVISOR

ACT SEE LEGAL OFFICE
Mr. Sherrod Lewis Bumgardner
Dr. Petra Ochmannova
Mrs. Galateia Gialitaki
Mr. Patrick J. Campbell
May 2013

Contents

Introduction.....	2
CLOVIS – operational tool for sharing legal knowledge.....	4
Questions on HQ SACT & International Law.....	7
Allegations, Denials and Investigations – Preparing for the Inevitable.....	11
Capturing NATO Knowledge through Information Management – Policy, Process and Procedure.....	18
ISAF Operational Records: Preserving information critical to history, analysis, and the law	27
Book Review: International Military Missions and International Law.....	35
Spotlights.....	39
Hail & Farewell.....	44
Dedication to Mr. Steve Rose.....	45
Upcoming Events of Legal Advisors Interest	47

Introduction

Dear Fellow Legal Professionals and Persons Interested in NATO,

It is our pleasure to deliver the 30th issue of the **NATO Legal Gazette** published for the past seven years by Allied Command Transformation. The **Gazette** aims to support the civilian and military legal professionals serving in NATO billets or providing advice to NATO and partner nations on Alliance legal matters. It promotes the active sharing of knowledge within our extended NATO Legal Community. Beginning as a modest inter-office circular, the articles written by you, our readers, for your NATO and national colleagues evolved the **Gazette** into an anticipated newsletter for frequently fresh and insightful legal analysis of issues of NATO interest.

With this issue and a new editorial team composed of Dr. Petra Ochmannova assigned in January 2013 by the Ministry of Defence of the Czech Republic to Allied Command Transformation Staff Element Europe (ACT SEE), and Mrs. Galateia Gialitaki the ACT SEE Legal Assistant who assumed her post in November 2012, the **Gazette** begins a new phase as a topically organized publication. Issue 30 is dedicated to NATO Information Management. Its three articles identify the necessity, challenges and policies for properly creating retrievable records of the actions of the North Atlantic Alliance, its partners, and cooperating nations. With the imminent conclusion of the mission of the International Security Assistance Force (ISAF) in December 2014, and as NATO's activities in Kosovo and Bosnia continue to wind down, this legally significant topic needs urgent attention.

“Leadership and learning are indispensable to each other.”

John F. Kennedy

In addition to articles focusing on different aspects of one topic, future issues of the **NATO Legal Gazette** will also include a short article describing a NATO headquarters, agency or organization so a better understanding of the work done by the 58 legal offices of the organization may be better known. Reviews of recent international law books will always be included and appreciated. Finally, as CLOVIS is evolving from a validated experiment to a fielded concept for using available IT platforms for better sharing legal knowledge within our NATO legal community, each issue will provide you with tips and short articles about how to effectively use this unique tool.

While the format of the **Gazette** is changing, its dependence on the contributions of its readers as authors continues. Issue 31 will be dedicated to the topic of **Gender**. Any readers who would wish to author a four to eight page article on the legal aspects of this topic or would like to be author of two to three page of book review that NATO Legal Community should be aware of, are encouraged to contact Petra Ochmannova via email at petra.ochmannova@shape.nato.int. The deadline for submission of the contributions is 17 June 2013.

Sincerely yours,
Lewis, Petra, Galateia, and Patrick





CLOVIS

Comprehensive Legal Overview Virtual Information System

CLOVIS OPERATIONAL TOOL FOR SHARING LEGAL KNOWLEDGE

Allende Plumed Prado
CLOVIS Team
ACT SEE Legal Office

The wide diversity of cultures within NATO is not only one of its main strengths, but it can also be its weakness. NATO can only perform effectively in joint operations if measures are in place to ensure smooth cooperation between the member nations. This is particularly true when applied to the legal community whose primary function is to provide timely and consistent legal advice to the NATO Commanders and community as a whole. Like most communities of interest within NATO, the obstacles the legal community faces in achieving its mission are caused in part by the rapid turnover in staff, leading to a loss of institutional knowledge. The lack of co-ordination and communication between the various legal offices due to the decentralised nature of NATO compounds the difficulty of accessing common information.

The Allied Command Transformation Staff Element Europe (ACT SEE) Legal Office is seeking to address this problem by training lawyers on the benefits of information sharing. For the past three years, and driven by NATO's desire for Smart Defence, ACT SEE has been working on an innovative project known as the **Comprehensive Legal Overview Virtual Information System - CLOVIS**.

CLOVIS is a tool available online to the whole NATO legal community: NATO HQ, both Strategic Commands, their subordinate commands, NATO Agencies, other NATO entities such as Centres of Excellence, NATO School in Oberammergau etc., as well as selected legal personnel working for NATO nations in MODs or MFAs.

This capability is designed to increase the communication between the NATO Legal Offices and the nations. The aim is to promote and facilitate the flow of information by using a system that complements, rather than replaces the traditional means of communication.

CLOVIS utilises the Information and Knowledge Management Organisation to gather, filter, process and disseminate legal information across both the NATO community and its partner organisations. For the first time NATO directives and policies, as well as other documents of legal relevance, such as international treaties (e.g. Ottawa Agreement, Paris Protocol etc.), case-law, articles of legal interest, training material (power point presentations) and other information relevant to the legal community are available on a single platform. Moreover, this information is created, processed, and managed by lawyers for the benefit of their peers.

But CLOVIS is not just a legal database. It is much more! It contains tools such as colleague finder, topic oriented sections and various workspaces (e.g. about the revision of the Legal Deskbook). These are intended to ease collaboration between users within a secured environment, a matter that is of great importance to all of us. It also prevents information loss through staff turnover, whilst capturing it in one place and making it easily accessible to everyone, at all times. Finally, at a time of global economic austerity CLOVIS represents a great tool for pooling resources by the legal community and prevents duplication of effort. And as such, it is in line with NATO's aim "to do more with less and increase its coordination of resources".

*"Learned men are the
cisterns of
Knowledge, not the
fountainheads."*

James Northcote

In summary, this single tool facilitates the sharing of legal information, promotes education and informs about training activities within NATO and NATO nations.

CLOVIS has been tested as an experiment over the last three years, and has become an operational capability in 2013. It will be replicated on the NATO SECRET system in the coming months. CLOVIS directly supports NATO operations by providing legal support, application training, relevant and timely information as well as pre-deployment training activities to the legal advisors. CLOVIS was recently determined as "mission critical" by the SHAPE Management Requirements Board because of the links it creates between the various NATO legal offices, in particular those in HQ ISAF and ISAF Joint Command, for which direct support and communication lines with higher headquarters are essential.

After 2014 and when NATO's emphasis generally shifts to operational preparedness, CLOVIS is well in line with the Connected Forces Initiative to expand its role in training lawyers on the increasing complexity of NATO operational law, and the close links between law and policy. In its current form, CLOVIS has a proven record of being reliable, useful and easy to access. With the advent of CLOVIS on the SECRET side and the continued

support it provides to the legal community, it can serve as a good example to other communities of interest within NATO to enhance communication and thus improve the quality of work within the Alliance.

In the next Legal Gazette issue, you will find more information regarding the use of CLOVIS with helpful instructions and tips on how to use CLOVIS more effectively. In particular, we will provide some information about how to participate in the revision of the NATO Legal Deskbook on CLOVIS.

We hope CLOVIS will prove to be a useful tool to you. Should you have any questions, comments or ideas to help us improve our work, please do not hesitate to contact us. Finally, if you work for NATO or a NATO nation MOD/MFA and are interested in joining CLOVIS, please contact a member of the CLOVIS team to gain access to the platform.

Lewis BUMGARDNER – Sherrod.BUMGARDNER@shape.nato.int (NCN: 254 4388)

Thomas MERTENS – Thomas.MERTENS@shape.nato.int (NCN: 254 7611)

Allende PLUMED – Allende.PLUMEDPRADO@shape.nato.int (NCN: 254 7611)

Annabelle THIBAUT – Annabelle.THIBAUT@shape.nato.int (NCN: 254 2080)

Jessica JOHNSON – Jessica.JOHNSON@shape.nato.int (NCN: 254 8194)



Questions on HQ SACT & International law

ACT SEE Legal Office
Sherrod Lewis Bumgardner
Petra Ochmannova
Patrick J. Campbell

Why This Article?

To share and institutionalise knowledge about the 21st Century legal structure of the North Atlantic Alliance, each issue of the *NATO Legal Gazette* in 2013 and 2014 will contain questions and answers about the various commands and organisations within the North Atlantic Treaty Organization. Issue #29 highlighted the legal regime of the Supreme Headquarters Allied Powers Europe (SHAPE). This article offers questions and answers about the other NATO strategic command, Headquarters, Supreme Allied Commander Transformation (HQ SACT).

This article is dedicated to Mr. Stephen (Steve) Rose who is retiring as the Allied Command Transformation (ACT) Legal Advisor in June 2013.

What Is HQ SACT?

Commanded by Supreme Allied Commander Transformation (SACT), General Jean-Paul Paloméros, French Air Force, HQ SACT is located in Norfolk, Virginia, United States. Celebrating its 10th anniversary in June of this year, HQ SACT is the legal successor organization to Headquarters, Supreme Allied Commander Atlantic (HQ SACLANT) that defended the vital shipping lanes between Europe and North America from 1952 until its deactivation in June 2003. HQ SACT is the only NATO military headquarters in North America and the only one outside of Europe.



At the 2002 Prague Summit, the North Atlantic Council, meeting at the level of the Heads of State and Nations, decided to restructure NATO's two military commands. To become more efficient, the Supreme Allied Commander Europe (SACEUR) at SHAPE would command all NATO operations—air, land, and sea—through the leaner Allied Command Operations (ACO). Affection for General Eisenhower's historical title and headquarters, as well as myriad agreements referencing either

SACEUR or SHAPE, led to the decision to leave these acronyms/short titles unchanged despite the command's prescribed change to from Allied Command Europe (ACE) to ACO.

To develop the doctrines and tools that NATO would need in the 21st Century, the new Supreme Allied Commander Transformation (SACT) in Norfolk would direct Allied Command Transformation (ACT) from his Headquarters in Norfolk (HQ SACT) to improve, in succinct terms, the military effectiveness of the Alliance. Because of this then-new transformational focus of ACT, the maritime mission and several of the subordinate HQs of the former SACLANC transferred to ACO. However, to perform its new mission, ACT also gained new entities such as the Joint Warfare Centre in Norway (formerly JHC North as part of ACE), the Joint Analysis and Lessons Learned Centre in Portugal, the Joint Force Training Centre in Poland, and retained the NATO Undersea Research Centre (formerly SACLANC Centre)¹ in Italy. While HQ SACT is the higher headquarters to JWC, JFTC, and JALLC, it should be noted that part of HQ SACT is actually co-located and administratively assigned to SHAPE (Staff Element Europe) and also has an element co-located at NATO HQ (SACT's Representative in Europe (STRE)).

