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**NATO & EU
Relations**

Contents

<i>Introduction</i> , by Dr Petra Ochmannova.....	3
<i>Collaborative Tools on CLOVIS: WORKSPACES</i> , by Allende Plumed Prado.....	4
<i>Questions on the NATO Communications and Information Agency</i> , by Simona Rocchi.....	7
Focus Topics on NATO & EU Relationship	
• Practitioner's Corner: The Relations and Interactions between NATO and EU , by Mette Prassé Hartov.....	12
• IGNORANTIA JURIS NON EXCUSAT: Analysis on the Compatibility of the NATO and EU Legal Regimes , by Cătălin Graure.....	14
• EU-NATO Relations: Some General and Legal Considerations , by Dr Frederik Naert.....	24
• A Matter of Practice under International Institutional Law: NATO International Military Headquarters and Exemption From Residency and Visa in EU Legal Order , by Mette Prassé Hartov and Andres B. Munoz Mosquera.....	33
• NATO and EU Military Cooperation , by Siegfried Dohr.....	44
<i>Book Review</i> , by Vincent Roobaert:	
• International Law and Classification of Conflicts , by Elizabeth Wilmshurst.....	52
<i>Spotlight</i>	54
<i>Hail & Farewell</i>	58
<i>Upcoming Events of Legal interest</i>	60

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Introduction

Dear Fellow Legal Professionals and those interested in NATO,

Welcome to 2014. With great pleasure we are bringing you Issue 33 of the *NATO Legal Gazette*. The first of our four 2014 planned *Gazettes'* issues is on NATO and EU relations.

NATO and the EU each have 28 member nations. 22 of these nations are members of both organizations, while six members of each organization are not members of the other.¹ This mixed representation naturally causes overlaps in the legal regimes that apply to some but not all of the NATO and EU members.

In four different articles we present you with different points of view on NATO and EU relations. Firstly, Mr. Catalin Graure provides you an analysis of the compatibility of legal regimes surrounding both international organisations. Secondly, Dr. Frederik Naert provides you with an EU perspective on general and legal considerations related to EU and NATO relations. Thirdly, our NATO practitioners Ms. Mette Hartov and Mr. Andres Munoz describe the EU's exemption of NATO International Military Headquarters from its residency and visa requirements. Finally, Mr. Siegfried Dohr provides an overview of NATO and EU cooperation from a military perspective.

The interactions of NATO with the EU are not a matter of academic discussion but rather of significantly increasing practical importance. Under the new heading of "Practitioner's Corner," Ms. Mette Hartov kindly shares with us her reflections on current issues encountered in the NATO legal practice. We are fully aware of your need of a pragmatic approach towards a number of topics that you are addressing daily. For this reason, we are hoping to keep delivering to you future articles from a practitioner's perspective. Please email me any topics that you would like to be covered in our upcoming issues.

Please know that our plan is to publish Issue 34 in June. This Issue will discuss NATO's legal cornerstones. I welcome from our readers any contributions you may wish to provide about the foundational and enduring legal regimes that arise from the Alliance's key treaties and controlling legal regimes by 1 May 2014.

Following our usual structure, this issue provides an article about a NATO organisation: Questions on NCI Agency; information about a CLOVIS feature called Workspace; a book review of International Law and the Classification of Conflicts; Spotlight introducing our new colleagues in NATO, hail & farewells and information about upcoming events.

Sincerely yours,

Petra Ochmannova, Deputy Legal Adviser ACT SEE

¹ The NATO members that are not members of the EU are Albania, Canada, Iceland, Norway, Turkey and the United States. The EU members that are not members of NATO are Austria, Cyprus, Finland, Ireland, Malta and Sweden.



Collaborative Tools on CLOVIS: WORKSPACES

By Allende Plumed Prado
ACT SEE Legal Office

One of the constant challenges that NATO faces is how to effectively connect and communicate within a segmented command structure. The unique variety of tools available on CLOVIS, such as Workspaces bridging and linking the NATO legal community, is helping to ease this challenge.

What is a Workspace?

“Workspace” is a 2010 SharePoint collaborative feature at the disposal of the NATO legal community. It provides spaces with controlled-access for active work on any NATO legal document or project between colleagues who may be in a single office or different countries or continents.

Who has access to it?

Depending on the project, access to workspaces can either be open to all CLOVIS users or restricted to certain groups and available only upon invitation. It is also possible to grant members of one workspace different permissions (read, contribute, etc.)

How to use it?

Users are invited to contribute to any of the public workspaces available. Generally, anyone interested in working on a project with another legal office, or wanting to collect comments on a particular project or draft from the whole legal community can request the CLOVIS team members to set up a specific workspace. Contacts for the CLOVIS team members can be found under the “Contact Us” tab on the menu bar.

What do Workspaces offer?

Workspaces offer a place for multiple people to work together on a particular project. As such it offers a wide range of helpful features, including:

Calendar: which can be connected to Microsoft Outlook, meaning users can set up alerts on tasks and arrange meetings with colleagues through this means.

Shared documents repository: Users can store all their draft materials and final products in the workspace's shared documents library. Documents are thus instantly available to every user participating in the workspace, and version control and history is guaranteed. Version control is a critical feature that saves every version of a document at any time. This allows for multiple people to make changes to a document without the fear of overwriting a previous version. If necessary, users can always revert to previous document versions. Pictures and presentations can also be uploaded and shared.

Task list: This feature enables users to distribute tasks among the workspace members, as well as monitor the progress and contribution.

Team Discussions: In order to better communicate with other workspace members at any time, a team discussion function can be set up to allow for internal discussions.



In addition to Workspaces, there are other tools available to the NATO Legal Community on CLOVIS and which are meant to facilitate communication and collaboration. These include:

Forum: For legal personnel posted in NATO, CLOVIS offers a "Forum" device. The aim is to encourage the NATO Legal Community to increase collaboration, and share legal opinions and experiences. It can be accessed by clicking on « CLOVIS Forum » on the left hand side navigation of the home page. To create a new post, users simply need to click on « Create a post », fill in the form and click on « Publish ». Users should ensure they give a title to their post in order for others to easily identify the theme of the conversation and participate in it. It is also possible for users to comment on another person's post by clicking on its title, scrolling down, adding their comment, and submitting it.

Colleague Finder: This feature offers the ability to search for an expert on any given issue within the NATO Legal Community and to connect qualified NATO legal experts with one another.

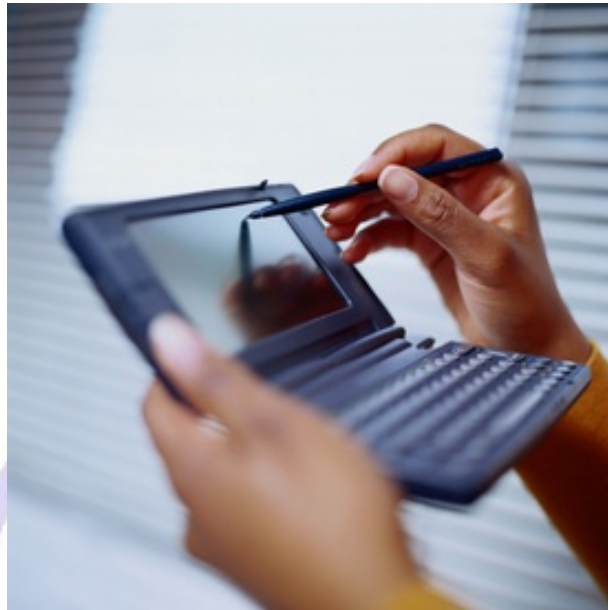
Shared Documents

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<input checked="" type="checkbox"/>	Legad Subject : CLOVIS Accounts	(11)
<input checked="" type="checkbox"/>	Legad Subject : CLOVIS Demo	(2)
<input checked="" type="checkbox"/>	Legad Subject : CLOVIS Project	(22)
<input checked="" type="checkbox"/>	Legad Subject : CONTRACTS	(3)

In addition to these features, Workspaces users can easily consult official NATO documents or related reference material whilst navigating through the portal.

It is also worth mentioning that CLOVIS is available from every internet connection, meaning Workspaces can also be used and accessed on TDY. Workspaces is therefore the equivalent of an "electronic desk", where all the documents needed are accessible in a click.

In conclusion, CLOVIS encourages its users to exploit these collaborative tools, with a special emphasis on Workspaces, so as to keep records of what the NATO legal community is doing. The ultimate goal is to build a better institutional memory and avoid having to constantly reinvent the wheel.



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Questions on the NATO Communications and Information Agency

By Simona Rocchi¹

What does NCI Agency stand for?

The NATO Communications and Information Agency, or NCI Agency, was established on 1 July 2012 by merging the NATO Consultation, Command and Control Agency (NC3A); the NATO Air Command and Control System (ACCS) Management Agency (NACMA); the NATO Communication and Information System (CIS) Services Agency (NCSA); the Active Layered Theatre Ballistic Missile Defence (ALTBMD) programme; and elements of the NATO Headquarters Information, Communication and Technology Management (ICTM) directorate.

The creation of the NCI Agency is part of the agency reform called for by the Lisbon Summit Declaration in 2010. The General Manager of the NCI Agency is Major General Koen Gijssbers, RNLA (Ret.). The agency's headquarters is located in Brussels with main offices in Mons and Glons in Belgium, and The Hague in the Netherlands. In addition, the NCI Agency has over 30 other locations in Europe, North America and Afghanistan in support of customers and NATO operations, with a staff of ca. 2,900, half military, and half civilians.

The NCI Agency is responsible for command, control, communications, consultation, intelligence, surveillance and reconnaissance (C4ISR) systems "from cradle to grave" and is set to achieve rationalisation and efficiencies. The C4ISR collaboration among nations with the agency both on a bilateral and multilateral level is a key element of the NCI Agency. Such collaborations represent important opportunities for NATO to develop less expensive solutions and to achieve better interoperability for NATO's and the nations' CIS systems.

¹ Simona Rocchi is the Legal Adviser of the NCI Agency. The NCI Agency Legal Office also comprises lawyers Kerstin Mueller, Vincent Roobaert, Jean-Luc Prevoteau, and Assistants Dominique Palmer-De Greve and Greg Rohel. The views expressed in this article are solely those of the author and may not represent the views of NATO.

What is the legal framework?

NCI Agency is a NATO body established under the Charter for the NATO Communications and Information Organization (NCIO) as of 1 July 2012. All NATO nations are members of the NCIO. The NCIO constitutes an integral part of NATO: it shares in the international personality of NATO as well as the juridical personality of NATO under Article IV of the Ottawa Agreement.² The NCIO is composed of the Agency Supervisory Board (ASB) and its executive body (NCI Agency) composed of a General Manager and his staff.



The North Atlantic Council (NAC) has granted authority to the NCIO to conclude agreements in the name of NATO (e.g. with NATO or non-NATO Nations) and to conclude administrative agreements with other NATO bodies (e.g. with other NATO agencies). However, before concluding any agreement or contract involving (a) a nation not being a member of NATO; (b) an agreement or contract with an

international organisation; or (c) any international agreement requiring Parliamentary approval by a NATO nation, the NCIO needs to obtain prior approval of the NAC. By delegation of the NAC, the NCIO is authorised:

- To conclude agreements within the scope of its agreed mission and activities, subject to prior clearance by the NATO Office of Security, with nations that have received authorisation by the NAC to contribute to NATO-led operations or nations that have a partnership programme with NATO such as the Partnership for Peace, Mediterranean Dialogue and the Istanbul Cooperation Initiative; and
- To let contracts in nations that are not members of NATO for those initiatives under the NATO/PfP Trust Fund Policy led by a NATO nation and for which the NCI Agency is the Executing Agent.

What are the main missions of the NCI Agency?

The number one priority for the NCI Agency is supporting NATO operations and ensuring optimal connectivity between all the different services involved, wherever they are in the world. Several programmes have been defined as vital. For instance, the NATO Computer Incident Response Capability (NCIRC), which aims to improve alliance cyber capabilities, is high on the priority list. The NCI Agency is also responsible for the provision of technical and operational cyber security services throughout NATO.

² Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa, 20 September 1951.

The NATO Ballistic Missile Defence (BMD) Programme is focused on the upgrade, test and integration of NATO's Command and Control (C2) systems and underlying communication network between various NATO and national missile defence systems. This will create a larger range of detection, communication and missile defence capabilities for NATO forces and NATO populations and territories. NATO's long-term goal is to merge missile defence assets provided by individual Allies into a coherent defence system so that full coverage and protection for all NATO European populations, territory and forces against the threats posed by proliferation of ballistic missiles is ensured. Another of the agency's priorities is the NATO Air Command and Control System (ACCS) programme which is intended to combine and automate, at the tactical level, the planning and tasking and execution of all air operations. Also high on the agency's priority list is modernising NATO's information technology infrastructure. The aim is to bring NATO into one single enterprise information system supporting multiple levels of security.

In fact, 7 out of 11 Lisbon Summit critical capabilities commitments fall under the responsibility of the NCI Agency (Afghan Mission Network, Counter-IED (Improvised Explosive Devices), BMD, Cyber Defence, Automated Information Systems, ACCS, Joint Intelligence, Surveillance and Reconnaissance).

What does customer funding mean to me/my organisation?

The NCI Agency is on its way to becoming completely customer funded. Customer funding is a system of compensation for work performed where the entity performing the effort is paid on a project or task basis. The aim is to achieve greater clarity on the Programme of Work, to realise cost efficiencies and overall to have greater business transparency and accountability. By the beginning of 2014 the agency will have gone from budget funding for two-thirds of the agency to customer funding for the entire agency. Customer funding requires the agency to attract work from its customers, to be flexible and to expand quickly or reduce workforce (or to use external contractors where necessary) depending on the Agency workload. This will ensure a fast response to customer demand, but will also require flexible workforce management. In addition to the military commands and NATO HQ (such as the NSIP programme), the NCI Agency also provides support to NATO, non-NATO nations and international organisations, in compliance with its charter.

The NCI Agency is, for example, providing CIS services to many nations that have deployed troops in Afghanistan. This support covers the provision of service and capabilities in the area of C4ISR. In order to facilitate this support, many nations have entered into a memorandum of understanding (MOU) on C4ISR cooperation. This is a framework agreement containing the general terms covering the cooperation, which is supplemented by technical arrangements detailing the technical and financial aspects of a specific project. The NCI Agency is also involved in various multinational projects, such as MAJIC (Multi-Sensor Aerospace-Ground Joint Intelligence, Surveillance and Reconnaissance (ISR) Interoperability Coalition) and the recently signed multinational projects on cyber defence.

During the first year of the NCI Agency, over 130 agreements with nations were concluded on a bilateral or multilateral basis. Examples of activities covered under NCI Agency agreements include CIS support for nations involved in the ISAF operation, support to exercises, multi-year programme of work, and training support.

Legal Office of NCI Agency

The Legal Adviser of the NCI Agency provides legal advice to all elements of the NCI Agency (the General Manager, the Commanders and the Directors) and to the Agency Supervisory Board. The Legal Office deals with a large variety of legal topics: it drafts, negotiates and manages all agreements; provides support to Human Resources, Acquisition and the various elements of the agency; manages contractual disputes and arbitration with contractors; manages export control and license agreements; ensures compliance with the standard of conduct; manages staff member complaints and appeals; manages the Agency regulatory framework and provides support to operations (including training and exercises).

The on-going rationalisation of structures and services which will be followed by an optimisation phase in 2014 presents challenges, but also opportunities and our goal is to assist in the change process whilst preserving the mission and mandate of the NCI Agency. Legal issues are often easier to prevent than to cure and we therefore encourage our staff to seek legal advice early on, before problems become unmanageable.

What are the main legal challenges within the next 12 months?

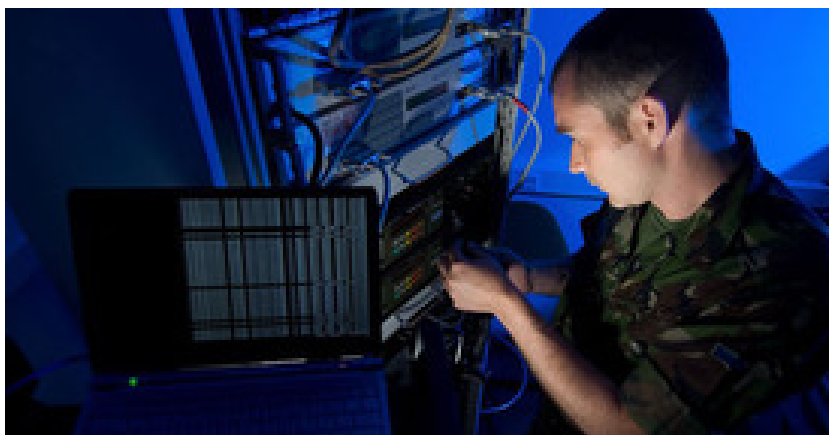
As the NCI Agency will be working closely with member nations and their industries to link national and NATO goals and solutions, the legal office will continue to be heavily involved in setting up the **legal framework for C4ISR cooperation** with nations and partners.

In order to enhance the **cyber defence** of NATO's networks and to bring industry best practices into the NCI Agency, the legal office is currently establishing a legal framework for a cyber defence information exchange with industry, similar to the framework established by the US Department of Defence. Legal participation in training and exercises as in the recent cyber exercise Lockshield organised by NATO Cooperative Cyber Defence Centre of Excellence (NATO CCD COE), will continue to be on the legal office's agenda.

With regard to **support to operations**, the coming challenge will be the transition from ISAF to Resolute Support and the disposal of CIS assets from the theatre of operations in Afghanistan.

From an industry **acquisition** perspective, the new agency now provides a single entry point for businesses seeking to provide C4ISR systems to NATO. The NCI Agency effectively becomes a single acquisition organisation and the legal office will continue its support throughout the whole entity to ensure the proper application of acquisition rules. This will include the continued training and guidance on the NCI Agency **code of conduct** and also the elaboration of an internal programme on **anti-fraud/corruption**.

The Legal Office will continue to be heavily involved in the discussions with Host Nation Belgium on **Privileges and Immunities** for all civilian Agency staff members in Mons and Glons.



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Practitioner's corner: The Relations and Interactions between NATO & EU

By Mette Prassé Hartov¹

The relations and interactions between NATO and EU, as well as NATO and EU Nations have notably increased over the past 20 years. NATO's webpage documents the developments in the NATO-EU relations, from Maastricht via Petersberg and to Lisbon and Chicago, and the list is significant. Most recently the principles for collaboration between NATO and EU were restated at the NATO Summit in Chicago in 2012, and the strategic partnership between NATO and EU is embedded in NATO Strategic Concept.

The NATO webpage records a development in the relations from high-level statements to staff talks and initiatives to join forces in common areas such as cyber and capability development. Apart from regular high-level meetings, permanent military liaison arrangements have been established to facilitate cooperation at the operational level. A NATO Permanent Liaison Team has been operating at the EU Military Staff since 2005 and an EU Cell was set up at SHAPE in 2006.

From the perspective of a NATO Legal Practitioner this raises a number of rather practical yet also policy driven staffing requirements: Legal arrangements have to be put in place to effectively support a liaison mission at SHAPE and within the EU Military Staff. The lack of status or access to workspaces and colleagues is not helpful if an effective relationship is being sought. Similarly, when operating side by side or consecutively in missions (such as in the Balkans), these relationships have to be developed to support interaction, allocation of missions, and relocation.

These matters are being addressed in the context of NATO status and mission agreements and in Headquarters Agreements, and at the current level of interaction it appears that NATO and the EU have been overall successful in this endeavour. We have yet to find out, how the EU Status of Forces Agreement (not yet in force) may reside with the NATO Status of Forces Agreement – and vice versa, should there be an exercise or event, in which they both apply. These are all issues that will be addressed at the adequate political and strategic level.

At the practical level the question of status does occur from time to time, particularly when the EU or EU / Non-NATO Nations take part in NATO activities either led directly by NATO Nations or by NATO. If such an activity is led by a Supreme Headquarters (or its subordinate commands) the issue of status will be addressed either bilaterally or in the relevant exercise documents and be tabled in the planning process. Such matters will always need to be assessed in close dialogue with (and lead of) the NATO Nation hosting the event, since the Supreme Headquarters depend on the support of the Host Nation and on the requirement to obtain the consent of the Host Nation to allow and facilitate the presence of foreign forces and international

¹ Deputy Legal Adviser at NATO Headquarters, Supreme Allied Commander Transformation, Office of the Legal Adviser. The views expressed in this article are solely those of the author and may not represent the views of NATO.

organisations in its territory.

The staffing at the Strategic Level starts, however, even before issuing an invitation: the stated policy of NATO, as an alliance to work with the EU, sets the mission of the Supreme Headquarters, but the Headquarters are also required to obtain the approval of NATO Nations before opening NATO education, training, and exercises at a NATO Training Facility to the EU (and other non-NATO entities). Per definition, this extends to training, education, and exercises conducted by HQ SACT, SHAPE, or by NATO Education and Training Facilities, within or outside the NATO Command Structure. This requirement is stated in MC 458/2 (NATO Education, Training, Exercise and Evaluation Policy, October 2009).

The policy applies to NATO Command Structure Entities, NATO Force Structure, and to NATO Education and Training Facilities, as well as to individuals from NATO Nations and from Non-NATO Troop Contributing Nations. In short, the Policy establishes the roles and responsibilities for NATO education, training, exercises and evaluation. The Policy identifies the value of including Non-NATO Entities in NATO training and exercises. The authority to include Partners, other (non-NATO) Governmental Organisations, International Organisation, and Contractors is retained by the Military Committee and the North Atlantic Council, and the entities to which MC 458/2 apply are required to seek Military Committee approval and North Atlantic Council endorsement of the participation of such Non-NATO Entities even before dialogue is initiated with the entity. Approval and endorsement are achieved either through the approval of the annual Bi-Strategic Command NATO Military Training and Exercise Programme (MTEP) or by ad hoc approval.

The requirements of MC 458/2 raise several issues which Legal Advisers, no matter where posted, have to take account of when NATO interacts with the EU or other Non-NATO Entities. This issue of the *NATO Legal Gazette* provides details as to the relations between NATO and EU in operations and related relations; the *Gazette* provides examples of NATO and EU military cooperation and the compatibility of the legal regimes of EU and NATO as a matter of international institutional law. The *Gazette* sets the relations between international institutions in a practical perspective, but as Legal Advisers we also need to be equally mindful of other decisions directing the course of engaging with Non-NATO Entities, and assist the staff in identifying the associated requirements and thus remain compliant with the directions given by the Military Committee and the North Atlantic Council.



IGNORANTIA JURIS NON EXCUSAT: Analysis of the Compatibility of the NATO and EU Legal Regimes

By Cătălin Graure¹

Introduction

The development of the European Union (EU) towards a federalist structure along with its ever-increasing prerogatives in various fields, after being endowed with many domestic and external powers, may sometimes lead to an apparent conflict of obligations for Member States towards the EU or under various other international regimes that they have individually acceded to. Some of these concerns may involve the North Atlantic Treaty Organization (NATO) as a great majority of its Member States is also part of the EU. 21 of the 28 NATO Member States are also members of the EU which brings out a debate on the relationship between the EU legal order and that of NATO.

The essential point under this scenario is to determine how an EU Member State has to proceed with its NATO treaty obligations and to comply with EU law.

As far as the NATO legal regime is concerned, it mainly consists of the 1949 North Atlantic Treaty² (NAT), the 1951 Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces³ (NATO SOFA), the 1951 Agreement of the Status of the North Atlantic Treaty Organization, National Representatives and International Staff⁴ (Ottawa Agreement), the 1952 Protocol on the Status of International Military Headquarters (IMHQs) set up Pursuant to the North Atlantic Treaty⁵ (Paris Protocol), the 1995 Agreement among the States Parties to the North Atlantic Treaty and the other States participating in the Partnership for peace regarding the Status of their Forces⁶ (PfP SOFA), the 1997 Further Additional Protocol to the Agreement among the States Parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace regarding the Status of their Forces⁷ (FAP) and various supplementary agreements concluded between the organisation and some of its Member States. On the other hand, the EU legal framework consists of

¹ Legal Intern (March-July 2013), SHAPE Legal Office; PhD Candidate, Sorbonne Law School.

I would like to thank Andrés Munoz Mosquera, Mette Prasse Hartov, Nikoleta Chalanouli and Natalie Dobson for their invaluable comments and support in writing this contribution.

The views and opinions expressed in this article are those of the author and do not necessarily reflect the official opinion or position of SHAPE, HQ SACT, or NATO.

² *The North Atlantic Treaty*, Washington D.C., 4 April 1949, available at: http://www.nato.int/cps/en/natolive/official_texts_17120.htm?.

³ *Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces*, London, 19 June 1951, available at: http://www.nato.int/cps/en/natolive/official_texts_17265.htm?.

⁴ *Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa*, Ottawa, 20 September 1951, available at: http://www.nato.int/cps/en/natolive/official_texts_17248.htm?.

⁵ *Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty*, Paris, 28 August 1952, available at: http://www.nato.int/cps/en/natolive/official_texts_17300.htm?.

⁶ *Agreement among the States Parties to the North Atlantic Treaty and the other States participating in the Partnership for peace regarding the Status of their Forces*, Brussels, 19 June 1995, available at: http://www.nato.int/cps/en/natolive/official_texts_24742.htm?.

⁷ *Further Additional Protocol to the Agreement among the States Parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace regarding the Status of their Forces*, 19 December 1997, available at: http://www.nato.int/cps/en/natolive/official_texts_25435.htm?.

the founding treaties, currently consolidated in the form of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) and of the secondary law adopted by its bodies.