The use of "transformation" in the titles of the Commander and Headquarters re-enforces the significant change towards a functional division of NATO activities. In carrying out its mission of improving the military effectiveness of the Alliance, HQ SACT and the transformation network that is ACT, is responsible for, among other things, training, education, capabilities, concept development, NATO's contribution to a comprehensive approach to crisis management, experimentation, research, and technologies that affect NATO operations, nations, partners, and troop contributing nations worldwide. In carrying out these tasks, HQ SACT also engages and maintains crucial relations with NATO COEs and with NATO Training Establishments, an example of which is the long-standing relationship between HQ SACT and the NATO School in Oberammergau, Germany. These functions, roles and tasks all involve legal support in terms of developing framework documents and have established HQ SACT Legal as a regular partner in the field of legal conversation.

¹ It should be noted that the NURC transferred from ACT and the NCS in July 2012 to take up residence in the newly formed Science and Technology Organisation (STO), an agency formed under the terms of the *Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff* (Ottawa Agreement) where it has been renamed the STO's "Centre for Maritime Research and Experimentation (CMRE)".

What Is HQ SACT's Legal Regime?

The constituting document of the Alliance is *The North Atlantic Treaty* signed in Washington, DC, in 1949 by its original twelve member nations.² Its Article 9 established a Council on which each of its parties is represented to consider matters concerning the implementation of the Treaty. In 1951 these nations entered into the *Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces* (NATO SOFA³) and the *Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff* (Ottawa Agreement⁴). In 1952 the members of the Alliance approved the *Protocol on the Status of International Military Headquarters Set Up pursuant to the North Atlantic Treaty* (Paris Protocol⁵).

Per Article 1 (b) of the Paris Protocol, HQ SACT, as the legal successor to HQ SACLANT, is one of the two "Supreme Headquarters" commonly referred to as a strategic command because of its position at the highest level of the NATO military command structure. The other, as noted above, is SHAPE.

What does this designation as a "Supreme Headquarters" say about their role in the Alliance? As a matter of international law, both Supreme Headquarters enjoy juridical personality explicitly provided to them by Article 10 of the Paris Protocol identical to, but separate from, what Article IV of the Ottawa Agreement provides the North Atlantic Treaty Organization. All three are independent legal entities subject to international law and in many areas, self-governing.⁶

"The final test of a leader is that he leaves behind him in other men, the conviction and the will to carry on."

Walter Lippman

²The North Atlantic Treaty (Washington Treaty) (1949), Washington, DC. The twelve original parties were Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom, and the United States.

³ Agreement between the Members of the North Atlantic Treaty Regarding the Status of their Forces (NATO SOFA) (1951), London.

⁴ Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff (1951), Ottawa.

⁵ Article 10 Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (Paris Protocol) (1952), Paris.

⁶ The commentary from NATO on the draft articles of responsibility of international organizations echoes this idea: "[T]he specific situation of organizations in which, owing to the nature of the activity in which it is engaged or other factors, the member States retain virtually all decision-making authority and participate on a daily basis in the governance and functioning of the organization." International Law Commission, Responsibilities of International Organizations: Comments and Observations Received from International Organizations, 63rd Sess., A/CN.4/637, at 11 (14 Feb. 2011).

What is the U.S. state practice towards HQ SACT?

The Paris Protocol addresses the status of HQ SACT, its personnel and their dependents. The Paris Protocol provides some additional status to that applied through the NATO SOFA. Since the Paris Protocol is a protocol to the NATO SOFA, it necessarily incorporates by reference selected provisions of the NATO SOFA.

Even though the Paris Protocol was written with headquarters like SHAPE and HQ SACT in mind, many of the details of crucial areas of the agreement, like privileges and immunities for Flag and General Officers, were left for further development, subject to bilateral agreements between the Supreme Headquarters and the receiving States hosting an International Military Headquarters.⁷ Indeed, the Paris Protocol authorises the Supreme Headquarters to conclude a supplementary arrangement with the NATO Member States pursuant to the Paris Protocol.

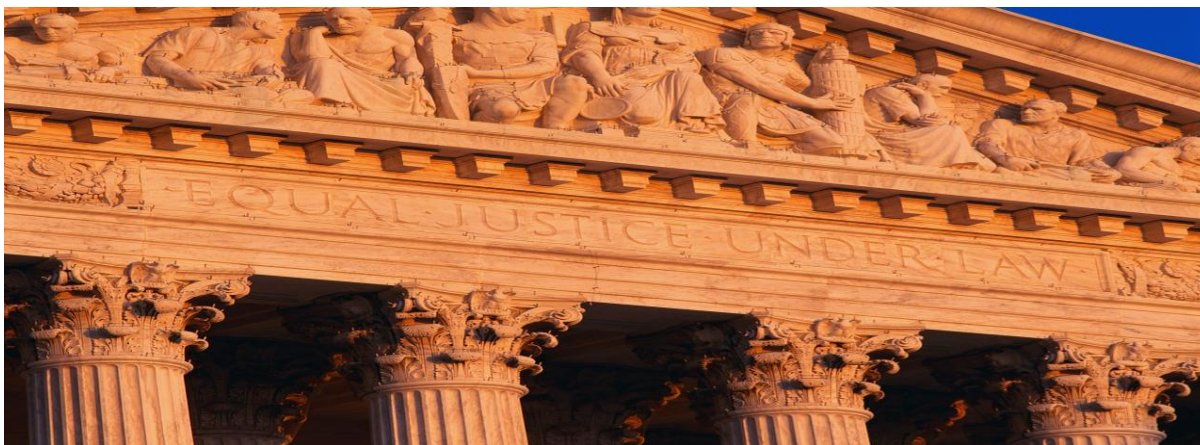
HQ SACT as the successor to HQ SACLANT remains bound by the *Agreement and Exchange of Letters between the United States of America and the Headquarters of the Supreme Allied Commander Atlantic* (1954).⁸ This bilateral supplementary agreement serves as an interpretive instrument for implementing the Paris Protocol with regards to HQ SACT.⁹ It establishes the legal rights and obligations for HQ SACT and the personnel attached to this entity on the territory of United States.

While the legal structure of the United States may be different than that of some of the other member Nations because of its common law traditions, it's important to note that the same founding instruments created both HQ SACT and SHAPE—seminal documents that the United States had a hand in crafting. Thus, it is difficult to foresee a disagreement arising between NATO and the U.S. over treaty language. Indeed, though supplemented by other bi-lateral arrangements concluded between HQ SACT/HQ SACLANT and the United States, the 1954 Stationing Agreement between HQ SACLANT (applicable to HQ SACT as the legal successor to HQ SACLANT) and the United States remains unchanged since its conclusion in 1954, a testament to the enduring commitment to HQ SACT by its Host Nation.

⁷ See Article 16 of the Paris Protocol and Max S. Johnson, *NATO Military Headquarters*, in *THE HANDBOOK OF THE LAW OF VISITING FORCES*, P. 318 (Dieter Fleck ed., 2001)

⁸ See *Agreement and Exchange of Letters between the United States of America and the Headquarters of the Supreme Allied Commander Atlantic*, Oct. 22, 1954, 5 U.T.S. 2519 [hereinafter 1954 Stationing Agreement].

⁹ Ibid. See Article 10 of the Paris Protocol.



ALLEGATIONS, DENIALS AND INVESTIGATIONS – PREPARING FOR THE INEVITABLE–

Prof. Charles Garraway^{1*}

Many years ago as a very junior military legal officer, I assisted in the prosecution at a court martial of a case involving injuries to a child. The case was difficult but careful attention to detail led to a conviction. Towards the end of my military career, I was informed that the accused had filed an appeal based on 'new evidence' which suggested the possibility that the injuries had been caused during treatment of the child in a foreign hospital. I knew that we had investigated this possibility at the time, had obtained statements from doctors to the effect that this could not have occurred and that we had a signed admission from the accused accepting that evidence. The file was called for – only for it to be discovered that it had been destroyed some months before. It was impossible to trace – or even identify – the doctors and so the appeal was allowed, and the conviction was overturned.

Around the same time that this occurred, Tony Blair, Prime Minister of the United Kingdom, created the Saville Inquiry in 1998 to establish a definitive version of the events in Northern Ireland of Sunday 30 January 1972, otherwise known as 'Bloody Sunday'. On that day, 13 civilians were killed after British soldiers opened fire on demonstrators.¹ A frantic plea went round the Ministry of Defence for any files relating to that period in Northern Ireland.

* Charles Garraway is a Vice President of the International Humanitarian Fact Finding Commission. As a Lieutenant Colonel in the UK Armed Forces, he served at SHAPE from 1984 to 1987 as Assistant Legal Advisor.

¹ For the website of the Saville Inquiry, see <http://webarchive.nationalarchives.gov.uk/20101103103930/http://bloody-sunday-inquiry.org/>

My office, like many legal offices, kept old files and so I was able to produce a few (though I am not sure that any were directly relevant to the events of 'Bloody Sunday'). However, soon afterwards, my office moved into the new 'paperless' Ministry of Defence Building and all our paper files were sent to be archived. Now everything was to be electronic. I am not sure whether those Northern Ireland files could ever have been recovered from an electronic archive because that would have required a better recording system than then existed – and the abilities to ask the right questions to identify the files.

We live in an age of inquiries, both national and international. I have to declare an interest here as a Vice President of the International Humanitarian Fact Finding Commission (IHFFC) established under Article 90 of the 1977 Additional Protocol I to the 1949 Geneva Conventions. In 1977, the need for an independent body to investigate violations of the law of armed conflict was recognised and the Commission was finally established in 1991 after the necessary number of States had accepted its competence. Unfortunately, the somewhat complicated method by which States can activate the Commission appears to have discouraged such activation and it has never been used.² Does that mean that there has been no need for fact-finding? Au contraire! Particularly since the end of the Cold War, inquiries have become commonplace.

"Learning preserves the errors of the past, as well as its wisdom. For this reason, dictionaries are public dangers, although they are necessities."

Alfred North Whitehead

The United Nations, often through the Human Rights Council (formerly Human Rights Commission), has established numerous *ad hoc* inquiries into such diverse situations as Darfur, Lebanon, Gaza and Libya. Even the European Union has joined in with the "Tagliavini Report" into the Russia-Georgia conflict.³ In addition, we are observing an unprecedented development of international criminal law with the establishment of the various "ad hoc" international criminal tribunals and the International Criminal Court itself. Fact finding has become almost flavour of the month. NATO, as one of the major players on the international scene, naturally has not been immune from this trend. As NATO's role has changed, so it has become increasingly involved in operations. It was a surprise to many – though not to the lawyers – when the then Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, Carla del Ponte, confirmed that the Tribunal had jurisdiction over the actions of NATO during the 1999 Kosovo

² For an outline of the role and history of the IHFFC, see Charles Garraway, 'The International Humanitarian Fact-Finding Commission', *Commonwealth Law Bulletin*, Vol.34, No.4, December 2008, 813-816.

³ The full report can be accessed at <http://www.ceiig.ch/Report.html>

air campaign, Operation Allied Force, and established a committee to review the NATO bombing campaign. That committee duly reported and recommended that no investigation be commenced by the Office of the Prosecutor in relation to the NATO bombing campaign or incidents occurring during the campaign.⁴ However, a more detailed reading of the report indicates that this was not the complete exoneration that some may have hoped for. The Committee looked at five specific incidents which in their view were the 'most problematic'. The Committee decided that none of these required detailed investigation by the Office of the Prosecutor. However, in the recommendations⁵, the Committee noted that when the Office of the Prosecutor requested NATO to answer specific questions about specific incidents, the NATO reply was couched in general terms and failed to address the incidents themselves. There the matter rested although Amnesty International publicly stated that some of the NATO actions amounted to war crimes.⁶ Indeed, the Independent International Commission on Kosovo in The Kosovo Report stated:

'The Commission accepts the view of the Final Report of the ICTY that there is no basis in the available evidence for charging specific individuals with criminal violations of the Laws of the War during the NATO campaign. Nevertheless some practices do seem vulnerable to the allegation that violations might have occurred and depend, for final assessment, on the availability of further evidence.'⁷

The door was left invitingly open.

Again, in relation to Libya, Operation Unified Protector led by NATO, the United Nations established an Inquiry headed by three eminent jurists, Cherif Bassiouni, a leading Egyptian human rights expert who teaches law at DePaul University in Chicago, Asma Khader, a former Jordanian Minister of Culture who founded a local human rights group and Philippe Kirsch, a Canadian who was the first President of the international Criminal Court. The Commission interpreted its mandate to include the actions of NATO and, in its report dated 8 March 2012, stated:

⁴ See Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, accessed at <http://www.icty.org/sid/10052>

⁵ *Ibid*, para.90.

⁶ See Amnesty Report 'NATO/Federal Republic of Yugoslavia, "Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force', dated June 2000, accessed at <http://www.amnesty.org/en/library/asset/EUR70/018/2000/en/e7037dbb-df56-11dd-89a6-e712e728ac9e/eur700182000en.pdf>

⁷ See Independent International Commission on Kosovo: The Kosovo Report, page 2, accessed at http://sitemaker.umich.edu/drwcasebook/files/the_kosovo_report_and_update.pdf

'The Commission concluded that North Atlantic Treaty Organization (NATO) conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties. On limited occasions, the Commission confirmed civilian casualties and found targets that showed no evidence of military utility. The Commission was unable to draw conclusions in such instances on the basis of the information provided by NATO and recommends further investigations.'⁸

The Commission had looked in particular at five airstrikes where a total of 60 civilians were killed and 55 injured.⁹ The Commission also investigated two NATO airstrikes which damaged civilian infrastructure and where no military target could be identified.¹⁰ They found:

'The Commission is unable to conclude, barring additional explanation, whether these strikes are consistent with NATO's objective to avoid civilian casualties entirely, or whether NATO took all necessary precautions to that effect. NATO's characterization of four of five targets where the Commission found civilian casualties as "command and control nodes" or "troop staging areas" is not reflected in evidence at the scene and witness testimony. The Commission is unable to determine, for lack of sufficient information, whether these strikes were based on incorrect or out-dated intelligence and, therefore, whether they were consistent with NATO's objective to take all necessary precautions to avoid civilian casualties entirely.'¹¹

Again the door was left invitingly open.

The two letters sent by the NATO Legal Adviser, Peter Olson, to the Inquiry are attached at Annex II to the Report. Both make one very pertinent observation. In his letter of 20 December 2011, Mr Olson stated:

'Allow me to note that many of the queries in the 11 November letter, and all or virtually all of those in the Annexure of your letter of 15 December, appear to involve issues of international humanitarian law. The mandate of the ICIL is to investigate violations of international human rights law.'¹²

In his letter dated 23 January, which provided substantive tactical information, Mr. Olson repeated this point. However, after accepting that

⁸ Para.122 (p.21), Report of the International Commission of Inquiry on Libya, A/HRC/19/68, dated 8 March 2012, accessed at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.68.pdf>

⁹ *Ibid*, para.86 (p.16).

¹⁰ *Ibid*.

¹¹ *Ibid*, para.89 (p.17).

¹² *Ibid*, Annex II (p.26).

NATO did not have the ability to carry out investigations on the ground in Libya, whereas other organisations did, he concluded by saying:

'If as a result serious questions arise with respect to NATO's conduct or understanding of the effects of its strikes, NATO is fully prepared to evaluate those questions and any new evidence that may be adduced.'¹³

Perhaps the door has now been deliberately fixed as open.

*"Those who don't
know history are
bound to repeat it."*

Edmund Burke

What conclusions can we draw from this? I think there are a number.

The first is that nothing is completed until everything is completed. As we saw from the national example that I gave at the beginning of this article relating to 'Bloody Sunday' in Northern Ireland, in politics and law, time is of little meaning. The trials at the ICTY continue decades after the wars in the Former Yugoslavia ended. Cases in national courts, and even international courts, continue to surface, even in NATO countries, where alleged victims seek compensation for actions taken (or in some cases, such as Srebrenica, not taken) by national forces, sometimes whilst under NATO command. An example of such a case before the European Court of Human Rights is of course that of *Bankovic*.¹⁴ As NATO is an international organisation with concurrent privileges and immunities, it is far easier to target individual States whether in civil suits or under human rights legislation. However, one cannot rule out the possibility of suits against NATO, or certainly of further inquiries involving NATO, possibly years down the line.

This raises issues both for national Governments and for NATO itself. In order to defend such claims, as the United Kingdom Ministry of Defence found in relation to 'Bloody Sunday', it is necessary to have the relevant documents available for examination and analysis. This means an adequate and accurate archive system. Not only must documents and other archival material be properly stored but they must also be capable of retrieval. In some ways this is easier in an electronic age but the sheer amount of material available provides a challenge in itself. I am not an expert in computers and computer systems and therefore can only point out the need – not how this can be achieved.

A further issue is that there is a marked – and often unappreciated distinction - between law of armed conflict fact finding and that conducted under human rights auspices. Perhaps I can give an example from an

¹³ *Ibid*, Annex II (p.36).

¹⁴ *Bankovic v Belgium et al.*, (2007) 41 ILM 517.

experience of my own during a fact finding commission of which I was a member (not, in this case, the IHFFC).

In country A, there were a number of civilian factories that had been attacked from the air by the forces of country B. A number of human rights bodies looked at the factories, could find no military link and therefore pronounced that these were 'indiscriminate attacks' and thus as such, constituted war crimes. My Commission also examined these factories and found the same facts. In human rights terms, the position seemed clear. However, we also found that the relevant factories had been attacked at night (indicating that precautions had been taken to protect the civilian work force and minimise civilian casualties). In addition, country B had used very expensive precision guided munitions, not 'dumb' bombs. This indicated that these were high value targets and not 'indiscriminate attacks' – unless they fell afoul of the proportionality rule. But the test there is to balance the **expected** incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof against the **anticipated** concrete and direct military advantage from the attack considered as a whole.¹⁵ This could only be viewed from the perspective of country B. The result was to a certain extent irrelevant. Even if there had been substantial civilian casualties, if these could not have been foreseen or the anticipated military advantage was sufficiently high, that might not have been a breach of the law of armed conflict.

"The knowledge of all things is possible."

Leonardo da Vinci

My point is that fact finding in law of armed conflict terms is different from human rights fact finding. In human rights law, one identifies the breach of the right and there is then an onus on the state to justify that breach. However, in the factory situation, without having further evidence, we could not even guess at whether there had been a breach of the law of armed conflict and indeed the evidence that we had gathered tended to indicate otherwise. The vast majority of fact finding today is carried out under human rights principles. Whilst many seek to say that human rights law and the law of armed conflict are 'complementary', there are significant differences, particularly in the interpretation of proportionality and over issues relating to detention.¹⁶

¹⁵ See Article 51 (5), Additional Protocol I. The principle of proportionality lies at the heart of the law of armed conflict. For an interesting analysis of how it works in practice, see Michael Schmitt, Targeting and International Humanitarian Law in Afghanistan, 85 International Law Studies 307-339.

¹⁶ See, for example on detention, Jelena Pejic, The European Court of Human Rights' *Al-Jedda* Judgment: The Oversight of International Humanitarian Law, International Review of the Red Cross, Vol 93, No.883 (September 2011) 837-851.

My final point could be seen as self-serving but I make it nevertheless. Both the Kosovo Report and the Libya Report referred to the possibility of further investigations being carried out. In controversial circumstances, self-investigation will not be accepted. To date, both in the cases of Kosovo and Libya, NATO has been seen as, in the words of the Libya Inquiry, having conducted "a highly precise campaign with a demonstrable determination to avoid civilian casualties". Despite this, in both operations, there were individual incidents that caused disquiet. NATO may need to look at a way in which they can introduce a degree of independent oversight into such cases so that they can answer such criticisms. Whether this would be by using an *ad hoc* body of experts or by using in some form an existing international body such as the IHFFC is a matter for discussion. Nevertheless, sooner or later, a case will arise where, regardless of legal niceties over whether particular incidents are the responsibility of nation States or NATO as an international organisation, NATO will be accused before the bar of public opinion.

When looking back over the last twenty years and the new operational and legal environment, there is no doubt that the actions both of States and of international organisations such as NATO are coming under increasing scrutiny. Furthermore, some of the new operations are like slow-burning fuses and the full impact may not become apparent for years to come. It follows that two key areas need to be addressed by NATO. The first is the need to have an electronic record system in place, with a standardisation of electronic documents which would enable them to be recalled when needed. The second is to have a policy in place to deal with calls for external investigation into individual incidents occurring during operations.

I conclude with the admonition of Lord Baden-Powell, founder of the Boy Scout Movement, over one hundred years ago, but as apposite today as it was then, "Be prepared!"



Capturing NATO Knowledge through Information Management: Policy, Process, and Procedure

Catherine Gerth¹
Ineke Deserno²
Dr. Petra Ochmannova³

Introduction

Ensuring that the right information gets to the right people at the right time is a challenge as old as mankind. As our communications technologies have developed, this mission has become both simpler and more challenging.

The introduction of computers to the workplace also introduced a “Wild West” era of information and records. The more we decentralized our information creation, storage, and circulation (aka email), the less we controlled our holdings. Concurrent with this loosening of control over information holdings was a parallel demand for increased accountability, transparency, and access to information.

This brought significant financial and legal risk to organizations and impacted their ability to exploit their own information for their own benefit. As Lew Platt, former CEO of Hewlett-Packard, said: “If only HP knew what HP knows, we would be three times more productive.”

¹ Catherine Gerth is the Head, Archives and Information Management (AIM), at NATO Headquarters, Brussels, and responsible for the on-going development and implementation of NATO's policy framework in the areas of records management and transparency. Prior to joining NATO in 2005, Ms. Gerth spent 15 years providing archives and records management support to war crimes prosecutions. Starting her career with the Department of Justice in Ottawa, Ms. Gerth moved to the International Criminal Tribunal for the former Yugoslavia in The Hague in 1995 where she managed information exploitation and archival projects in support of the investigation and prosecution of alleged war criminals. Ms. Gerth continues to provide ad hoc support to various human rights and humanitarian law efforts.