The debate regarding the compatibility of NATO treaty obligations and EU law is to be addressed by reference to relevant provisions within the NATO and EU treaties. Considering the NAT, its Article 8 is intended to solve any potential conflict of obligations, whereas Articles 351 TFEU and 42 TEU have a similar function within the EU framework.

First of all, Article 42 TEU establishes a general exemption from EU laws to Member States' obligations under the NATO security and defence policy. Second, the fulfillment of NATO obligations on security and defence can only be seen from a broad perspective in accordance with the areas covered in the NATO governing treaties (e.g. relief for IMHQs from duties and taxes; the import by members of a force or civilian component free of duty of their private motor vehicles, etc.); areas that are or can be regulated by EU treaties or secondary law. Therefore, any attempt to deplete the NATO treaty obligations on security and defence by EU law implementers through secondary law provisions is clearly against both the NATO and EU regimes.



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The NATO Primacy Regime under the North Atlantic Treaty

The NAT is the founding document of NATO although the text does not specifically mention the creation of a new international organisation. However, Article 9 reads that "[t]he Parties hereby establish a Council [...] to consider matters concerning the implementation of this Treaty," that "shall set up such subsidiary bodies as may be necessary."

The NAT also contains a supremacy clause creating for the NAT its own conflict-of-laws regime, somewhat similar to Article 103 of the UN Charter, regarding past, present and future third engagements in favour of obligations of the parties arising from the NAT. According to Article 8 of the NAT, [e]ach Party declares that none of the international engagements now in force between it and any other of the Parties or any third State is in conflict with the provisions of this Treaty, and undertakes not to

enter into any international engagements in conflict with this Treaty.⁸

To meet the goals of the organisation, the member states later understood the need to complement the provisions of the NAT with the provisions such as the ones regarding the forces of one Party sent to serve in the territory of another Party (NATO SOFA) or concerning the status of International Military Headquarters (IMHQs enjoying status under the Paris Protocol). Such treaties derive from the provisions of the NAT and, as long as they are in force, it can be reasonably assumed that the NAT conflict clause equally applies to all Member State obligations under such agreements.

The provisions of Article 351 TFEU

The Treaty on the Functioning of the European Union (TFEU)⁹ explicitly considers the situation of pre-existent treaty obligations to Member States of the EU and their effects under the EU legal order. Article 351 TFEU (ex Article 307 TEC) provides that: [t]he rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties.

Article 351 TFEU further mentions that:

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

As the EU has separate international legal personality,¹⁰ it is not bound by any agreements concluded by its Member States, such as the NATO related treaties and agreements and therefore, it is ultimately a Member State's duty to ensure its compliance with its prior international obligations.

Before the conclusion of the Maastricht Treaty, Article 307 TEC represented the only means of protection of the NATO regime against any potential intrusion on the part of the European Community. At the same time, such shielding was under the scrutiny of the Court in Luxembourg that continuously limited the scope of the provision, in order to favour the supremacy of the European legal order.

According to the Court of Justice of the European Union (CJEU) the provisions of an agreement concluded prior to a Member State's accession cannot be relied on in intra-Community relations if the rights of non-member countries are not involved.¹¹ Furthermore, on the appeal of the Kadi case,¹² the CJEU considered the applicability

⁸ This provision was added at the initiative of the United States and its rationale was explained by Dean Acheson, US Secretary of State, at his meeting with Senators Connally and Vandenberg on February 3, 1949. According to Acheson, the US had in mind "the possibility that one of these countries might go Communist and some ground should be provided for disassociating them from the pact" (Memorandum of Feb. 3, 1949, written by Bohlen and signed by Acheson. Department of State, file No. 840.20/2-349; in E. Reid, *Time of Fear and Hope. The Making of The North Atlantic Treaty 1947-1949*, McClelland and Steward, 1977, p. 212.

⁹ European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01.

¹⁰ Article 47 TEU.

¹¹ C-286/82 *Ministère Public v Deserbais* [1988], para. 18; *Joined Cases C-241/91 P and C-242/91 P Radio Telefis Eirean (RTE) and Independent Television Publications v Commission* [1995], para. 84.

¹² C-402/05 P and C-415/05 P, *Kadi* [2008] ECR I-6351.

of Article 351 TFEU in its ruling and stated that the article, while allowing for derogation from primary law,¹³ “may in no circumstances permit any challenge to the principles that form part of the very foundations of the Community legal order.”¹⁴

On the other hand, the same Court held that as a matter of principle current Article 351 TFEU implies “a duty on the part of the institutions of the Community not to impede the performance of the obligations of Member States which stem from a prior agreement.”¹⁵

The applicability of Article 351 TFEU with regard to NATO

The founding treaties of NATO were concluded prior to January 1958. Furthermore, the other EU Member States that are part of NATO ratified the NATO agreements prior to their EU accession. Therefore, the current EU and NATO members had international obligations under the NATO founding treaties either before 1 January 1958 or before their accession to the EU, as provided by Article 351 TFEU. While we might be tempted to question the status of the anterior treaty of the PfP SOFA, FAP and Supplementary Agreements in Europe, it is unquestionable that these were only intended to ensure the functioning of an international organisation already shaped in 1949, 1951 and 1952, that is aimed to exercise the right of collective self defence in accordance with the Charter of the United Nations.

The question of whether the obligations could only be owed to a third country and not to an international organisation is not specifically dealt with, as the article only mentions the type of signatories to the treaties (“[...] agreements concluded [...] between one or more Member States on the one hand, and one or more third countries on the other”) and does not address the issue of international organisations. However, there is nothing indicating that the drafters intended to exclude the applicability of the text to agreements establishing international organisations that equally provide for obligations of the Member States towards the organisation. Furthermore, the NATO nations who are members of the EU have consolidated by practice the “cohabitation” of the NATO and EU regimes without mutual exclusion, ensuring their independence and autonomy as international organisations with separate legal personality.

The way this provision has been applied, in order to ensure the NATO special status, can be illustrated by following the subsequent practice within the European Community that shows the understanding of specific obligations owed to NATO. As an example of this NATO special status, the 1977 VAT European Council Directive¹⁶ establishes that:

Member States shall exempt [...] importation of goods into the territory of Member States which are parties to the North Atlantic Treaty by the armed forces of other States which are parties to that Treaty for the use of such forces or the civilian staff accompanying them or for supplying their messes or canteens where such forces

¹³ Idem., para. 301.

¹⁴ Idem., para. 304.

¹⁵ Case 812/79, Attorney General v Burgoa [1980], ECR 2787, para. 9.

¹⁶ The legislation currently applicable to VAT within the EU is the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. The Directive provides for the same kind of exemptions for NATO under its articles 22, 143.1(h) and 151.1(c) and (d).

take part in the common defence effort.¹⁷

The 1977 text further exempted the “supply of goods and services [...] effected within a Member State which is a party to the North Atlantic Treaty and intended either for the use of the forces of other States which are parties to that Treaty or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort.”¹⁸

The scope of the VAT exemption for NATO under the current 2006/112/EC VAT Directive¹⁹ has recently been addressed by the CJEU by means of a preliminary ruling.²⁰ The request was made by the Upper Tribunal (Tax and Chancery Chamber) in a case concerning the dismantling by Able UK Ltd on UK soil of thirteen obsolete ships which were in the service of the United States Navy. The proceedings opposed Able UK Ltd to The Commissioners for Her Majesty’s Revenue and Customs (HMRC).



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The issue had previously been addressed by the First-tier Tribunal judge who established that the scope of Article 151.1(c) of the VAT Directive²¹ was not limited to “NATO visiting forces” parting from a textual interpretation of the Article and concluding that there was “no policy reason for limiting the exemption under Article 151.1(c) to visiting forces stationed in the Member State.”²² On the other hand, the CJEU concluded that Article 151.1(c) only exempted services supplied to the forces to another Member State if such forces “are taking part in the common defence effort” and if those armed forces “are stationed in or visiting the Member State concerned.”²³ Accordingly, in this particular case the appeal was allowed by the national Court, as the Respondent (Able UK Ltd) confirmed it had no interest in defending the appeal following the decision of the CJEU.²⁴

¹⁷ Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, Art. 14(1)(g).

¹⁸ *Idem.*, Art. 15(10).

¹⁹ The interpretation requested to the CJEU concerns the scope of Article 151.1(c) of the Directive.

²⁰ C-225/11, *The Commissioners for Her Majesty’s Revenue and Customs v Able UK Ltd* [2012].

²¹ This article reads as follows: “Member States shall exempt the following transactions: the supply of goods and services within a Member State which is a party to the North Atlantic Treaty, intended either for the armed forces of other States party to that Treaty for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort.”

²² First Tier Tribunal Tax, *Able UK Ltd v The Commissioners for Her Majesty’s Revenue and Customs*, Appeal Number: MAN/2008/1497, 30 October 2009, para. 31.

²³ See *supra* note 20, paras. 20-27.

²⁴ Upper Tribunal Tax and Chancery Chamber, *The Commissioners for Her Majesty’s Revenue and Customs v Able*

Such a position may prove hazardous for NATO's special regime, as the CJEU interpreted restrictively the exemption provided for the organisation parting from the sole interpretation of Article 8(1) of the Paris Protocol. One could question any de facto CJEU authority to interpret the NATO governing treaties in matters as specific as what is "common defence effort" or armed forces "stationed in or visiting the Member State concerned."

A different example is provided by the 1992 Council Directive on the arrangement for products subject to excise duty.²⁵ The Directive specified that:

Products subject to excise duty shall be exempted from payment of excise duty where they are intended [...] for the armed forces of any State party of the North Atlantic Treaty other than the Member State within which the excise duty is chargeable [...], for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens.²⁶

Thirdly, the EU has added specific language to the 2006 Schengen Borders Code²⁷ in order to ensure the respect of Article III of the NATO SOFA which exempts the members of the visiting forces from passport, visa and immigration control, on the condition that they hold a specific movement order and their personal identity card. According to Annex VII of the Schengen Borders Code, "[i]n view of the special privileges and immunities they enjoy, the holders of [...] documents issued by the international organisations listed in point 4.4 who are travelling in the course of their duties, may be given priority over other travellers at border crossing points even though they remain, where applicable, subject to the requirement of visa."²⁸

Point 4.4 of the Annex goes into details and specifically mentions the documents issued pursuant to paragraph 2 of Article III of the NATO SOFA, as well as documents issued in the framework of the Partnership for Peace.

In addition to these examples, the primacy of the NATO legal regime was explicitly addressed by the EU Member States in the basic treaties (Article J.4(4) of the Maastricht Treaty). Consequently, NATO countries that are also part of the EU have currently incorporated the necessary and minimum wording in Article 42 TEU, further discussed below, to ensure that their obligations vis-à-vis NATO are not invaded by the principle of "EU law primacy". This is to avoid any temptation of renegotiating or denouncing any prior agreements related to the NATO common security and defence framework.

The CFSP and Article 42 TEU

The Common Foreign and Security Policy (CFSP) has its major role in defining the

UK Limited, [2013]UKUT 0318(TCC), available at:

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/hmrc-v-Able-UK-ltd.pdf>.

²⁵ Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products. The Directive was repealed by Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty which maintains the same exemption for NATO.

²⁶ *Idem.*, Article 23(1).

²⁷ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

²⁸ *Idem.*, Annex VII, point 4.1.

interactions between EU and NATO and establishing a general exemption clause for all common defence actions of Member States realized within the framework of NATO.

The CFSP theme was initially formulated in April 1990, by German Chancellor Helmut Kohl and French President François Mitterrand. According to their letter sent to the Irish Presidency of the European Council (EC), the Council was requested to hold an intergovernmental conference having as one of the objectives to “define and implement a common foreign and security policy”.²⁹

Consequently, the CFSP is first embodied in the Treaty on European Union (TEU) or Maastricht Treaty, signed on 7 February 1992 and which came into force on 1 November 1993. Article B of Title I (Common Provisions) specifies among the objectives of the Union “to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence.”

Title V of TEU elaborates on the CFSP. Under these provisions, the EU was intended to acquire a stronger role in international security matters. Under Article J.4(2) of the Treaty, the EU requests the WEU, as “an integral part of the development of the Union,” to “elaborate and implement decisions and actions of the Union which have defence implications.” Under the same Article, there is a provision crucial to the debate at hand, meant to settle the issue of a potential incompatibility between the newly envisaged EU legal regime in matters of defence and the NATO legal framework already in place. According to Article J.4(4), the harmonisation of the two legal regimes is ensured by providing that the policy of the Union in accordance with its CFSP:

“[s]hall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.”