² Ineke Deserno is a professional archivist and records manager. She is the NATO Archivist. She has over 18 years of professional experience as an archivist and/or records manager at international organisations including World Health Organisation (WHO), International Olympic Committee (IOC) and the United Nations High Commissioner for Refugees (UNHCR). Through education at three leading schools of archival and information management studies, she obtained a strong theoretical background in archives and records management. She is currently completing a PhD study at Monash University, Australia.

³ Dr. Petra Ochmannova currently works as Deputy Legal Advisor at ACT SEE located in Mons, Belgium. She is posted as the VNC from the Ministry of Defence of the Czech Republic, where she worked as a Legal Advisor in the International Law Department.

NATO and Information Management

Information management is the discipline of marrying people, process, and technology to regain and maintain control of our information. It allows an organization to simultaneously exploit its information and comply with regulations that require accurate information. Correctly executed information management can save time, money, effort and embarrassment.

NATO did not begin to address its information management issues until 2005 when the Alliance embraced the NATO Network-Enabled Capability (NNEC), a networking and information infrastructure. At that point, it was discovered that NATO had only a rudimentary, security-centric information management framework that was out of step with legislation and practice in NATO nations.

Work began on information management policies, directives, and guidelines with three drivers: operations, partnerships and the need for interoperability. Today the main policies and directives are in place but implementation remains challenging.

Information Management Framework 2008-2013

The centerpiece for NATO's approach to information management is the **NATO Information Management Policy (the NIMP)**.⁴ Approved by North Atlantic Council in January 2008, the NIMP establishes the objectives of information management within NATO, the principles which govern it, and assigns responsibilities to a wide range of subjects.

"Be obscure clearly."

E. B. White

From an organizational accountability perspective, the key principle in the NIMP is that information is a corporate resource. This means that it should be managed as such to support NATO's missions, consultations, decision making processes, and operational requirements by organizing and controlling information throughout its life-cycle regardless of the medium and format in which the information is held. For Heads of NATO civil and military bodies this means, that under this policy in particular, they are to identify and protect essential information to ensure the continuity of key services and operations.⁵

⁴ C-M(2007)0118. NATO UNCLASSIFIED.

⁵ Ibid, Para 12, subpara e (2). NATO UNCLASSIFIED.

For practical operability, the NIMP is naturally supported by a number of policies, directives and guidelines that deal either with specific aspects of information management or with how information management will be executed within NATO. The majority of these documents are aimed at information management practitioners; however, there are several that are significant for the legal community:

1. The NATO Records Policy⁶
2. Directive on the Management of Records Generated on Operational Deployment⁷
3. Directive on the Handling of Records during the Closure of a NATO Civil or Military Body⁸
4. Policy on Retention and Disposition of NATO Information⁹

The NATO Records Policy and two Directives came into effect as late as in 2011 and 2012, respectively. Unfortunately, prior to 2011 NATO had no policy that required NATO civil and military bodies to maintain records although there were a number of policies which presumed that records were being maintained. The Alliance implemented these policy frameworks in response to growing concern by NATO Nations about the potential negative consequences of information mismanagement.

NATO Records Policy

The **NATO Records Policy**¹⁰ establishes an essential framework for creating, managing and handling all documents related to NATO, including electronic documents such as videos, emails, etc. With rapid increases in technology, proper management and preservation of records is vital to ensure the ability of NATO and NATO nations to understand, learn from and account for Alliance actions.

The NATO Records Policy requires that NATO record and officially documents the actions and decisions of the Organisation.¹¹ The key goals of creating and keeping records are to document decisions, actions and operations; to provide accountability; to facilitate planning and decision making; to support policy formation; to protect the interests of the Alliance;

⁶ C-M(2011)0043. NATO UNCLASSIFIED.

⁷ C-M(2012)0014. NATO UNCLASSIFIED.

⁸ AC/324-D(2011)0002. NATO UNCLASSIFIED.

⁹ C-M(2009)0021. NATO UNCLASSIFIED.

¹⁰ C-M(2011)0043. This document is based upon the ISO Records Management Standard 15489. NATO UNCLASSIFIED.

¹¹ C-M(2011)0043, para 1 at 1-1 and definitions at 1-7. NATO UNCLASSIFIED.

and to preserve the organizational memory.¹² After reading this ambitious goal, one is not surprised that the definition of the “NATO record” is articulated so broadly to include *“information created, received, and/or maintained as evidence and information by NATO, in pursuance of legal obligations, NATO missions or in the transaction of business.”*¹³

To be able to fulfill such demanding goals, the Alliance had to be very clear about information ownership. For the first time the NATO policy expressly recognizes that the Alliance maintains ownership and authority over its holdings: *“All NATO records, regardless of form, medium or classification level, are the property of the Alliance and are subject to the provisions of Articles VI and VII of the Ottawa Agreement and/or of Article 13 of the Paris Protocol”*.¹⁴ This means that all NATO records are the property of the Organization and are included in the inviolable Archives of NATO HQ and the international military headquarters (IMHQ) of its two Supreme (Strategic) Commands.¹⁵ At the NATO HQ level, the pertinent provisions are Article VI and VII of the Ottawa Agreement.¹⁶ At the IMHQ level of SHAPE and HQ SACT and its subordinate commands, the pertinent provision defining the Archives as inviolable is Article 13¹⁷ of the Paris Protocol. However, the scope of this article does not begin and end only at this level. One must be aware that inviolability extends beyond the Supreme Commands to the subordinate entities because of their derived legal personalities. Thus for example documents in paper or electronic form from the NATO Communication and Information Agency or the Joint Force Command Headquarters in Brunssum are all subject to the same records management and protection.

“Knowledge is of two kinds, we know a subject ourselves, or we know where we can find information upon it.”

Samuel Johnson

What does the inviolability of NATO records mean in practice? Inviolability is usually described as the total sanctity of documents.¹⁸ It means that the authorities of the receiving State (the state where the inviolable archives are located) not only has no right to access them, but moreover that the State is actually obliged to protect such premises against unauthorized interference by others.¹⁹ In plain words, all the documents related to these legal affairs are considered as NATO records, thus inviolable

¹² C-M(2011)0043, para 9 at 1-2. NATO UNCLASSIFIED.

¹³ C-M(2011)0043, para 1 at 1-1 and definitions at 1-7. NATO UNCLASSIFIED.

¹⁴ C-M(2011)0043, para 11 (a) at 1-2. NATO UNCLASSIFIED.

¹⁵ C-M(2011)0043, para 11. NATO UNCLASSIFIED.

¹⁶ Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, done in Ottawa on September 20, 1951.

¹⁷ Protocol on the Status of International Military Headquarters Set up Pursuant to the North Atlantic Treaty, done in Paris, August 28, 1952.

¹⁸ D. Fleck ed., *The Handbook of the Law of Visiting Forces*, Oxford University Press, 2001, p.311.

¹⁹ Amerasinghe – *Principles of the Institutional Law of International Organisations*, pp. 383 ff.

and exempt from any pertinent legal proceeding. This is absolutely valid for documents contained in the archives of NATO HQ. The inviolability of the records of the Supreme Headquarters is similarly protected in 13 of the Paris Protocol.

In terms of the protection of documents and archives the Ottawa Agreement and Paris Protocol are consistent with the traditional view of the legal establishment of international organizations. This inviolable immunity of NATO Archives is well accepted. However, it is important to recognize that international and national judicial bodies are more and more turning their attention to the immunities of international organizations. Although nowhere has the immunity of documents at Archives been challenged.

If fact, only the terms of employment and the treatment of international civilians by international organizations have been considered. At an international level, the pioneer questioning of the immunity of NATO occurred at the European Court of Human Rights (ECrHR) in its 2009 case *Gasparini v. Italy and Belgium*.²⁰ At the national level, in 2009 the Belgium Supreme Court (the Court of Cassation of Belgium) challenged the immunity of the Western European Union and then dealt with two cases involving General Secretariat of the African, Caribbean and Pacific Group of States.²¹ In all three cases the Belgian Court of Cassation examined the question of immunity of international organization from legal proceedings.

"Experience is the worst teacher; it gives the test before presenting the lesson."

Vernon Law

Again, even though these proceedings did not challenge the inviolability of archives of the WEU or NATO they do serve as a cautionary precedent regarding international organizations' when primary issues are raised such as the right to a fair trial as established in Article 6 para 1 of the European Convention of Human Rights²² and Article 14 para 1 of the International Covenant on Civil and Political Rights.²³

²⁰ ECrHR, application No. 10750/03, 12 May 2009, www.rtdh.eu/pdf/20090512_gasparini_c_italie.pdf.

²¹ More info at J. Wouters, C. Ryngaert, P. Schmitt, *Western European Union v. Siedler; General Secretariat of the ACP Group v. Lutchmaya; General Secretariat of the ACP Group v. B.D.*, ASIL, Vol. 105, No.3, 2011, pp.560-567.

²² Convention for the protection of human rights and fundamental freedoms, as amended by protocols 11 and 14, 14 November 1950,

²³ International Covenant of Civil and Political Rights, 16 December 1966

NATO and Records Generated During Operational Deployment

Since NATO's first major operation in the Balkans in the early 1990s (IFOR and SFOR), the number and diversity of NATO operations have increased. Currently 110,000 military personnel are operating in NATO-led operations in Afghanistan (ISAF), Kosovo (KFOR), the Mediterranean (Active Endeavour), and off the Horn of Africa (Operation Allied Protector). Moreover, NATO is a partner to AMISON, the African Union mission in Somalia.

Information generated during an operation is critical not only for a reliable assessment of the operation, both during the conduct and after the completion of the operation, but also to provide and support accountability at all levels. The operational records²⁴, if properly maintained, are the only source that provides the required knowledge and allows for the protection of the Organizations' interests related to operations.

"And in today already walks tomorrow."

Samuel Taylor Coleridge

Similar to the general policy framework on NATO Records, the **Directive on the Management of Records Generated on Operational Deployment**²⁵ regarding operational records was not in place until 2012. The management of these records had been carried out in an ad-hoc fashion.²⁶ The significant drive for developing this Directive was the wake of the Operation Unified Protector (OUP) and the anticipation of the transition of the ISAF operation.

Every nation has experienced a loss of operational records. Add multi-national coalitions into the mix—where everyone thinks the others are keeping records—and you have the perfect opportunity to lose all traces of actions. The Directive seeks to prevent this scenario from happening in NATO-led operations.

²⁴ Operational records are defined in the Directive C-M(2012)0014 as "information created or received in the course of a NATO operation and maintained as evidence and information by NATO in pursuance of legal obligations, and the conduct of military or civil emergency operations".

²⁵ C-M(2012)0014, para 3. NATO UNCLASSIFIED.

²⁶ The IFOR and SFOR records for example were collected and managed by the IFOR/SFOR Historian. However this collection was not comprehensive and did not include all records generated during the deployment. At the end of the SFOR operation however the SFOR records were securely transferred to SHAPE, but the increasing complexity of the operations and the rapid improvements in technology demand a more comprehensive and sophisticated approach to the management of these records. See also: Ineke Deserno and Gregory Pedlow: NATO in the Balkans: Collecting and Managing the Operational Records of a Coalition, Auftrag Auslandseinsatz. Neueste Militargeschichte an der Schnittstelle von Geschichtswissenschaft, Politik, Öffentlichkeit und Streitkräften, ed: Bernhard Chiari (Freiburg, 2012).

From a legal perspective, the Directive makes it clear that records created by NATO and the NATO bodies governed by either Ottawa Agreement or Paris Protocol NATO bodies in the context of a NATO operations belong to NATO.²⁷ Whenever NATO is the originator of the information, the information owner, or the information custodian, that information shall be managed and preserved by NATO. Moreover, this Directive implements a similar approach for records created by Member nations during operations. An example of this is air operations where nations are providing NATO with information about their planes, flights, and operational requirements. In this case, even though NATO is not the proprietor of such operational records, it is still considered to be its custodian. This means that NATO is responsible [or has responsibility] for vis-a-vis the owner (originator of the information) to safe-keep and control. ISAF, where 50 different countries participated in NATO-led operations and 22 of them were Non-NATO Nations, showed the importance of the clear determination and description of ownership and custody. Moreover, establishing ownership is not only relevant to determine where the records reside post 2014, but also to control the classification and release of the information.

Another challenging issue is the long term access to digital records created during an operation. The Directive indicates that digital information needs to be kept accessible and readable throughout and after the conduct of an operation.²⁸ For example, in a digital environment, information is stored but its metadata and location is not always recorded, making discovery and proving the authenticity of a record (as evidence of an operational activity or decision) very difficult. For example, in ISAF, the most wide-spread form of communication is emails. Thus the value of emails in providing evidence of actions taken at the level of operational commanders and decisions taken as part of ISAF missions is significant. For that reason there are arrangements to ensure that even emails are properly stored and preserved.

Handling Records in the Event of Office Closure

NATO—and every other organization, nation or corporation—has a long tradition of closing an office and throwing out the “old” files. This can lead to innumerable complications, particularly when it comes to legal and financial obligations. Decisions need to be taken on the disposition of information generated by the closing body. **The Directive on the handling of NATO records during the closure of a NATO Civil or Military Body**²⁹ was

²⁷ C-M(2012)0014, Para 11 subpara a), 1-3. NATO UNCLASSIFIED.

²⁸ C-M(2012)0014. NATO UNCLASSIFIED.

²⁹ AC/324-D(2011)0002. NATO UNCLASSIFIED.

developed in response to lessons learned following the closure of the NATO Hawk Agency and in the anticipation of the NATO Command and Agency Reform. The directive applies to all NATO civil bodies and to the entities in NATO Command Structure and aims to ensure business continuity; smooth transition to successor organisations of active information; and appropriate end-of-lifecycle disposition of information which is no longer needed by the successor organisation. This directive also establishes criteria for distinguishing between NATO Records and personal papers.

Retention and Disposition

So we know why we keep records and who is responsible for making it happen, but we cannot keep everything forever. **The Policy on Retention and Disposition of NATO Information**³⁰ provides guidance on retention and disposition by identifying which categories of information have permanent value to the Organization. In this regard, it applies to information in any medium or form which records:

- Significant consultations, decisions, policies, events, missions and activities;
- The structure and evolution of the Organization;
- The Organization's legal and financial status, obligations and accountability;
- The impact of the Organization's decisions on the rights, health and safety of NATO personnel and/or other persons;
- The Organization's impact on the physical environment; or
- Informs public knowledge and understanding of the Organization's purposes, principles and achievements

is considered to be of permanent value to NATO and must be retained by NATO. The Policy is supported by implementing directives and by retention schedules that define the retention periods to keep NATO information. These schedules also establish permanent or temporary value of particular types of NATO information.

Getting It Done: Conclusion

A great policy framework is just that, policy. If it is not promulgated, implemented and enforced, it serves no purpose. In the case of information management policies, doing nothing with good policy can do more harm than having no policy at all. For that reason the **Primary Directive on Information Management (PDIM)**³¹ has been developed with the aim to provide guidance on how to implement information management within

³⁰ C-M(2009)0021. NATO UNCLASSIFIED.

³¹ C-M(2008)0113. NATO UNCLASSIFIED.

NATO and established the **NATO Information Management Authority (NIMA)**³² to coordinate and monitor progress.

This year the NATO Joint Analysis and Lessons Learned Centre (JALLC) in Lisbon conducted a study to map the implementation of the records policies related to keeping operational records. Preliminary results of the study show that the policy framework has been well received but that more work is needed to develop working practices and procedures to implement these policies.

For future NATO operations it is important that the information and recordkeeping framework is put in place at the planning stage of the operation. This requires that recordkeeping procedures are incorporated in Standard Operating Procedures. Both the Strategic and the Operational level must strive to implement tools and procedures to manage and preserve operational records from the start of an operation. In addition to implementing procedures and processes, ensuring adequate recordkeeping cannot be effectively accomplished without the allocation of necessary resources as well.

Finally, from a truly practical point of view, one must emphasize NATO records policies and directives creating an information management regime are of little use if the records are not easily accessible. In 2010 NATO introduced **CLOVIS** (Comprehensive Legal Overview Virtual Information System) as one of the critical tools that helps to facilitate ready access to information.

³² C-M(2009)0035. NATO UNCLASSIFIED.



ISAF Operational Records

Preserving information critical to history, analysis, and the law

Douglas Roberts*
ISAF Operational Archivist

Introduction

A headline of the morning newspaper announces: "Soldier serving under NATO command in Afghanistan shoots Afghan civilian." Legal professionals with a knowledge of the Law of Armed Conflict (LOAC) wonder, "Did this person represent a lawful military target? Were the LOAC principles of distinction and necessity properly applied?" Or in plain words, was the man who was shot an insurgent or an innocent civilian and did the soldier act appropriately? To answer these questions you will need such things as copies of the Rules of Engagement, Standard Operating Procedures, and Commander's Tactical Directive in place at the time. Intelligence reports about the area where the shooting occurred will be helpful. You would certainly want to see the unit and headquarters incident reports and any After Action Review that was done. In other words, you need operational records. And if the legal query comes up after the operation has concluded? You still need the operational records, so hopefully they have been properly preserved!

This is the goal of the ISAF archiving program and by extension the NATO program since NATO will be the owner/custodian of ISAF operational records at the end of the mission. The success or failure of these programs will have a lasting impact on NATO's ability to analyze its operations, write histories about those operations, and deal with the legal issues that will linger long after the operation concludes.

* Mr. Douglas Roberts has been the Senior Operational Archivist at the International Security Assistance Force (ISAF) Headquarters in Kabul, Afghanistan since September 2007. He works directly for ISAF as an International Civilian Consultant (ICC). Mr. Roberts served 23 years in the United States Air Force, primarily as a Broadcast Journalist. He holds a Bachelor of Science degree in Communication Studies and a Master of Arts degree in Military History.

Electronic Working Practices (EWP)

In ISAF the practice is to rely on and keep electronic records rather than paper. When I introduce the idea of archiving data to personnel at ISAF or take a turn teaching the Electronic Working Practices (EWP) course required for newcomers, I often open with the remark, "You need to understand and follow these practices because we are all going to be sued someday for what we are doing here." Obviously I'm joking with a gross oversimplification of our culpability, but I want them to pay attention to this important issue. Now, the *NATO Legal Gazette's* usual readers might consider the threat of litigation or claims tied to a military operation as something obvious, but for intelligence analysts, operational planners, and logisticians on a headquarters staff it is not one of the reasons they expect to hear for establishing good electronic working practices in Afghanistan. But as I go on to explain, whether you are updating last year's campaign plan, briefing a commander on why we should mount an operation, or trying to explain to a court why an Afghan civilian was killed for driving too close to a convoy, you will definitely want to be able to find the records that explain what happened and why.

"Paper is to write things down that we need to remember. Our brains are used to think."

Albert Einstein

It will also be no surprise to the legal community that many questions about operations, especially legal questions, do not arise until quite some time after an event occurs. That means the people with direct knowledge will be long gone from the mission and even if successfully tracked down, their memory regarding the details or sequence of events may be weak. So only the records they or their command created will remain to provide answers. Thus the needs for good EWP today to ensure records remain usable tomorrow. Since we in the ISAF Archives Office work daily with searching out and collecting the key records created or received by ISAF, staff members naturally turn to us for help when they cannot find a record they need for ongoing work; often one referred to in another document. Our first external query for records, however, was directly in support of a case that was making its way through a Troop Contributing Nation's (TCN) courts some years after a deadly event had occurred in Afghanistan. The number of external queries we have received over the past five years has been pretty small, but at least 80 percent of them have involved litigation.

In a bit of archival serendipity, two events occurred while I have been working on this article that further support the importance of operational records to litigation. First I was paid a visit by the latest team of British Ministry

of Defence Historians, the progenitors of ISAF operational archiving, doing Great Britain's periodic field collection of operational records. When I mentioned I was working on an article for the *Legal Gazette*, my guests shared that they were supporting hundreds of queries of their operational record collections in support of litigation. A few days later I received an e-mail with a request from a military member who was wounded in an insurgent attack back in 2009. He is looking for documentation to support his own claim package. People often jokingly accuse me of pushing good records management and operational archiving in order to support my own history of the war to be published some twenty or thirty years hence. But long before that happens, those records need to be able to support wounded warriors and defend or hold accountable warriors accused of wrongdoing in the Afghan mission.

According to the unclassified *NATO Records Policy (NRP)* accountability happens to be one of the five key goals of creating and keeping records:¹

- (a) to document decisions, actions and operations;
- (b) to provide accountability
- (c) to facilitate planning and decision making and support policy formation;
- (d) to protect the interests of the Organization,
- (e) to preserve the organisational memory

The other main goal outlined in the Policy is the "creation and management of authentic, reliable, complete and usable records, capable of supporting business functions and activities for as long as they are required."²

The overall importance of a good operational archive to NATO is clearly evidenced by the efforts that the Organization has put into the program over the past several years. Beginning with my own position; when the NATO-led ISAF mission expanded to cover the entire country of Afghanistan in 2006, taking regional responsibilities from the USA-led Operation ENDURING FREEDOM,³ General Sir David Richards (GBR) was Commander ISAF (COMISAF) and Great Britain provided the first operational archivists as a voluntary national contribution. These first historians and war diarists established the still-used model of building a daily Operational Record (War Diary/Operational Diary) from the records created and collected in the ISAF HQ along with the archivists' editorial additions from attending various command meetings. NATO added two archivist positions to the 2007 ISAF Crisis Establishment (CE) and they were filled by the current incumbents in September and November 2007.

¹ NATO Records Policy, C-M (2011) 0043, 17 June 2011, 1-2, Para 9. NATO UNCLASSIFIED.

² Ibid, Para 8.