This provision, currently under Article 42 of the consolidated version of the TEU³⁰, is further strengthened by the objectives of the CFSP as outlined in Article 21 of the TEU. Accordingly, the EU “shall work [...] in order to [...] consolidate and support the principles of international law”³¹ and one of the cornerstone principles under international law is the principle of *pacta sunt servanda*. According to this principle, every treaty in force is binding upon the parties to it and must be performed by them in good faith. However, this principle is not only applicable with regard to the CFSP but also concerns the entire functioning of the EU as Article 3(5) of the TEU stipulates that the Union “shall contribute [...] to the strict observance and development of international law, including respect for the principles of the United Nations Charter.”

²⁹ Letter by the German Federal Chancellor Helmut Kohl and French President François Mitterrand to the Irish Presidency of the EC, 19 April 1990, source: Agence Europe, 20 April 1990.

³⁰ Current Article 42(2) TEU reads as follows: “[t]he policy of the Union [...] shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.”

³¹ TEU, Article 21(2)(b).

At the same time, Annex 14 to the Lisbon Treaty stipulates that “the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the United Nations.”³²

Accordingly, the EU has to ensure that its regulations do not come in conflict with the international obligations of its Member States, such as the ones established under the NATO framework. On this note, it cannot be forgotten that the NAT is founded upon implementing the purposes and principles of the Charter of the United Nations.



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The scope of the derogation set by Article 42 TEU

Article 42 TEU mentions that the EU policy on common security and defence shall be compatible with the NATO security and defence policy, while respecting the obligations of its Member States under the latter.

The scope of Article 42 TEU could be determined taking into account the principle of speciality of international organisations. The principle of speciality was developed as an international organisation does not possess a general competence as subject of international law.³³ According to this principle, international organisations “are invested by the states which create them with powers, the limits of which are a function of the common interests whose promotion those states entrust to them.”³⁴ With regard to NATO, its main objective and its nature are provided for in the NAT, specifically in Article 5, as the organisation establishes a framework for the common

³² Declarations Annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, Declaration concerning the common foreign and security policy, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0335:0359:EN:PDF> (emphasis added).

³³ ICJ, Legality of the Use by a State of Nuclear Weapons in Armed Conflict, advisory opinion, ICJ Reports, 1996, pp. 66, 78-9.

³⁴ Idem.

security and defence of its Member States under Article 51 of the Charter of the United Nations.

The powers of the organisation are either expressly written in the constituent instrument or have arisen in time as implied powers, as considered necessary for the fulfilment of the particular functions of NATO. In the same vein, the International Court of Justice (ICJ) stated that under international law the organisation must be deemed to have those powers which, though not expressly provided in the charter, are conferred upon it by necessary implication as being essential to the performance of its duties.³⁵

As far as NATO is concerned, its path and prerogatives on the international scene have evolved in time and its Strategic Concept, document providing strategic direction for Alliance activities, was re-examined to ensure that it remained fully consistent with the new security situation and challenges of the organisation's geographical sphere of interest. For example, under the 2010 Strategic Concept, the essential core tasks of NATO are collective defence, crisis management and cooperative security.³⁶

Despite the changing circumstances, the organisation keeps fulfilling its collective defence role within the limits set by the principle of speciality. Through the agreements concluded after the adoption of the NAT, the Member States started building on the legal foundation of the Washington Treaty, in order to ensure the necessary standards for the fulfilment of the organisation's role. Consequently, the Member States, through agreements such as the NATO SOFA, the Paris Protocol or Supplementary Agreements, consented to further obligations towards the organisation (granting a specific status to the forces of another Member State or to the NATO IMHQs located within their territories). All the obligations consented by NATO members, regardless of any financial or economic implications they might have, are exclusively intended to allow the effective functioning and accomplishment of the organisation's objective, maintain its autonomy and independence, and fall within the scope of the established common security and defence framework.

Consequently, Article 42 TEU is to be regarded as an overarching umbrella in favour of the NATO legal regime when confronted with any potential inconsistency with newly adopted EU laws. As a matter of principle, NATO could only be subject to any legal requirement impeding upon its special status only if freely consented by the organisation, never driven by a third party.

Concluding Remarks

As shown above, NATO has a special regime granted by its Member States which derives from Article 8 of the NAT and follows the very international purpose of the organisation, providing an effective framework for the collective security and defence of its members. The importance of the fulfilment of NATO's objectives is equally reflected in the founding treaties of the European Union and taken into consideration by the European bodies while adopting regulations and directives.

³⁵ ICJ, *Reparation for injuries suffered in the service of the United Nations*, advisory opinion, ICJ Reports, 1949, p. 182.

³⁶ Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization, adopted by Heads of State and Government at the NATO Summit in Lisbon, 19-20 November 2010, Core Tasks and Principles, para. 4.

Article 42 TEU settled once and for all the issue of primacy with regard to the common security and defence policy established under NATO, whereas Article 351 TFEU represented a means of ensuring the EU Member States international obligations, *inter alia* towards NATO.

Lastly, maybe one of the most persuasive arguments towards the compatibility of the NATO-EU regimes is that for more than fifty years, since the establishment of the European Communities, there has been no related litigation or any NATO-EU high level meeting to address incompatibilities. Therefore, it is the conclusion of the author that incompatibilities do not exist in NATO treaties nor in EU law and those that may be presented as such by EU law implementers³⁷, clearly disregard solid legal grounds and unequivocal policy practices by both organisations.



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³⁷ Andrés Munoz Mosquera, Deputy SHAPE Legal Adviser at NATO/Supreme Allied Command Operations Legal Office, argues that neither the EU law, primary and secondary, nor the EU institutions have ever challenged the obligations of the EU nations, that are also members of NATO, with respect to the North Atlantic Treaty and the rest of the Organisation's treaties; however, certain medium-level implementers, at national level, have shown a tendency to do it via preliminary questions to the CJEU.

EU-NATO Relations: Some General and Legal Considerations

By Dr. Frederik Naert¹

Introduction

In this contribution, I will describe the basic features of the EU's Common Security and Defence Policy (CSDP) (I) and how the CSDP relates to NATO (II).² I will then make some observations on current legal challenges for the CSDP that might also be of interest to NATO (III).

I. Basic Features of the CSDP

Unlike NATO, the European Communities were not established as security organisations, even though their establishment did serve, at least in part, security objectives. However, especially since the creation of the European Union in the early 1990s, the European Union³ has gradually acquired significant competences in the security field.

These competences include the CSDP, but also many other competences that are relevant to security issues new and old. For example, the EU has competences on internal security, counter-terrorism, sanctions ("restrictive measures"), space, cyber, arms trade, etc.

The CSDP is governed by Articles 42 to 46 of the EU Treaty.⁴ Its main features can be summarised as follows:

First, the CSDP is part of the EU's broader Common Foreign and Security Policy (CFSP)⁵ and is consequently subject to the specific rules governing this area of EU activity. This includes decision-making by the Council by unanimity⁶ and a very limited role of the European Commission, Parliament and the Court of Justice.

Second, as part of the EU's external relations, the CSDP shall respect international law and the principles of the UN Charter, as well as the primary role of the UN Security Council.⁷ This has been specifically confirmed with regard to the CSDP.⁸

Third, the core of the CSDP consists of "*an operational capacity drawing on civilian and military assets*" which the EU may use on "*missions outside the Union for*

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² See more extensively my chapter on 'EU Crisis Management Operations and Their Relations with NATO Operations', in the *NATO Legal Deskbook 2010* (2nd ed.), pp. 281-300.

³ Initially alongside the European Communities but the latter have now been incorporated into the European Union, with the exception of Euratom, which still exists as a separate legal person.

⁴ The post-Lisbon consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union are published in the *Official Journal (O.J.)* C 326, 26 October 2012 (see also <http://eur-lex.europa.eu/en/treaties/index.htm#current>).

⁵ See Article 42(1) EU Treaty. The provisions on the CSDP are included in the EU Treaty Title on the CFSP.

⁶ This is subject to a few exceptions, in particular for decisions on the 'Start-Up Fund' for financing operations not financed by the EU budget, on the European Defence Agency and on 'Permanent Structured Cooperation' (see Articles 41(3), 44(2) and 46(2) EU Treaty).

⁷ See Articles 3(5); 21(1) and 21(2) c EU Treaty and Declaration (No. 13) concerning the CFSP.

⁸ See Article 42(1) EU Treaty.

peace-keeping, conflict prevention and strengthening international security".⁹ These missions are further defined in Article 43 of the EU Treaty: they "shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation" and may all "contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories." This covers a wide range of military and civilian crisis management operations, including high intensity peace enforcement ("tasks of combat forces in crisis management, including peacemaking" – this is sometimes overlooked).



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Fourth, the EU Member States have a mutual assistance obligation, as introduced by the Treaty of Lisbon. Article 42(7) of the Treaty on European Union (TEU) provides that "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter." However, it continues that this "shall not prejudice the specific character of the security and defence policy of certain Member States." This qualification is notably meant to exempt the neutral/non aligned Member States such as Ireland from any obligations which would be incompatible with that status.¹⁰ Furthermore, pursuant to Article 42(2) of the EU Treaty, the CSDP "shall include the progressive framing of a

⁹ See Article 42(1) EU Treaty.

¹⁰ See the Decision of the Heads of State or Government of the 27 EU Member States meeting within the European Council on the concerns of the Irish people on the Treaty of Lisbon, adopted on 18-19 June 2009 (as well as the earlier Irish and EU declarations made at the Seville European Council of 21-22 June 2002). This 2009 decision is now reflected in the Protocol on the concerns of the Irish people on the Treaty of Lisbon, O.J. L 60, 2 March 2013, p. 131. Article 3 of that protocol *inter alia* provides that "The Treaty of Lisbon does not affect or prejudice Ireland's traditional policy of military neutrality"; that "It will be for Member States - including Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality - to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory" and that "The Treaty of Lisbon does not provide for the creation of a European army or for conscription to any military formation". For a more extensive analysis, see F. Naert, *International Law Aspects of the EU's Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights* (Antwerp, Intersentia, 2010), pp. 213-233 (the thesis on which this book is based, is available online at https://lirias.kuleuven.be/bitstream/1979/1986/1/Doctoraatsthesis_Frederik_Naert_08-09-2008_final.pdf).

common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements." This decision has not yet been taken.¹¹

Fifth, both the CSDP generally and the mutual assistance clause in particular are without prejudice to NATO and the obligations of NATO Member States (see *infra*, II.1). The EU may conduct CSDP operations either autonomously or with recourse to NATO assets and capabilities.¹²

Sixth, Denmark decided to not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications.¹³ Thus, in practice Denmark does not (and cannot) participate in the EU's operation Atalanta even though it was active in counter-piracy off the coast of Somalia. However, it does participate in EU civilian crisis management.

II. The Relationship between the CSDP and NATO

The founding decisions of the CSDP *inter alia* set out a number of premises for EU – NATO relations, on the basis of which these relations have been developed.

1. The Development of the CSDP Is without Prejudice to NATO

First and foremost, the development of the CSDP always was and continues to be without prejudice to NATO. The requirement to respect the obligations of certain Member States towards NATO, in relation to the progressive framing of a common Union defence policy under the CSDP has consistently been stated in the EU Treaty and is now enshrined in its Article 42(2).¹⁴

Moreover, Article 42(7) of the EU Treaty adds that commitments and cooperation relating to Member States' obligations of aid and assistance towards another Member State that is the victim of armed aggression on its territory shall be consistent with commitments under NATO, "*which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation*".

Interestingly enough, none of the provisions on the CSDP in the EU Treaty specify in any way how Article 42(7) should be implemented. For instance, Article 38 of the EU Treaty on the role of the Political and Security Committee (PSC) refers to crisis management operations under Article 43 of the EU Treaty and not to Article 42(7). This absence of implementing arrangements is a marked difference with the "solidarity clause" laid down in Article 222 of the Treaty on the Functioning of the European Union (TFEU).¹⁵ This could probably also be explained by the fact that the obligation under

¹¹ See the 2009 Decision and the Protocol *supra* previous note.

¹² See § 1 of the Cologne Declaration of the European Council and Presidency report on strengthening the European common policy on security and defence (3-4 June 1999, Presidency conclusions, Annex III) and § 4 of the Presidency report annexed thereto. See further *infra*, II.4-6.

¹³ See Article 5 of Protocol (No. 22) on the Position of Denmark.

¹⁴ Article 42(2) of the EU Treaty provides that the CSDP's "*progressive framing of a common Union defence policy [that] will lead to a common defence ... shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework*".

¹⁵ Pursuant to the first paragraph of this provision, "*The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster*". The

Article 42(7) rests on the Member States and not the Union (again in contrast to the solidarity clause, which addresses both).

In practice, as most EU Member States are also NATO members, Article V of the North Atlantic Treaty would in any event come into play when one of them is attacked. However, this raises two practical questions, which have not been thoroughly addressed so far. The first question is how non-NATO EU Member States would provide their assistance (at least those not invoking their neutrality – e.g. see above the case of Ireland) in this scenario. The second question is how this assistance would be coordinated or organized if the Member State attacked is not a NATO member. Presumably, *ad hoc* arrangements would have to be agreed on to cover either case.¹⁶



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2. The Overall Framework for EU-NATO Consultation and Cooperation

The framework for overall EU-NATO relations¹⁷ is based on the 16 December 2002 EU-NATO Declaration on ESDP setting out the principles governing their mutual relations,¹⁸ the EU-NATO Security Agreement of 14 March 2003¹⁹ and the “Berlin Plus arrangements” on EU access to NATO assets (see *infra*, II.5).²⁰

It includes permanent EU-NATO consultations and cooperation, including regular joint meetings of the NAC and the PSC/Council of the EU. However, due to political difficulties between Cyprus and Turkey, discussions at formal meetings have been limited to Berlin plus issues.

In addition, efforts to enhance Member States’ capabilities in both organisations should be complementary,²¹ including through the EU-NATO Capability Group²² and staff-to-staff contacts between the EDA and HQ SACT.

remainder of this article contains further rules on the (adoption of the) arrangements for implementing this clause. A draft decision on its implementation by the Union is under discussion in the Council.

¹⁶ See F. Naert, *supra* note 10, pp. 230-233.

¹⁷ Article 21(1) of the EU Treaty requires that in its external relations the EU develop relations and build partnerships with like minded States and organisations.

¹⁸ See <http://www.nato.int/docu/pr/2002/p02-142e.htm>.

¹⁹ O.J. L 80, 27 March 2003, p. 35/36, entered into force 14 March 2003.

²⁰ See ‘EU-NATO: The Framework for Permanent Relations and Berlin Plus’, <http://www.consilium.europa.eu/uedocs/cmsUpload/03-11-11%20Berlin%20Plus%20press%20note%20BL.pdf>.

²¹ See the 16 December 2002 EU-NATO Declaration on ESDP, *supra* note 18.

²² See, e.g. EU Council Doc. 6805/03 (26 February 2003), pp. 4, 13 and 15-17. Unless indicated otherwise, Council documents cited by number are (unclassified and) available in the online public register of Council documents

Finally, in practice, broader EU-NATO relations have also developed as various EU policies have become relevant to NATO.

3. The EU Would Only Act under the CSDP Where NATO as a Whole Was Not Engaged

The premise that the EU should only conduct operations where NATO as a whole is not engaged²³ has evolved significantly over time. There are many cases where both organisations have or had operations in the same theatre, but where their operations were quite distinct. For instance, see the (recently terminated) EU Police Mission in Bosnia²⁴ alongside NATO's military SFOR operation; the EU's civilian rule of law mission EULEX Kosovo²⁵ alongside NATO's KFOR and the EU's Police Mission in Afghanistan²⁶ alongside NATO's ISAF. However, in other cases, the operations were/are more similar. For instance, see the EU²⁷ and NATO support for AMIS II and, more recently, the EU and NATO counter piracy operations off the coast of Somalia (Atalanta²⁸ and Ocean Shield).

4. There Should Be No Unnecessary Duplication²⁹

One of the most challenging questions in EU-NATO relations is to what extent there should be some duplication in the EU of certain military structures which exist in NATO.

The ability of the EU to conduct operations without recourse to NATO assets (see *infra*, II.6) inevitably requires some EU military structures. However, the extent to which the EU should have military structures has been, and continues to be, the subject of considerable debate. In this respect, the EU has a Military Committee, a small Military Staff and a Civilian Planning and Conduct Capability,³⁰ but it has no standing military command structure and headquarters. Therefore, the chain of command for an operation, in particular the designation of its headquarters, is determined on an *ad hoc* basis for each operation.³¹ Headquarters could initially be made available by NATO (see *infra*, II.5) or by Member States. Nevertheless, as the CSDP has evolved, there has been a somewhat greater acceptance for the nucleus of a proper headquarters within the EU in defined circumstances. In particular, following a compromise in late 2003, a (civilian/military planning) cell at the EU Military Staff, an EU cell at SHAPE, and NATO liaison arrangements with the EUMS (which would become the NATO Permanent Liaison Team), were put in place.³² On this basis, the mandate of

at <http://www.consilium.europa.eu/documents/access-to-council-documents-public-register.aspx?lang=EN>.

²³ Helsinki European Council Presidency Conclusions, 10-11 December 1999, § 27.

²⁴ See <http://www.eeas.europa.eu/csdp/missions-and-operations/eupm-bih/>.

²⁵ See http://www.eeas.europa.eu/csdp/missions-and-operations/eulex-kosovo/index_en.htm.

²⁶ See http://www.eeas.europa.eu/csdp/missions-and-operations/eupol-afghanistan/index_en.htm.

²⁷ See <http://www.eeas.europa.eu/csdp/missions-and-operations/eu-support-amis-darfur/>.

²⁸ See <http://eunavfor.eu/>.

²⁹ See § 3 *in fine* of the 1999 Cologne Presidency Report and Helsinki European Council Presidency Conclusions, 10-11 December 1999, § 27.

³⁰ The CPCC acts as the equivalent of an operational headquarters for most of the EU's civilian CSDP missions.

³¹ On the command and control (C2) arrangements in military CSDP operations, see the EU Concept for Military Command and Control, EU Council Doc. 10688/08 REV 3 of 13 September 2012 (declassified). See also the EU Concept for Force Generation, Council Doc. 10690 of 16 June 2008.

³² Presidency Conclusions, 12-13 December 2003, § 90. See also EU Council Document 10596/04 REV 1 of 1 April 2009 ('European defence: NATO/EU consultation, planning and operations'; declassified).

the EUMS³³ was amended to give it the responsibility *“of generating the capacity to plan and run an autonomous EU military operation, and maintains the capacity within EUMS rapidly to set up an operations centre for a specific operation, in particular where a joint civil/military response is required and where no national HQ is identified, once a decision on such an operation has been taken by the Council, upon the advice of the EUMC”*.³⁴ The EU Operations Centre reached operational capability on 1 January 2007 and has been activated for exercises. In addition, the role of the EUMS in the early stages of planning for a military CSDP operation has been enhanced.³⁵ The Council may now also decide to activate the EU Operations Centre to serve as Operation Headquarters. The EU Operations Centre was activated for the first time in relation to an operation in 2012,³⁶ albeit not in a command role.³⁷

5. The EU May Conduct Military Operations with Recourse to NATO Assets

Turning to more operational cooperation, the EU may conduct some of its military operations with recourse to NATO assets.³⁸

The arrangements for the EU to conduct operations with access to NATO assets were agreed upon in March 2003. They were applied in Operation Concordia (FYROM) and are still applied in Operation Althea (Bosnia), and they function well. The package on these arrangements is called the “Berlin Plus” agreement/arrangement and governs EU access to NATO planning, NATO European command options and EU use of NATO assets and capabilities.³⁹

These operations take place when both the EU and NATO agree that a given EU operation will be conducted with recourse to NATO assets and capabilities. Once that is decided, the Berlin plus arrangements provide the general framework, which must be supplemented by an operation-specific arrangement on the modalities of putting NATO assets and capabilities at the disposal of the EU for its operation. In such operations, operational planning may be carried out by the Alliance’s planning bodies, and the EU Operational Headquarters will be located at SHAPE. DSACEUR is then the preferred option for designation as Operation Commander. However, the entire chain of command of an EU Force remains under the political control and strategic direction of the EU throughout the EU military operation, after consultation between the EU and NATO. Within this framework, the EU Operation Commander

³³ See also the December 2003 European Council approved document on NATO-EU Consultation, Planning and Operations, <http://www.consilium.europa.eu/uedocs/cmsUpload/78414%20-%20EU-NATO%20Consultation,%20Planning%20and%20Operations.pdf>.

³⁴ See Council Decision 2005/395/CFSP of 10 May 2005 amending Decision 2001/80/CFSP on the establishment of the Military Staff of the European Union, O.J. L 132, 26 May 2005, p. 17. On the Civ-Mil Cell and the EU Operations Centre, see also EU Council Doc. 13990/04 EXT 1 of 28 January 2005 (‘European Defence NATO/EU Consultation, Planning and Operations’).

³⁵ The Civil/Military Cell’s functions were later partially redistributed within the EUMS and partially transferred to the Crisis Management and Planning Directorate but the capacity to generate the EU Operations Centre remains within the EUMS (see also Council Decision 2008/298/CFSP of 7 April 2008, O.J. L 102, 12 April 2008, p. 25).

³⁶ See Council Decision 2012/173/CFSP of 23 March 2012 on the activation of the EU Operations Centre for the Common Security and Defence Policy missions and operation in the Horn of Africa, O.J. L 89, 27 March 2012, p. 66.

³⁷ See *id.*, Article 1(2). See also http://www.eeas.europa.eu/csdp/structures-instruments-agencies/eu-operations-centre/index_en.htm.

³⁸ See *supra* note 12.

³⁹ The agreement itself (an exchange of letters with a long list of annexes) is not in the public domain. Its content is summarized in ‘EU-NATO: The Framework for Permanent Relations and Berlin Plus’, *supra* note 20.

reports on the conduct of the operation to EU bodies only, and NATO is informed of developments in the situation by the appropriate EU bodies (namely the PSC⁴⁰ and the Chairman of the EU Military Committee (EUMC)).⁴¹ Furthermore, such operations are conducted in accordance with EU rules, concepts, etc.

The non-EU European NATO members will participate in such an operation if they so wish, upon a decision by the Council to launch the operation. On the EU side, Cyprus, an EU but non NATO member, cannot participate in these operations.⁴²

6. The EU May Conduct Autonomous EU Military Operations

From its early stages on, it has been clearly stated that the EU should also be able to act on its own, i.e. without recourse to NATO assets.⁴³

The relations of such operations with NATO and/or NATO operations are determined on a case-by-case basis and are not subject to standing arrangements except for information and consultation. The political obstacle to greater EU-NATO coordination (see *supra*, II.2) has limited cooperation at the "Brussels" level and has, for example, prevented the adoption of EU-NATO cooperation agreements regarding their operations in Kosovo and Afghanistan. Instead, a number of mechanisms have been developed in the field with a view to appropriate coordination and/or cooperation. For instance, EUPOL Afghanistan and ISAF cooperate at the provincial level, with EUPOL personnel being assisted by ISAF's Provincial Reconstruction Teams.⁴⁴ Similarly, KFOR and EULEX Kosovo have developed a good level of working relations. As another example, Atalanta and Ocean Shield de-conflict and coordinate at the working level through SHADE (Shared Awareness and De-confliction) meetings, and also with other navies/operations in theatre.

7. The Non-EU (European) NATO Members

The non-EU European NATO members (currently Turkey, Iceland and Norway) should be able to participate in CSDP operations to the fullest extent possible but without affecting the EU's decision-making autonomy.⁴⁵ The agreement reached on this includes arrangements on the involvement of these third States in the CSDP, in particular on consultation and participation in operations.⁴⁶ Consequently, these NATO countries have participated in several CSDP operations and have concluded a

⁴⁰ Pursuant to Article 38 EU Treaty, the PSC, which meets at ambassadorial level, "shall exercise, under the responsibility of the Council and of the High Representative, the political control and strategic direction of the [CSDP] crisis management operations" and the Council may authorise it to take decisions in this respect.

⁴¹ See e.g. Article 13(2) Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina, O.J. L 252, 28 July 2004, p. 10: "The entire chain of command of the EU Force shall remain under the political control and strategic direction of the EU throughout the EU military operation, after consultation between the EU and NATO. Within this framework, the EU Operation Commander shall report on the conduct of the operation to EU bodies only. NATO shall be informed of developments in the situation by the appropriate bodies, in particular the PSC and CEUMC".

⁴² Because Cyprus has no security agreement with NATO and is not involved in NATO's Partnership for Peace programme.

⁴³ See *supra* note 12. See *supra*, II.4 on the command arrangements for such operations.

⁴⁴ See e.g. Article 4(2) of the EUPOL Afghanistan Council Decision (2010/279/CFSP of 18 May 2010, O.J. L 123 of 19 May 2010, p. 4, as amended): "Technical arrangements shall be concluded with ISAF and Regional Command/Provincial Reconstruction Team (PRT) Lead Nations for information exchange, medical, security and logistical support including accommodation by Regional Commands and PRTs".

⁴⁵ See § 1 of the Cologne European Council Declaration on strengthening the European common policy on security and defence and § 5 of the annexed Presidency Report.

⁴⁶ See the conclusions of the European Council meetings in Nice in December 2000 and in Brussels in October 2002.

permanent agreement on their participation in such operations.⁴⁷

The same is true for Canada, for which separate arrangements have been adopted,⁴⁸ and which has also concluded a framework participation agreement with the EU.⁴⁹ Cooperation has also gradually developed in practice with the US. For instance, the US participates in some civilian CSDP missions and has concluded a framework participation agreement with the EU in 2011.⁵⁰

III. Some Observations on Current Legal Challenges for the CSDP

The EU's security and defence policy faces a number of challenges. I would like to identify those which are of a legal nature and may be of interest to the NATO legal community.