³ "History of ISAF", http://www.nato.int/cps/en/natolive/topics_69366.htm [accessed 5 Mar 2013]

However, guidance for these positions, and information/records management in general, was still very much self-generated, using national constructs as a baseline.⁴ As noted above, the *NATO Records Policy (NRP)* was not published until 2011, some ten years after NATO involvement in Afghanistan began. The unusual records management challenges posed by the operation actually helped instigate the creation of a comprehensive policy for the entire Organization.⁵ The Record Management challenges of ISAF and other operations in the Balkans and Libya, however, were also recognized as requiring additional guidance beyond the standards in the *NRP*. That guidance was provided with the *Directive on the Management of Records Generated on Operational Deployment* [C-M(2012)0014, 27 Feb 2012, NATO UNCLASSIFIED]. The *Directive* takes into account the records ownership issues that arise in a coalition with non-NATO members, outlines the preservation of records after an operation concludes, and institutionalizes the idea of maintaining an Operational Diary at the Operational Command level.⁶

"Progress is a nice word. But change is its motivator and change has its enemies."

John F. Kennedy

What I find especially reassuring about the new Directives and Policies is that NATO HQ closely coordinated their development with us in ISAF and our colleagues dealing with records from the Balkan and Libya operations. Hopefully this has translated to high-level policies firmly grounded in the realities of the operational world. And those realities are complex. So complex, that policy by itself will not be enough; there must be continued work

on putting processes into place to enable the policies and sufficient resources invested to implement the processes.

What are those complexities? Well, let's begin by boiling down the goals of preserving ISAF's operational records. First, we would like historians to be able to explore and explain what happened here with confidence and credibility. I sometimes describe the historian aspects of our job as writing the "front end" of history, trying to capture the material that will be needed when time provides the necessary perspective for historical analysis. Second, NATO needs to be writing contingency plans now for future possible operations. To conduct the operational analysis and planning required in order to replicate

⁴ HQ ISAF Standard Operating Procedure 00010 – HQ ISAF Information Management. NATO/ISAF RESTRICTED.

⁵ NATO Records Policy, , "Note by the Deputy Secretary General", 1. See also: Directive on the Handling of Records during the Closure of a NATO Civil or Military Body, C-M(2011)0002, 4 July 2011. NATO UNCLASSIFIED.

⁶ Directive on the Management of Records Generated on Operational Deployment, C-M(2012)0014, 27 Feb 2012, "Note by the Secretary General", 1.

ISAF, one needs to be able to see the whole picture, from intelligence to operations to contracting out the cleaning of living quarters. And third, as mentioned earlier, one needs to be able to answer legal questions as sensitive as civilian casualty allegations or as common as contract payment disputes.

The need to answer such a wide range of questions explains why the 'Operational Records' Directive provides such a broad definition of operational records: "[I]nformation created or received in the course of a NATO operation and maintained as evidence and information by NATO in pursuance of legal obligations, and the conduct of military and civil emergency operations."⁷ Obviously the main focus remains on those records unique to a military operation, such as operational plans and orders, but we do not want to lose sight of the ISAF entity in the glare of the ISAF mission.⁸ So our overall goal is to preserve all of ISAF's operational records to enable the understanding of the mission and the answering of all manners of questions today and far into the future. ISAF's Information Management SOPs have had that goal since being developed in 2006, but having the higher level publications discussed above adds weight and comprehensive guidance all the way from the strategic to the operational level.

However, the greatest challenges to following the SOPs, directives and policies and to meeting the goal of preserving ISAF's records come from the real essence of ISAF's complexity, its structure and operation. The coalition has grown from 18 nations in 2002 to 50 TCNs today, that is fifty different nations providing a constantly rotating cadre of personnel with varying levels of experience in information and records management. Experience gained in systems different than what they find in ISAF. Now, I don't want to paint a false image of 50 wildly divergent record management systems competing for supremacy in the ISAF HQ. The system laid out in the ISAF Information Management SOP and taught in the newcomer's EWP class is the common system in use at HQ ISAF. But you can't be surprised when a soldier who will only be on the ISAF staff for six months sometimes falls back on what he has been practicing for six or sixteen years in his home nation. A robust records management system, like that used at ISAF, provides all the control, metadata, structure, etc., required to meet the *NATO Records Policy* (NRP) goals mentioned earlier. However, to be blunt, that comes with a high front-end cost in terms of time and effort by record creators and they can often find that cost frustrating. The archivists and attorneys may see the future benefit of following all the records management rules today, but the operators often do not. These people are working hard every day, charging forward to generate the information and analyses needed for command

⁷ Ibid., 1-2, Para 3.

⁸ Ibid., 1-1, note 1. "Examples of operational records include, but are not limited to: Operational Plans (OPLANS), operational orders, incident reports, graphic intelligence summaries, battle briefings, after action reviews, situation reports and operational diaries."

decisions and that can lead to avoiding as many administrative rules as possible in the name of speed and simplicity.

That means that our repository is not as clean as we would like it to be and that in turn will create problems for future users; lawyers probably more than historians. When exploring a historical theory I can still use records of uncertain provenance to expound and support possibilities. For example, if the only copy of a letter from COMISAF to an Afghan government official is an unsigned digital version, as a Historian I can still take that as circumstantial evidence that the commander was involved and informed on the issue of the letter. However, if personnel from the office of the Legal Advisor asked me for evidence to resolve a disagreement over that issue between ISAF and the Government of the Islamic Republic of Afghanistan (GIROA), I could not give an Archivist's guarantee that COMISAF had ever even seen the letter in question, let alone signed a copy that was sent to GIROA. This is the essence of an authentic record as defined in the Operational Record Directive.⁹ And that is why we ask users to follow the records management rules, so that historians can support their conclusions with verifiable documentation and lawyers can readily prove their documentary evidence is authentic and reliable.

So what are we doing about these challenges? ISAF's information and knowledge managers run a regular inspection program to check on the various divisions and branches to see if they are meeting standards in the use of information systems. Grades are shared with the ISAF Chief of Staff, a 3-star general, in an open forum to remind leaders of the importance of keeping their divisions in line. We archivists, in the collection and collation of records for the daily operational diary, will go back to the sources of key records and help them strengthen weak spots in record naming and metadata. We also build new lines of provenance through cross-referencing of records within the diary. The HQ ISAF Registry and Distribution Centre staff works with customers daily to improve the quality of metadata connected with the higher level records that are published to the official Records Centre in the HQ ISAF document management system. But this is the information age and the volume of information items created by thousands of staff members is beyond the abilities of a small core group of records management professionals to completely police. Plus, as discussed earlier, many of today's records management tools and procedures were not put into place until the mission had already been running for five, nine, or eleven years. So there is a sizeable portion of records that have not yet benefited from those evolutionary improvements.

⁹ Ibid., "GUIDING PRINCIPLES OF OPERATIONAL RECORDS MANAGEMENT", 1-5.

Therefore, in addition to what is being done in theater, we are also reaching back up the NATO chain for assistance. Earlier I mentioned a need for processes and resources. We think there needs to be an investment in studying the problem scientifically to come up with realistic solutions, and such studies are happening or planned. Tools need to be bought or built that can handle some of the batch tasks in an automated way. And in the end it may be necessary to simply hire people to sit down and work on bringing individual records into closer compliance with minimum standards or using more of the elements available in current tools to bring them to a higher standard.

The idea that additional, focused resources will be required in order to ensure that NATO retains a solid archive of ISAF records after the mission comes to an end in December 2014 becomes even more understandable when we expand our vision.¹⁰ In the past few paragraphs I have been focusing on the key elements of operational archiving within HQ ISAF,

"The most immutable barrier in nature is between one man's thoughts and another's."

E.B. White

the core documents created and stored in the headquarters' document management system - Digital documents. ISAF has been operating an all-digital environment from the beginning, so procedures based on paper records must be modified, especially in terms of transfer and long-term storage. However, beyond this core there is also a myriad of functional area systems that hold operational records. Specialized databases for intelligence and geospatial data, operational chat rooms and e-mail systems, and let's not forget the massive amounts of video produced by aircraft, aerostats, and tower camera systems. Each of these systems may require specialized equipment, software, and handling to ensure their contents remains accessible and usable (for example, how many of you still have floppy disk drives in your computers?).

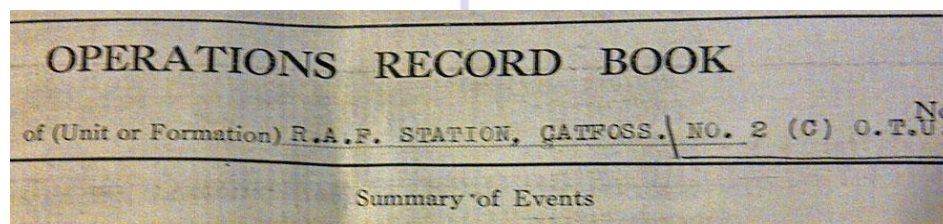
Thinking about the end of the mission also reminds us again that ISAF is a coalition of fifty nations, with twenty-two of those being non-NATO members, and that coalition will no longer exist (at least not as it is today) come 2015. When we get down to the Regional Command level and below the mission is based on national leadership and resources, but it is still the ISAF mission and therefore most operational records are still ISAF vs. National records. However, those ISAF operational records residing on national servers may be separated from the theater-wide, NATO-managed, Afghanistan

¹⁰ NATO has announced its intent to lead a follow-on Afghan mission called "Resolute Support" after 2014, however, that will generate a separate operational archive from the ISAF repository. ("NATO reaffirms Resolute Support to Afghanistan," 05 Mar. 2013, http://www.nato.int/cps/en/SID-7B8DCB06-4B654A29/natolive/news_98937.htm) (accessed 10 March 2013)

Mission Network (AMN) when those national systems are repatriated to the TCN along with its redeploying troops. This is when the “Ownership and Custodianship” elements of C-M(2012)0014 will come into play, and frankly, be most challenged.¹¹ The AMN is one of those recent evolutionary improvements in information and knowledge management I mentioned earlier, so we already suspect that some early ISAF records may only exist back in some national units that have rotated out of theater over the years. In recognition of this situation the NATO Archives has already put out a survey to the nations asking about their ISAF record holdings. A follow up survey is currently being fielded to try and add additional information and granularity to the initial findings. Inherent in these surveys is the attempt to maintain cooperation and mutual support among ISAF TCNs in the area of records and information management and sharing.

Conclusion

By this time I suspect you may be thinking it is all doom and gloom and you will not be able to find the operational records you need to deal with a lingering ISAF legal issue in the coming years. Well, rest a little easier; things are not at that point and with continued effort will not get there. I do want to be clear and open about the scope of this project and the challenges we face, but we are in a pretty good position and receiving interest and support from Brussels to Kabul to TCN capitals to ensure we build a solid repository of ISAF operational records that can be transferred up the NATO chain for long term use. What can the legal community do to help? Two broad approaches come to mind. First, continue LEGAD involvement in the overall policy process. If we want records to meet requirements for use in court cases and legal disputes then we need to know what those requirements are. Conversely, prepare yourselves for the reality of modern record-keeping. For instance, will courts recognize the legal validity of electronic-only documents with scanned signature pages or digital signatures? Secondly, as users, please follow good records management working practices and encourage those you advise to do the same. Think about difficulties you have experienced in finding necessary records in your own research and take the time to use the records management elements that will make the files you create easy for someone else to find and use years in the future.



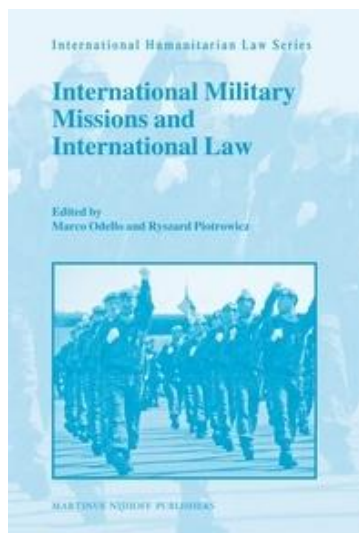
¹¹ C-M(2012)0014, para 11, 1-3.

Book review: *International Military Missions and International Law*

*Edited by Marco Odello and Ryszard Piotrowicz*¹

Vincent Roobaert

Assistant Legal Adviser, NCI Agency



Since the end of the Cold war, States and international organizations have been involved in an increasing number of international military missions of varying scopes. At the same time, those participating in these missions (States and international organizations, but also individual soldiers) have come under greater scrutiny from the press, national prosecutors and, in certain instances, international tribunals. This edition of the NATO legal gazette underlines the importance of adequate record keeping for use in potential future inquiries / prosecutions. However, one should remain conscious of a critical pre-requisite in relation to record keeping: ensuring that the instructions

provided at all levels are based on a correct understanding of the legal framework applicable to the operation concerned. The book under review is another testimonial of the difficulties in ascertaining the legal framework applicable to international military missions.

Its contributors explain several complicating factors.

First, as shown by Nigel White, the types of military missions have evolved drastically since the end of the Cold War. The number of international military missions was limited before the 1990s and apart of few exceptions, they were based on the consent of the States in which they were taking place. Since then, however, the scope of these missions has evolved to include traditional peace keeping operations but also peace building and peace enforcement operations. The composition of these missions has also changed. While early missions were comprised of military personnel only, the development of civil-military cooperation has increased the involvement of civilian elements. . This evolution results in the growing participation of civilians in the theatre of operations, ranging from private security companies to contractors and humanitarian aid workers. The growing participation of civilians in the theatre of operations raises many questions, which on their own deserve a monograph. These include, for example, the protection granted to all types of contractors supporting the troops (e.g. providing logistics support) or the development of the nation (e.g. experts on

¹Ed. Marco Odello and Ryszard Piotrowicz, *International Military Missions and International Laws*, Martinus Nijhoff Publishers, 2011.

agricultural or other industrial fields like those present in Provincial Reconstruction Teams run by troop contributing nations in Afghanistan), the participation of private military and security companies (PMSC's) in the theatre of operation and the impact of their action on of the coalition.

Second, because of this evolution, Mr. Odello's contribution explains that the law applicable to these operations has grown more complex. Now, one needs to be aware of obligations not only arising from international humanitarian law, but also from international human rights law, rules of engagement, national law (e.g. for national caveats), and international agreements such as status of force agreements. It should be noted also that the actions of military personnel acting in international military missions are getting closer scrutiny from international courts and tribunals such as the International Criminal Court and the European Court on human rights, thereby underlining the importance of adequate training to avoid breaching the laws applicable to the mission.

Third, the application of international humanitarian law and the international law of occupation to United Nations forces remains a disputed issue. As Katie Sams explains, the determination is complicated by the fact that operations are not static and thus the missions frequently evolve overtime as was witnessed in Rwanda. For example, a peace enforcement mission could evolve into a peace keeping mission or vice versa and this would have an impact on the legal framework applicable in those participating in the mission. International organizations, such as the United Nations and NATO, should assess the need to change the mandate and the rules of engagement of the troops if they are no longer appropriate considering the evolution of the situation. Lacking that, troops involved in a situation that evolves may be acting under inadequate rules of engagement. Fourth, the fact that more and more operations are conducted in coalitions raises new issues when the members of the coalitions are not parties to the same treaty obligations. In her contribution, Susan Breau highlights that this problem is particularly acute in relation to Additional Protocol I to the Geneva Conventions. This is an ongoing issue for NATO, as not all its members have ratified it. As a consequence, she said, this impacted the coalition's targeting decisions and prevented the participation of certain nations in specific missions. The same situation arises from other treaties, such as the 1997 Ottawa Treaty on the prohibition of anti-personnel landmines. It has been argued that this treaty may limit the action of the coalition. For example, the general prohibition stated in Article 1, "to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention," has been interpreted by some as limiting the action of coalitions comprised of States that are parties to the Ottawa Treaty and States that are not parties to the treaty.

Fifth, Noelle Quénivet discusses the issue of compliance to human rights law provisions by peace-keeping personnel. Human rights courts have already recognized the extra-territorial application of human rights law to the deployed personnel of sending States in certain cases. In Europe, for example, the European Court of Human Rights issued several judgments confirming this, such as the 1996 *Loizidou* case against Turkey. However, the obligation for international organizations to comply with human rights obligations is not self-evident as these organizations are usually not parties to human right treaties. Interestingly, in relation to the UN, the author attempts to move away from the formal requirement for ratification. According to her, the United Nations' commitment towards the development of human rights, as stated in the United Nations Charter, could be construed as recognition that the United Nations and troops sent on its behalf are bound to comply with the obligations set out in human right treaties. If such an approach was adopted, however, one could argue that it could negatively impact the decision of certain nations to join coalitions to intervene in situations of grave human rights violations. Indeed, the consequence of this would be that the actions of this coalition could be judged on the basis of human rights standards these nations may not adhere to at the national level.

Sixth, Ben Klappe provides us with interesting developments on rules of engagement. Even if the correct legal framework has been identified, it is important that it be translated in rules of engagement that are clear and understandable to the individual soldier. Absent such clarity, one could find oneself in difficulties due to the interpretation of such rules of engagement. One example of this is the interpretation of what constitutes hostile intent that allows an individual to take steps in self-defence.

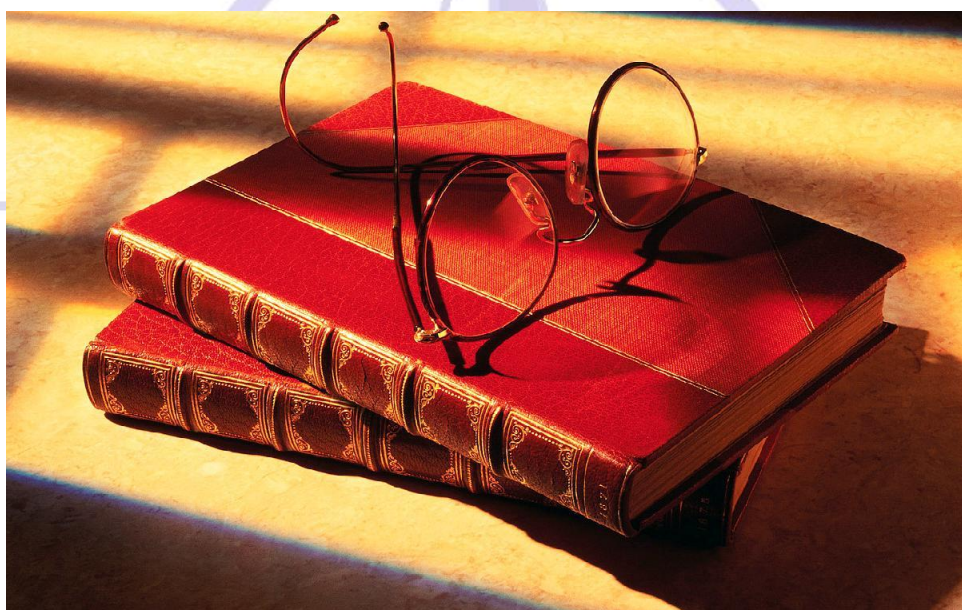
Seventh, our learned colleague Ulf Häussler looks at a topic which is growing in relevance due to recent anti-piracy operations: crisis response operations at sea. The complexity here lies in the fact that traditionally the high sea has been the object of competing sovereign rights. Moreover, there seems to be a trend by the United Nations to facilitate the neutralization of threats to international peace and security taking place in the ocean, which may create tensions with the Convention on the Law of the Seas.

The last two contributions of the book, Paolina Massidda and Nicholas Tsagourias, constitute a reminder of the critical need to assess the applicable legal framework correctly. Indeed, as shown by the case-law reviewed by Ms. Massidda, prosecutors and tribunals do take into account various areas of the law to secure convictions and will not limit themselves to examining only the rules of international humanitarian law.

All of these authors illustrate that adequate record keeping must go hand in hand with a correct determination of the legal rules applicable to a specific operation, which must themselves be properly translated in clear rules of engagement. Lacking this, the risk is that these records would actually

constitute evidence of a lack of diligence and open the path to the prosecution of the chain of command and/or the international organizations as such.

To conclude, *International Military Missions and International Law* provides a current and quite exhaustive review of the legal issued that should be examined by lawyers acting for States or international organizations participating in international operations. One can regret, however, that certain areas were not addressed more comprehensively, such as the role of contractors. Indeed, military organizations rely increasingly on civilian contractors to carry out tasks which are not considered to be core military tasks. These contractors provide services as different as real life support, civil work, communications and security. Given this increasing role, a contribution highlighting the issues faced by contractors would have been appreciated.



N
A
T
O

S
P
O
T
L
I
G
H
T

Name: Mario Nooijen

Rank/Service/Nationality: Colonel/Army/Dutch

Job title: Chief Legal Advisor JFC Brunssum

Primary legal focus of effort: Operational Law and Host Nation Support.

Likes: Travelling, motorbikes and Japanese Fencing.

Dislikes: Dishonesty.

When in office or operation everyone should: help each other, because a team is always better than a group of individuals.

Best NATO experience: Working at JFC Brunssum.

My one recommendation for the NATO Legal Community: Never stop learning.



Name: Christopher C. Lozo

Rank/Service/Nationality: Colonel (OF-5), US Air Force, USA

Job title: Senior Legal Advisor, NATO International Military Staff

Primary legal focus of effort: International and Operational law, with a healthy dose of labor law, and international relations thrown in for good measure!

Likes: Travel, photography, reading, fine dining, and medium distance running (to compensate for the fine dining!)

Dislikes: Very few; I'm actually a pretty positive person! However, my evening drive home in ridiculous traffic with motorcycles zipping all around and cars doing "bat turns" coming out of side streets from the right manages to challenge my gentle demeanor and good humor!

When in Brussels, everyone should: everyone should enjoy a beer, frites, chocolate, and a waffle...and avoid Brussel Sprouts!!

Best NATO experience: My best experience was one of my first experiences...the NATO Legal Conference in Tirana, Albania. What a great opportunity to meet some really awesome people, engage on strategic issues, and enjoy the hospitality of our Albanian hosts. It's going to be hard to top that one!

My one recommendation for the NATO Legal Community: My own philosophies: (1) Don't be an "Abominable No-Man" – find a way to shape the issue to get to "yes"; (2) Know what your boss wants, and know what his boss wants, and then work their agenda; (3) have a good work-life balance...everything in moderation, including work and fun!