Firstly, the EU increasingly employs all its instruments in a coordinated manner as part of a "comprehensive approach" on the basis of horizontal external relations objectives and direction by the European Council.⁵¹ To achieve this, the EU has multiple tools, including in the field of external security (e.g. CSDP missions), external dimensions of the area of freedom, security and justice, diplomacy, development and technical, financial or economic assistance/cooperation,⁵² trade policy (dual use goods and arms trade), etc. However, each of these instruments is subject to distinct decision-making procedures, and thus it is a challenge to ensure coherence in decision-making and in implementing a truly comprehensive approach.⁵³

Secondly, an important external challenge for the EU is the relationship between EU law and international law. The increasing body of EU legislation and the autonomy of the EU legal order, as affirmed by the European Court of Justice (ECJ) has, in some cases, given rise to discussion on the compatibility of certain rules of EU law or EU decisions with international law.⁵⁴ This is in addition to questions about the relationship between different areas of international law, such as human rights law and international humanitarian law, and between human rights law and UN Security Council resolutions.

Thirdly, and linked to this, the EU, like NATO, is facing increasing scrutiny and must

⁴⁷ See respectively O.J. L 189, 12 July 2006, p. 16/17 (entered into force on 1 August 2007); O.J. L 67, 14 March 2005, p.1/2 (entered into force on 1 April 2005 and provisionally applied as of the date of signature) and O.J. L 67, 14 March 2005, p. 1/8 (entered into force on 1 January 2005). Such agreements generally determine the key modalities for cases in which the third country concerned participates in an EU operation.

⁴⁸ See EU Council Doc. 8721/02 of 6 May 2002.

⁴⁹ 24 November 2005, O.J. L 315, 1 December 2005, p. 20/21 (entered into force 1 December 2005).

⁵⁰ 17 May 2011, OJ L 143, 31 May 2011, p. 2 (entered into force on 1 June 2011).

⁵¹ See Articles 21-22 EU Treaty. A good example of this approach is the EU's strategic framework for the Horn of Africa: see the Council Council Conclusions on the Horn of Africa adopted on 14 November 2011 (http://www.eeas.europa.eu/csdp/documents/pdf/st16858.en11_en.pdf).

⁵² Some financial instruments cover areas closely linked to foreign and security policy: see especially the Instrument for Stability (see http://www.eeas.europa.eu/ifs/index_en.htm), which has for instance complemented Atalanta's counter piracy actions, and the African Peace Facility (see http://ec.europa.eu/europeaid/where/acp/regional-cooperation/peace/index_en.htm), which *inter alia* provides funding for AMISOM.

⁵³ EU legal advisers often deal a lot with internal legal issues, including litigation before the European Court of Justice (ECJ).

⁵⁴ See especially Joined Case C-402/05 P and C-415/05 P, *Kadi and Al Barakaat v. Council and Commission*, 3 September 2008; the EU General Court's subsequent judgment of 30 September 2010 in Case T-85/09, *Yassin* and the latest appeals judgment of 18 July 2013 in Cases C-595/10 P, C-593/10 P and C-584/10 P. This case has had a clear impact on the case-law of the European Court of Human Rights.

address accountability and transparency issues in the field of its CSDP. Regarding accountability, there are questions over the attribution of actions of an EU operation to the EU and/or Member States for the purposes of international responsibility. The absence of ECJ jurisdiction in that regard⁵⁵ has led to a specific and complex system of remedies.⁵⁶ There is no consensus on some aspects of attribution and jurisdiction, but the subject is likely to be clarified to some extent in the course of the EU's forthcoming accession to the ECHR.⁵⁷ A draft accession agreement and accompanying explanatory report were agreed in April 2013,⁵⁸ and the ECJ has been asked to give its opinion on whether that draft agreement is compatible with the EU Treaties.⁵⁹



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⁵⁵ There are exceptions to this as regards restrictive measures against individuals (sanctions) and the delimitation between the CFSP and other EU policies. For an example of the latter, see Case C-658/11 (pertaining to *Atalanta*).

⁵⁶ For an extensive discussion, see F. Naert, 'The International Responsibility of the Union in the Context of Its CSDP Operations' in P. Koutrakos & M. Evans (eds.), *The International Responsibility of the European Union* (Hart, 2013), pp. 313-338 and 'Shared Responsibility in the Framework of the EU's CSDP Operations', chapter forthcoming in a volume that will be published in the framework of the research project on Shared Responsibility in International Law (SHARES) of the Amsterdam Center of International Law (see <http://www.sharesproject.nl/>).

⁵⁷ Article 6(2) EU Treaty provides that the EU shall accede to the ECHR. See also Protocol No 5 to the Treaty of Lisbon and Article 17 of Protocol No. 14 to the ECHR (Strasbourg, 13 May 2004, C.E.T.S. No. 194, entered into force on 1 June 2010), which amended article 59 ECHR to this effect.

⁵⁸ Both are contained in the report in Council of Europe Doc. 47+1(2013)008rev2 of 10 June 2013, [http://www.coe.int/t/dghl/standardsetting/hrpolicy/Accession/Meeting_reports/47_1\(2013\)008rev2_EN.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/Accession/Meeting_reports/47_1(2013)008rev2_EN.pdf). See especially Articles 1(3)-(4) and 3 of the draft accession agreement as well as paragraphs 23-25 of the draft explanatory report.

⁵⁹ The case number is A-2/13.

A Matter of Practice under International Institutional Law: NATO International Military Headquarters and Exemption from Residency and Visa in EU Legal Order

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Introduction

In the course of developing Supplementary Agreements to the Paris Protocol³, the authors have seen the need to analyse the regime compatibility of European Union (EU) legislation with provisions of the Supplementary Agreement and eventually with the NATO founding treaties in an attempt to empirically explain the need for cooperation and coordination⁴ between and among international organisations as a practical measure and a principle in international law. This principle is expressly adopted by the EU. Article 3, paragraph 5 of the Treaty on European Union (TEU) states that "[i]n its relations with the wider world, the Union shall uphold and promote [...] the strict observance and the development of international law." The TEU more specifically promotes effective multilateralism in Article 21, paragraph 1, which provides that "[t]he Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations [...]" and that it "shall promote multilateral solutions to common problems."⁵

Likewise, EU Member States' participation in international organisations is also important. Declaration 14, attached to the Treaty of Lisbon, explicitly recognises this importance in the area of foreign policy.⁶ The Declaration states that "the provisions covering the Common Foreign and Security Policy [...] will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its [...] participation in international organisations.

This article specifically reviews the area of visa waiver and exemption from immigration regulations enjoyed by international organisations in their hosting State.⁷ The authors conclude that, consistent with their nationally or internationally appointed

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³ Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, dated 28 August 1952 (Paris Protocol). Supplementary Agreements are those bilateral treaties concluded pursuant to the Paris Protocol, Article 16, between the Supreme Headquarters and a State hosting an international military headquarters or an international military organisation granted status in accordance with the Paris Protocol, Article 14.

⁴ See 'The need of Coordination' in H. G. Schermers, Niels M. Blokker, *International Institutional Law* (2011), para.1702.

⁵ For further analysis on effective multilateralism see Wouters, Bijlmakers and Meuwissen 'The EU as a Multilateral Security Actor after Lisbon: Constitutional and Institutional Aspects', February 2012, p.6.

⁶ Declaration 14 to the Final Act of the Intergovernmental Conference Which Adopted the Treaty of Lisbon.

⁷ A more comprehensive article elaborating on this topic and covering more areas, such as exemption from value-added tax and duty, self-insurance of vehicles and recognition of drivers' license, is intended to be published shortly by the authors.

international mission, neither members of an international military headquarters nor members of a sending State visiting force are taking up residence in a hosting State. Moreover, EU Member States retain the discretion to identify certain categories of persons (particularly diplomats and staff members of international organisations) as a special category enjoying status with equivalent value to that of holding a residence permit. These categories may equally be identified as such under the Schengen Border Code and thus be entitled to enter and depart from the Schengen area. The discretion to identify those categories permits NATO nations, who are also members of the EU, to honor the obligations established under NATO treaties. Therefore, the EC Regulation No. 539/2001(**OJ L 81, 21.3.2001**) for EU States members of NATO is not the *nisi legem* (the only law) when considering the topic of residency and visas. Consequently, the language in the Supplementary Agreements and the EC Regulation No. 539, or later amendments, is compatible and complementary.

Finally, the authors have not been able to identify the legal effect of status “with equivalent value of a residence permit” in EU Law, as it does not appear to be specifically defined. Rather, the term is used to categorise residence permits other than those “[r]esidence permits issued according to the uniform format” and covers “all other documents issued to third-country nationals authorising a stay in, or re-entry into, the territory of [the Member State] with the exception of temporary permits issued pending examination of a first application for a residence permit or an application for asylum.”⁸ Based on the context of which it appears in the Journal, this status can only be understood as having a temporary duration nature as it is entirely linked to a professional and fully international function.



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General Observations Regarding International Organisations and Privileges and Immunities

The privileges and immunities of international organisations regarding minimum protection of their assets, headquarters, international staff, and member representatives are normally recorded in the constituent treaty by which the organisation was established. Constituent treaties usually define the mission of the

⁸ Official Journal of the European Union, 8.7.2011 C 201/01, cover page. A ‘consolidated version’ of those notifications is found on the EU Directorate-General for Home Affairs’ webpage, providing the specimen of cards issued by Foreign Ministries of the Member States, under an annex: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/borders-and-visas/schengen/docs/handbook-annex_22_en.pdf.

organisation⁹ and apply to all state parties to it. The facilities (status) accorded to international organisations are operative (support the mission and objective of the organisation) and cover generally what the participating states consider necessary to enable the organisation to function effectively and to carry out its mission on behalf of its constituents. Functional immunities and privileges are recognised as a prerequisite for the effective operation of international organisations in international law. However, whether they constitute customary¹⁰ international law remains a subject of debate. The most prominent treaty examples are the Convention on Privileges and Immunities of the United Nations¹¹ and the subsequent Convention on the Privileges and Immunities of the Specialised Agencies.¹² Although it may be argued that the United Nations Conventions provide a post-Second World War paradigm,¹³ nations have continued to explicitly address privileges and immunities in founding documents and in headquarters or seat agreements. The United Nations conducted a study in 1967 (and in 1985) on the topic, as it relates to the United Nations and the specialised agencies,¹⁴ in an attempt to record customary international law in respect of the status of member representatives to international organisations. Following this study, the Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character was introduced in 1975. The Convention has not been signed by a sufficient number of States and has thus not entered into force, and several States questioned whether the Convention in fact reflected customary international law.¹⁵ However, based on the discussions referenced here and accepting that customary law is often vague, we can safely assume that certain immunities have become commonly recognised as customary norms.¹⁶ Regardless,

⁹ For draft articles on the law of treaties between States and international organisations or between international organisations with commentaries, see International Law Commission 34th Session, 1982, Yearbook of the International Law

Commission, 1982, vol. II, Part Two.

¹⁰ '[La] [c]onvention générale sur les privilèges et immunités des Nations Unies approuvée par l'Assemblée générale le 13 février 1946, pour répondre aux exigences de l'article 105 de la Charte ... [la] convention sur les privilèges et immunités des institutions spécialisées. Cette convention, de façon, inhabituelle, fut d'abord para l'Assemblée générale de l'ONU (21 novembre 1947) ... ces deux conventions aient été à l'origine d'une pratique génératrice d'une sorte de droit commun (coutumier) des privilèges et immunités ... il s'agit en effet, dans un cas comme dans l'autre, d'assurer à leurs bénéficiaires l'indépendance nécessaire à l'exercice de leurs fonctions.' P.M. Dupuy, *Droit International Public* (2012), pp. 225-226.

¹¹ Adopted 13 February 1946 by the United Nations General Assembly; entered into force 17 September 1946; UNTS <http://treaties.un.org/doc/publication/UNTS/Volume%201/v1.pdf>

¹² Adopted by the General Assembly of the United Nations on 21 November 1947; entered into force on 02 December 1948, UNTS <http://treaties.un.org/doc/publication/unts/volume%20817/volume-817-a-521-english.pdf>

¹³ See August Reinisch in Convention on the Privileges and Immunities of the United Nations, Convention on the Privileges and Immunities of the Specialised Agencies (Article, 2009, published on www.un.org/law/avl).

¹⁴ For further reading on the the practice of the United Nations see what described by Gerster/Rotenberg in the comments to Article 105 of the Charter of the United Nations in 'The Charter of the United Nations – a Commentary', Bruno Simma, et al. (ed.), (second edition, 2002).

¹⁵ For a more detailed discussion, see Principles of Public International Law, Ian Brownlie, (fifth edition, 1998), p. 684.

¹⁶ See [38th session](#) of the ILC (1986), in which the Special Rapporteur, Mr. Leonardo Díaz-González (Third Report) provided an outline of the scope of the privileges and immunities to be granted to both the organisation and its officials. The ILC never completed its draft Articles on this topic, the outline captures the scope of the functional necessity and the associated requirements to effectively enable international organisations and of their international staff to perform their mission. Or, as summarised in the Third Report of the ILC Special Rapporteur, the granting of these privileges and immunities is 'founded on the principle underlying the legal status of those organisations, i.e. the guarantee afforded by the host country that they can, with complete freedom and independence, exercise on its territory their constitutional and statutory activities or any other activity connected with the functions assigned to them'. Paragraph 31 of the Third Report outlines the entitlements as follows:

I. Privileges and immunities of the organisation

A. Non-fiscal privileges and immunities:[...]

B. Financial and fiscal privileges:[...]

II. Privileges and immunities of officials

A. Non-fiscal:

the requirement (and expectation on nations) to provide functional protection to international organisations is generally recognised in customary international law: “members – and *a fortiori* the headquarters State – may not at one and the same time establish an organisation and fail to provide it with those immunities that ensure its role as distinct from that of the host State (and other member States).”¹⁷

Consistent with the notion of function, international organisations across the spectrum enjoy different levels of immunity from legal process, measures of execution, financial controls, taxes and duties as well as inviolability of documents and archives.¹⁸ The extent of these customary norms has been examined by the International Law Commission (ILC), which confirms the general principles. In his Third Report, the Special Rapporteur, Mr. Leonardo Díaz-González, provided an outline of the scope of the privileges and immunities to be granted to both the organisation and its officials.¹⁹ While the ILC never completed its draft Articles on this topic, the outline still confirms the scope of functional necessity²⁰ and the associated requirements necessary to effectively enable international organisations and their international staff to perform their mission. It is important to understand that the principle is different from that of diplomatic immunity: the principle of functional necessity states that an international organisation shall be granted privileges and immunities which are necessary for the effective exercise of their functions.²¹ As summarised in the Third Report of the ILC Special Rapporteur, the granting of these privileges and immunities is “founded on the principle underlying the legal status of those organisations, i.e. the guarantee afforded by the host country that they can, with complete freedom and independence, exercise on its territory their constitutional and statutory activities or any other activity connected with the functions assigned to them”.²² Although the ILC reports did not materialise in a treaty, the general principle is widely recognised in international law, and it is affirmed in the UN Charter (Article 105, paragraphs 1 and 2).²³

Regardless of the existence of the well-established general principles, States have continued to embed privileges and immunities in the treaties by which international organisations are established and / or in a subsequent headquarters or status agreement. This is perhaps to acknowledge that short of specific agreement, the recognition of further entitlements is logically prone to debate unless national legislation foresees such circumstances and provides status to international

(a) immunity in respect of official acts;

(b) immunity from national service obligations;

(c) immunity from immigration restrictions and registration of aliens;

(d) diplomatic privileges and immunities of executives and other senior officials;

(e) repatriation facilities in times of international crisis;

B. Financial and fiscal:

(a) exemption from taxation of salaries and emoluments;

(b) exemption from customs duties.

III. Privileges and immunities of experts on mission for, and of persons having official business with, the organisation.[...]

¹⁷ Reuter as quoted in *Principles of the Institutional Law of International Organizations*, C.F. Amerasinghe (1996), *ibid*, p. 401.

¹⁸ See discussion in C.F. Amerasinghe, pp. 397-402.

¹⁹ Third Report of the Special Rapporteur, Mr. Leonardo Díaz Gonzalez ([38th session](#) of the ILC (1986)).paragraph 31.

²⁰ See also *Mendaro v. World Bank*, 717 F.2d 610, 615-17 (D.C. Cir. 1983).

²¹ Shaw, Malcolm N. *International Law*. Cambridge, UK: Cambridge University Press, 6th ed., 2008.1319.

²² Third Report of the Special Rapporteur, Mr. Leonardo Díaz Gonzalez ([38th session](#) of the ILC (1986)).paragraph 30.

²³ Shaw p.1319. See also the work of ILC. Already in its 1977 Preliminary Report of the Special Rapporteur, Mr. Abdullah El-Erian (29th session of the ILC (1977)), the ILC noted that both the literature and state practice recognised the functionality principle as customary law.

organisations and their staff. Since the privileges and immunities are entirely purposeful, the status should be aligned with the specific foundational or constituent treaty(ies) of the international organisation. Moreover, the detailed status to be enjoyed in the host State is usually substantiated in further agreements between the organisation and its host State(s) rather than doing so *ad hoc*. As such, headquarters or basing agreements reflect the capacity (mandate, internal and international legal personalities) and captures the immunities and privileges required by a specific international organisation to effectively deliver its mission; privileges and immunities are assigned accordingly to enable the organisation to carry out its tasks and functions. This approach, therefore, does not necessarily reflect an *opinio juris* of States on customary international law in this field. It does, however, illustrate the development of public international law, and it speaks to 60 years of well-accepted State practice to describe the functions of international organisations in their constituent treaties and identify the corresponding privileges and immunities from the outset, rather than rely on more general principles in public international law.

International Organisations and Employment of Staff

Depending on its internal regulations, an international organisation typically recruits its international staff members amongst nationals of the member States. Following its internal rules, the organisation can employ personnel to serve in international functions (posts), and the host State is expected to facilitate this employment process and to not impose unreasonable and unnecessary obstacles, such as requiring that personnel obtain regular residency status in the host State or comply with general immigration regulations.²⁴ This status is not granted for the personal benefit²⁵ of the staff members: it is granted only “for the purpose of exercising their function in relation to the international organisation.”²⁶ This functional approach is commonly captured in international agreements. The 1946 Convention on the Privileges and Immunities of the United Nations exempts United Nations officials from the national regulatory framework regarding immigration and residence.²⁷ A more recent example is that of the ICC Headquarters Agreement.²⁸

Due to the international nature of the staff, staff members may be a citizen of the hosting State or be recruited from abroad.²⁹ The staff member may choose, subject to

²⁴ See summary of ILC Third Report (1986), listing immunity from immigration restrictions and registration of aliens as one of the customary privileges granted in support of staff members.

²⁵ ‘Privileges and immunities should only be granted to meet the functional needs of international organisations.(...) Nor should States give undue weight to the idea of uniform treatment. Each organisation should be considered on its own merits.’ Council of Europe, 49th meeting of the European committee on legal cooperation (CDECJ), Final Activity Report, Committee of experts on public international law (CJ-DI), Strasbourg, 02-06 May 1988, p.8.

²⁶ Amerasinghe, p.390.

²⁷ Article V on Officials of the UN, Section 18: ‘[o]fficials of the United Nations shall [...] (d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration’.

²⁸ The main privileges and immunities are set out in the Rome Statute (1998) which also identifies that a Headquarters Agreement shall be concluded between the International Criminal Court and The Netherlands. The Headquarters Agreement (ICC-BD/04-01-08) entered into force on 1 March 2008. Available at: <http://www.icc-cpi.int/NR/rdonlyres/99A82721-ED93-4088-B84D-7B8ADA4DD062/280775/ICCBD040108ENG1.pdf>. Article 37, paragraph 1 of the Agreement provides Court officials, State representatives and counsel and persons assisting counsel with the right to ‘unimpeded entry into, exit from and movement within the host State’. Furthermore, paragraph two states that visas are not necessarily required, but if so they are to be ‘granted free of charge and as promptly as possible’. These visa privileges are extended to ‘members of the family forming part of the household’ in paragraph 3.

²⁹ Even in such a case, the function that is being performed in the international organisation determines when the staff member (including military personnel of the Host State) enjoys status, even if in defined or limited areas, not

the host nation's laws, to become a permanent resident of the hosting State, but that is not a requirement to work for an international organisation.



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Visa Waiver and Council Regulation (EC) No 539/2001³⁰

Upon entering and leaving a receiving State, NATO SOFA, Article III exempts the members of the visiting force (but not civilians or dependents) from passport, visa, and immigration control³¹ on the condition that they conform with the specifics detailed in the NATO SOFA and can present a valid travel order and their national (military) ID to the relevant authorities in the receiving State. This is a practical measure to ease the crossing of borders without a visa and passport and to enable visa-free transit and stay in a receiving State. It does not constitute a right for an individual to enter or stay in a country, and some countries require notification in advance of entry, just as the receiving State may require that it countersigns the travel order and request that the sending State remove an individual from its territory. Since NATO SOFA, Article III, paragraph 1 is limited to military personnel, members of an International Military Headquarters' civilian component and all dependents must have a valid passport and, where applicable, a visa to facilitate the entry into and exit from receiving States. The entry into a State hosting an International Military Headquarters and any associated visa waiver or separate visa regime is usually addressed in a Supplementary Agreement.

Article 4 of the Paris Protocol covers the basic rights and obligations of the International Military Headquarters and its personnel, providing that, in general, these can be determined by substituting "International Military Headquarters" for the "sending State" in the NATO SOFA, with the exemptions identified in the Paris Protocol. An International Military Headquarters is, through Article 4 of the Paris Protocol, considered a force, and, by extension, a sending State with certain obligations. In terms of crossing borders and legitimately staying in a receiving State, both the sending State and the International Military Headquarters must inform the receiving State when personnel are no longer part of an International Military Headquarters.

nationality.

³⁰ COUNCIL REGULATION (EC) No 539/2001 of 15 March 2001, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

³¹ For the drafting history of article III, paragraph 1 of the NATO SOFA, see MS-R(51)13 (published by Naval War College, Newport Rhode Island in NATO Agreements on Status: Travaux Préparatoires, edited and annotated by Professor Joseph M. Snee, 1961, International Law Studies).

The Paris Protocol, Article 4, paragraph c requires that the ID card issued by the sending State be presented upon the crossing of borders. This is because the military staff members (and the civilians in the employ of the sending State) remain representatives of their sending State and subject to the jurisdiction of that State; therefore, they should identify themselves accordingly. This does not, of course, change the status of the personnel as “attached to an International Military Headquarters” in the sense of Article 3 of the Paris Protocol.

The Supplementary Agreement³² seeks to exempt members and their dependents from visa and immigration requirements, obligations associated with residency and registration, and from provisions regarding work permits under the host State law. The Supplementary Agreement additionally requires that a State hosting an International Military Headquarters issues the appropriate ID Cards to the members of the Headquarters and to their dependents to appropriately identify them as staff members of an international organisation. This is done to identify the staff as staying in the hosting State as staff members of an international organisation, but it does not afford them any further status or entitlements. The Agreement identifies that the stay in the hosting State is temporary³³ and consistent with the national or international appointment and reliant on the relationship between the member and the International Military Headquarters. The temporality of the stay extends to the dependents of such a member.

EC Regulation No 539/2001 of 15 March 2001 (with later amendments³⁴) identifies the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from the visa requirement. This is not the only regulation relevant to the Schengen Acquis; therefore the review below covers both this provision and the regulations relevant to the crossing of borders and the legal effect of visa and residency in the EU context.

Firstly, the 2001 Regulation recognises in the introduction, paragraph 8, that “[...] Member States may exempt certain categories of persons from the visa requirement or impose it on them in accordance with public international law or custom.” Where such exemptions are applied, Member States should communicate to the other Member States and to the Commission the measures which they take pursuant to this Regulation. For the same reasons, that information should also be published in the Official Journal of the European Communities. (2001 Regulation, introduction, paragraph 9). The 2001 Regulation provides in Article 4 that Member States may provide exemptions for diplomats and for members of “some international

³² For an example of a recent Supplementary Agreement, see the Supplementary Agreement concluded between Estonia, SHAPE, and HQ SACT in 2013: https://www.riigiteataja.ee/akt/isa/2140/5201/3002/NATO_HQ_engl.pdf

³³ In this regard, this inherent ‘temporality’ of the presence of international staff is consistent with the mission and nature of international organisations; as their *raison d’être* is to carry out their functions for an “international purpose.” This mandate will be carried out as long as it exists. However, this ‘temporality’ is also required for permitting international organisations to evolve, as only under the functional approach can these institutions prosper. This ‘temporality’ has, *inter alia*, manifested itself in the several forms of recruitment (the principle of ‘*précarité de l’emploi* in international organisations’) practiced by international organisations, which facilitates reorganisations to be implemented in an agile manner and thus the Organisation to continue exercising its ‘international’ competence’.