N
A
T
O
S
P
O
T
L
I
G
H
T

NATO
SPOTLIGHT

Name: Eliot Glover

Rank/Service/Nationality: Lieutenant Colonel, Army, UK

Job title: SHAPE Assistant Legal Advisor

Primary legal focus of effort: Afghanistan post 2014, detention, Security Force Assistance and other bits and bobs.

Likes: Resolving conflict through mediation, executive coaching, cooking, Lebanese wine, sailing, benign warm climates, a good curry.

Dislikes: When people do not listen, lack of manners, abuse of the English language, reality television, everything associated with 'celebrity'.

When in Belgium everyone should: Sample the beer.

Best NATO experience: Working as the LEGAD at NATO HQ Skopje in 2005. Negotiating to completion the infamous Roads Project and drafting and signing off other TA's was immensely rewarding as was the autonomy and trust of the higher NATO chain of command.

My one recommendation for the NATO Legal Community: Keep listening and talking with each other.



Name: Petra Ochmannova, PhD.

Rank/Service/Nationality: Civilian – CZE VNC

Job title: Deputy Legal Advisor ACT SEE

Primary legal focus of effort: Legal Education and Training within NATO.

Likes: Professional approach and people who dedicate their time and wisdom to make good things happen.

Dislikes: Negativity and formalism without a real substance.

When in Mons, everyone should: Relax in one of the cafes at the Grand Place.

Best NATO experience: If projects that are in front of us will turn into reality, then I hope this will be my best NATO experience.

My one recommendation for the NATO Legal Community: Communicate among each other and share your legal knowledge with your other colleagues to make the NATO Legal Community truly a high professional group of experts at all levels.

NATO SPILLIGHT

Congratulations!



Name: Zoltán Hegedüs

Rank/Service/Nationality: Lt. Col., HUN-A

Job title: Head of International Law Section, HUN MOD

Lieutenant Colonel Hegedüs was recently awarded the Andrassy Gyula award, named for Count Andrassy, the last common foreign minister of the Austro-Hungarian Monarchy. This award is granted to one person per year for "outstanding activities in international and NATO relations" and it is rarely granted. Lieutenant Colonel Hegedüs previously was a VNC in the ACT SEE legal office and currently works in the Hungarian MOD. Congratulations to Lieutenant Colonel Hegedüs!

HAIL & FAREWELL

Bienvenue...

ACT SEE:	Dr. Ochmannova Petra (CZE CIV) Mrs. Emma Burden (GBR CIV) Mr. Patrick J. Campbell (USA CIV) Ms. Jessica Johnson (UK CIV)
EUROCORPS:	Mr. Wolfgang G. Richter (DEU CIV)
EU Legal Staff in SHAPE:	Mr. Gerhard Weitzer (AUT CIV)
HQ ISAF:	COL Norman F.J. Allen III (USA Army) CDR DeAndrea Fuller (USA Navy)
HQ SACT:	Ms. Natalie Dobson (NDL CIV)
HQ Sarajevo:	LtCol Thomas Dobbs (USA AF)
JFC HQ Brunssum:	COL Mario Nooijen (NLD A)
SHAPE:	LtCol Elliot Glover (GBR A) Mr. Catalin Gravre (ROU CIV)

BON VOYAGE...

ACT SEE:	Ms. Klara Tothova (SVK CIV) Mr. Thomas Hughes (USA CIV) Ms. Georgina Dietrich (DEU CIV)
HQ ISAF:	COL Donald J. Riley (USA MC) CDR Rock Detolve (USA Navy)
HQ SACT:	Ms. Alexandra Perz (DEU CIV)
SHAPE:	LtCol Mark Dakers (GBR A)
JFC HQ Brunssum:	Maj Gerrit Maassen (NLD A)



Dedication to Mr. Steven Rose

Captain, USA-Navy (ret.)
ACT Legal Advisor, HQ SACT Office of the Legal Advisor
2000-2013



This issue of the **Gazette** is dedicated to Mr. Steve Rose, who after a highly successful career at the HQ SACT Office of the Legal Advisor retires at the end of June. For that reason we have decided to highlight some of Mr. Rose's accomplishments.

Mr. Rose was introduced to the NATO/PfP Legal Community in 1998 when SACLANT hosted the first NATO/PfP Legal Symposium in Norfolk. He joined SACLANT at a time when PfP had taken off and the Alliance had started its enlargement. Mr. Rose contributed diligently to the process of legal transformation and adaptation even before SACLANT became a transformational command. He continued to lead the annual NATO/PfP Legal Symposia (Tallinn, 1999, Noordwijk 2000, Naples 2001), and worked to open the newly introduced Legal Advisors' Course at the NATO School to non-NATO Nations and non-NATO speakers. Later, an Operational Law Course was added to the NATO School curriculum under the guidance of Mr. Rose.

In the course of developing NATO-PfP relations, Mr. Rose supported numerous outreach activities and became a well-sought teaching authority on NATO SOFA and Paris Protocol. He supported either directly or through his office, activities in Albania, Bosnia-Herzegovina, Estonia, Georgia, and Ukraine. Mr. Rose has, through his years as ACT Legal Advisor, remained dedicated to disseminating of the NATO SOFA and Paris Protocol, and in 2011, he and the ACO Legal Advisor, Mr Thomas Randall, co-chaired the NATO SOFA 60th Anniversary Conference, together with the Estonian Ministry of Defence.

When SACLANT transitioned to HQ SACT, the Legal Office was tasked to develop a range of new legal arrangements, including Host Nation Support Arrangements (HNSA) and Agreements to Supplement (SA) the Paris Protocol. Under Mr. Rose's leadership HNSA were drafted and concluded

with several NATO and PfP nations. And, when JHQ North was transferred to HQ SACT and reformed as JWC, and JFTC stood up as a new entity, Supplementary Agreements were concluded with Norway and Poland. In the wake of this work, and as a transformational effort, Mr. Rose directed his office to work closely with SHAPE Legal Office to develop a template for future Supplementary Agreements.

The HQ SACT Office of the Legal Advisor has overseen more initiatives under Mr. Rose's leadership. Of benefit to the entire NATO legal community are the introduction of the annual Administrative Law Workshops and of the annual NATO Legal Conferences; CLOVIS; and last but not least the **NATO Legal Gazette**. Internal to ACT, the changes to NATO Command Structure and to the increasing tasks of the Command have been supported by the Office of the ACT Legal Advisor, and that office has grown significantly since 1998, and so has the number of ACT-wide legal staff.

The post of ACT Legal Advisor marked Mr. Rose's second career. Mr. Rose has served the United States Navy first as a helicopter pilot (1969-1970 flight training and ensign; 1971-74 Helicopter Combat Support Squadron Six) and later in the United States Navy Judge Advocate General Corps where Mr. Rose has held several significant offices: From 1989-90, he served as Force Judge Advocate for Commander, Naval Air Force Atlantic. During 1990-93, he did a tour of duty with the Office of the Secretary of Defense as Deputy Director for Policy Planning (Special Operations and Low-Intensity Conflict). In 1993-94, he served as Fleet Judge Advocate for the Atlantic Fleet and from 1994-2000 as Staff Judge Advocate for U.S. Atlantic Command/U.S. Joint Forces Command. In 2000, Mr. Rose retired with the rank of Captain (Navy) and became the civilian director of Legal Affairs for NATO's Supreme Allied Commander Transformation.

Mr. Rose has obtained his academic degrees with honors; he has authored numerous articles on legal, maritime, and strategic issues, and his decorations included the Defense Superior Service Medal (two awards), Meritorious Service Medal (three awards), Navy Commendation Medal, and Navy Achievement Medal.

We wish Mr. Rose a long and relaxing third career, with his wife Mary Ellen and his daughters Rebecca and Melissa, and grandchildren Ethan and Tyler. His many colleagues in NATO and particularly the HQ SACT Legal Office will miss Mr. Rose, but we will regularly remind him that he remains a lifelong member of our community.

UPCOMING EVENTS OF LEGAL ADVISOR INTEREST



in Germany:

- US centric **V Corps Lessons Learned Symposium**, 3-6 June 2013 in Wiesbaden, Germany, chaired by US V Corps Commander LTG James L. Terry.
- NATO centric **IJC Lessons Learned Symposium**, 10-12 June 2013, hosted by US V Corps in Wiesbaden, Germany, chaired by US V Corps Commander LTG James L. Terry.

in Estonia:

- **2013 NATO Legal Conference**, 24-28 June 2013 in Tallinn, Estonia, hosted by the Estonian MOD. This year topic is "**Responding to Change – Legal Challenges in the Future Security Environment**". It aims to focus on legal aspects of NATO-partner relationships and the broader legal implications for NATO in a world that is undergoing rapid geo-political and technological changes. Our objective is to provide you a forum where you encounter candid, solution-focused legal discussion. If you are interesting in attending this event please contact Mrs. Galateia Gialitaki at galateia.gialitaki@shape.nato.int
- **NATO Cooperative Cyber Defence Centre of Excellence (CCD COE)** in cooperation with **International Society for Military Law and Law of War (ISMILLW)** are organising **One day international legal Seminar prior the International Conference on Cyber Conflict**, 4 June 2013 in Tallinn, Estonia. More information at www.ccdcoe.org and www.ismllw.org

in Switzerland:

- **The Geneva Center for Security Policy (GCSP) with Swiss Armed Forces** organize international workshop on “**Central Role of Commander: Accomplish the Mission respecting the law**”, 26 to 30 August 2013 in Geneva, Switzerland. The aim of this seminar is to foster understanding of the key legal principles at commanding levels, to apply them in the planning and execution of military operations. Please send your application no later than 31 May 2013 to Mrs. Anne-Caroline Pissis at a.pissis@gcsp.ch. You will find more information at www.gcsp.ch.

NATO School Oberammergau, Germany...

- **NATO Legal Advisor Course**, 7 – 11 October, 2013: The course provides military and civilian legal advisors, in national or NATO billets, an understanding of the legal aspects of NATO operations and activities. Instruction will address legal issues arising at strategic, operational, and tactical NATO headquarters in an environment that encourages development of professional relationships.
- **International Law of Cyber Operations Seminar**, June 10 – 14, 2013: The seminar offers an introduction to computers and computer networks, as well as to NATO's policy and doctrine regarding cyber defence. Participants will acquire a basic knowledge of public international law as it applies to cyber operations, including, *inter alia*, issues such as the prohibition of the use of force, the law of self defence, countermeasures, LOAC, the law of neutrality, legal attribution and State responsibility. The seminar will consist of presentations by noted academics and practitioners, and will include practical exercises focusing on the legal aspects of cyber operations. More information can be found on: https://www.natoschool.nato.int/new_website/conferences/Cyber_2013.pdf

For more information please contact the NATO School at: <https://www.natoschool.nato.int/bengs.brian@natoschool.nato.int> or klaiber.bjorn@natoschool.nato.int or

Disclaimer : The NATO Legal Gazette is published by Allied Command Transformation/Staff Element Europe and contains articles written by Legal Staff working at NATO, Ministries of Defence, and selected authors. However, this is not a formal NATO document and therefore may not represent the official opinions or positions of NATO or individual governments.