³⁴ Regulation (EU) No 1289/2013 of the European Parliament and of the Council of 15 December 2010 amending Council Regulation (EC) No 539/2001, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. Official Journal L 347, 20/12/2013 P. 0074 – 0080.

organisations" issuing laissez-passer to staff members. This, logically, will be done differently by each of the Member States, depending on their respective international obligations. This is implemented in the 2006 Schengen Borders Code³⁵ and subsequent Border Crossing Handbook.³⁶ The 2006 Schengen Borders Code, Article 2 paragraph 15, extends discretionary authority to the Member States to issue residence permits to third-country nationals. Member States are, by the same Article, required to notify the European Commission of the specimen of model cards so issued. The information is then published in the Official Journal of the European Union, C Series. Reviewing this Journal, there is a significant variety in the categories of groups that, by national decision, receive a residence permit. Several States assign status "with equivalent value of a residence permit"³⁷ to members of diplomatic missions and to staff members of international organisations hosted by that State. Thus, Member States maintain national discretion to grant entry and stay and to provide a special ID card, a sticker, or similar means of identification. Under this procedure, a hosting State can facilitate the requirement of members of an International Military Headquarters and their dependents to travel to, from, and reside temporarily in a Schengen Member State.

Reviewing the practice of affording status "with the equivalent value of a residence permit" as it is reported and published in the Official Journal accordance with Article 2, paragraph 15 of the Schengen Borders Code, it seems that the practice varies amongst EU Member States. As mentioned above, some States identify that special documents are issued "with equivalent value of a residence permit" to diplomatic personnel and to members of international organisations. Some Member States specifically stipulate that this status be applied to both the privileged members and to their accompanying dependents. Such cards or documents appear consistently to be issued by the Ministry of Foreign Affairs in the EU Member States. Regardless of the different practice in the EU Member States, what is relevant for this analysis is that, consistent with practice in international law, EU Member States *de lege* are not prevented from granting members of an international organisation and their dependents entry and temporary stay (temporary residency) as long as they comply with the procedures described above.

In terms of members of a force (as opposed to members of an international military headquarters), the 2001 Regulation recognises the NATO SOFA, Article III as a special arrangement. This recognition is repeated in Annex VII of the Schengen Borders Code,³⁸ which specifically references the waiver of passport and visa provided in the NATO (Partnership for Peace/PfP) SOFA³⁹ for military members holding a valid national

³⁵ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006, establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). Add OJ reference

³⁶ Commission Recommendation 7.11.2006, establishing a common 'Practical Handbook for Border Guards (Schengen Handbook)' to be used by Member States' competent authorities when carrying out the border control of persons; Commission Recommendation of 16.8.2010, amending the Recommendation establishing a common 'Practical Handbook for Border Guards (Schengen Handbook)' to be used by Member States' competent authorities when carrying out the border control of persons (C (2006) 5186 final).

³⁷ See footnote 7 above.

³⁸ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006, establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) - Community rules for carrying out the border control of persons, covering both border checks and surveillance. (Consolidated version, not official, published 2006R0562— EN— 05.04.2010 — 003.002— 1).

³⁹ Agreement among the States Parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace regarding the Status of their Forces, dated 19 June 1995.

ID and a travel order. Nothing in the 2001 Regulation, the Borders Code or Visa Handbook⁴⁰ prevents EU Member States from affording members of a force, a civilian component, or their dependents entry and temporary stay. Although the Schengen Borders Code facilitates border crossing and visa waiver procedures for military personnel, there have over the past years been some cases of practical difficulties in attaining documentation for non-EU civilians and dependents attached either to a visiting force or to an international military headquarters.

This situation causes problems when persons are transiting through Schengen Member States and are required to present a valid permit to temporarily reside in the hosting NATO Member State. However, based on the review of the cited regulations, the practice identified in the Official Journal of the European Union, and especially the notifications provided by the Schengen Member States under the EU visa regime (including the quoted secondary law), EU Member States, as a matter of national decisions and based on their NATO obligations, can facilitate the entry and the temporary stay of both military and civilian staff and their dependents.

This is in fact being done by some NATO / EU Member States. The Handbook for Visa Regulations, chapter 2.3 records visa exemptions "granted by Member States to members of the armed forces travelling on NATO or Partnership for Peace business and holders of identification and movement orders provided for by the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty Organisation regarding the status of their forces". The provision is accompanied by comments; the Norwegian and the Greek comments are particularly important here because they both extend the visa waiver of Article III of the NATO SOFA to civilian staff members and to dependents. The Greek comment includes civilians; the Norwegian⁴¹ comments instead extend the waiver to dependents of military personnel attached to an International Military Headquarters. Neither comments are considered to include all categories of NATO or PfP personnel, but what is rather important in this context is that NATO/Schengen Member States are *permitted* to take the necessary actions to facilitate entry, stay, and exit of the military and civilian members of an International Military Headquarters (and of NATO Agencies), and of their dependents under current EU regulations.⁴²

The effective means of entry and transit would thus depend on whether or not members of an International Military Headquarters and their dependents are identified as a special group under the Schengen Borders Code and whether the associated notification has been completed by the Schengen Member State hosting the Headquarters. Therefore, as the Schengen Borders Code, Annex VII paragraph 4.4, establishes a specific exception, the EU Member States hosting an International Military Headquarters are provided with a sufficient, legal mechanism to respect its

⁴⁰ Handbook for the processing of visa applications and the modification of issued visas based on COMMISSION DECISION C(2010) 1620 final of 19.3.2010 establishing the Handbook for the processing of visa applications and the modification of issued visas and COMMISSION IMPLEMENTING DECISION C (2011) 5501 final of 4.8.2011, particularly Annex 5: Information pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. More NATO/EU Member States have submitted a statement identifying visa waiver for military personnel under the NATO (and PfP) SOFA.

⁴¹ Norway is a member of the European Free Trade Association (EFTA) and is one of the four non-EU countries participating in the Schengen cooperation; the other three are Iceland, Switzerland and Liechtenstein.

⁴² Annex 5, paragraph. 2.3, lists the relevant comments.

international legal obligations towards the International Military Headquarters and, thus, NATO as a whole.

Conclusion

One of the less explored terrains in international institutional law is that of the relation between international organisations.⁴³ Coordination between international organisations is desirable when their functions are either related or where they may overlap or affect the functions of other international organisations, be it directly or indirectly. In the case of NATO and EU, NATO is performing activities in territories where EU law enjoys primacy over national law. In the course of implementing the Paris Protocol, EU regulations are sometimes perceived as a limitation that has to be factored into the Supplementary Agreements, and the waiver of visa and of residency expressed in the Supplementary Agreement has in particular prompted questions in this regard. The authors have empirically explored this, and other areas (planned to be published) are object of EU regulations and directives and typically addressed in Agreements supplementing the Paris Protocol. The conclusion is consistently that both “regimes” are compatible, as the EU adopts legal principles and regulations in harmony with the existing international obligations of its member States. A separate discussion is that of the relation between posterior treaties and EU regulations when the former supplement anterior treaties, but that is considered to be outside the scope of this article and not relevant to the conclusion, since the assessment is that the EU develops its law on the premise of not prejudicing the obligations related to the existence and functioning of (other) international organisations, such as NATO. Consequently, and after having analysed the specific EU rules on visa and immigration in the context of the Paris Protocol and Supplementary Agreements, we conclude that EU secondary law recognises the special status enjoyed by NATO in particular and international organisations in general. In particular, EU law specifically identifies the specific status held by NATO. This status enables NATO forces and International Military Headquarters to carry out their designated functions within a NATO (and thus EU) member State. Additionally, the EU *Acquis* also recognises and bases itself on the functional immunities and privileges afforded to international organisations in international law. As such, the EU arguably has an inherent or organisational responsibility to facilitate EU nations’ efforts to comply with obligations originating from their memberships of international organisations, without compromising their EU responsibilities.⁴⁴

⁴³ H. G. Schermers, Niels M. Blokker, *ibid*, paragraph 1702.

⁴⁴ Additionally, NATO has a particularly prominent position in this regard, as the TEU dedicates Article 42, paragraph 1, sub. 3, codifying the obligation of both the EU and its Member States to ensure that policy concluded under the Common Foreign Security Policy (with includes Defence Policy) (CFSP) does not interfere with the NATO obligations of EU Member States (‘The policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organization (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.’). Article 42 TEU clearly identifies that the EU has a duty to respect the NATO obligations of its Member States. The obligations undertaken under the North Atlantic Treaty go beyond that of responding to an armed attack and acting in collective self-defence (Article 5). The preamble reaffirms the faith of Parties to the Treaty in the purposes and principles of the Charter of the United Nations. Additionally, Article 7 reminds that the Treaty will not affect any right or obligation under the Charter of the United Nations. Articles 2 and 4 promote interaction and development of relations; Article 3 direct Allies to ‘maintain and develop their individual and collective capacity’ and this is done through military cooperation which again relies broadly on the effective functioning of NATO International Military Headquarters and North Atlantic Council activated MOU Organisations, as well as efficient implementation of the NATO SOFA (and the PfP equivalent). The EU regulations reviewed here recognise the privileges and immunities enjoyed by international organisations and furthermore have, as illustrated in the

The present conclusion is further supported by the principle of the need for coordination between international institutions; this principle is recognised by the Court of Justice of the EU (CJEU), which has explicitly acknowledged “the growing importance of international cooperation and of the consequent need to secure the proper functioning of international organisations”⁴⁵ and more recently, in *Kadi* Joined Cases C-402/05 P and C-415/05 P where the court stated that “in the sphere of cooperation and development must be exercised in observance of the undertakings given in the context of the United Nations and other international organisations.”⁴⁶

Consequently, the Supplementary Agreement is not only consistent with secondary EU law as reviewed by the authors in the context of residence and visa requirements; it is also consistent with primary EU law and with public international law and its various elements at different levels. Therefore, EU Member States have no legal obstacles to conclude host or seat agreements and to grant functional immunities and privileges to international organisations.



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implementation of the Schengen Acquis, accepted that EU rules are not intended to be an obstacle to the implementation of the NATO SOFA and the PfP SOFA. Moreover, TEU Article 42 must be understood in the context of the EU facilitation for permitting NATO carry out its functions and purposes as identified in the North Atlantic Treaty, which necessarily includes its functional immunities and privileges to be tailored to fit both the roles of Article 2, Article, 3, and Article 4 as they prepare the NATO member States to fulfil Article 5. The North Atlantic Treaty is drafted within the framework of the Charter of the United Nations and particularly recognising the role of the Charter of the United Nations, but the language (“purpose and principles”) of the North Atlantic Treaty is carefully chosen as not all of the founding NATO member States at the time were members of the United Nations (see Lord Ismay, *The First Five Years*, Part 1, Chapter 2). As such, there is a clear linkage between the North Atlantic Treaty and the Charter of the United Nations. This relationship is separate from the relations established between NATO and its constituents, on one hand, and the United Nations, on the other hand, when NATO and NATO members carry out missions in response to a Security Council Resolution or otherwise implement Security Council Resolutions (in particular the application of Article 103; as reviewed in the *Kadi* Case before the ECJ and in the cases of *Bahrami*, *Saramati*, and *Al-Jedda* before the ECHR). Finally, it is necessary to understand the purposes of the North Atlantic Treaty and the cooperation undertaken by NATO member states consistent with the Treaty, which underpin the purpose and principles of the Charter of the United Nations.

⁴⁵ (*Bosphorus* case 84/95, referring to ECtHR, *Al-Adsani v. the United Kingdom* [GC], no. 35763/97 and *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 72, ECHR1999-I).

⁴⁶ 291: “[...]the European Community must respect international law in the exercise of its powers (*Poulsen and Diva Navigation*, paragraph 9, and *Racke*, paragraph 45), the Court having in addition stated, in the same paragraph of the first of those judgments, that a measure adopted by virtue of those powers must be interpreted, and its scope limited, in the light of the relevant rules of international law.”²⁹²: Moreover, the Court has held that the powers of the Community provided for by Articles 177 EC to 181 EC in the sphere of cooperation and development must be exercised in observance of the undertakings given in the context of the United Nations and other international organisations (Case C-91/05 *Commission v Council* [2008] ECR I-0000, paragraph 65 and case-law cited).

NATO and EU Military Cooperation

by Siegfried Dohr¹

Introduction

Since the 1990s the European Union has developed its competences and activities in the area of Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP). Despite differences in nature and approach, NATO and the EU both deal with matters of security and conduct crisis-management operations. 22 of the 28 NATO member states are also members of the EU.²

The comprehensive framework for EU-NATO permanent relations, which the EU High Representative and NATO Secretary General concluded on 17 March 2003, was a landmark in the relationship between the two organisations. This framework of relations built upon NATO's Washington Summit in 1999 and the conclusions of the European Council in Nice in December 2000 as well as the EU-NATO joint declaration of 16 December 2002. The EU has also established modalities to involve non-EU European NATO members like Iceland, Norway and Turkey in EU-led operations.

The EU and NATO have built a genuine strategic partnership that is now well established and deeply-rooted. For this partnership to work both organisations must ensure effective consultation, cooperation and transparency at all times. This partnership is also about ensuring efficient crisis management and coordination of efforts in order to identify the best possible response to a crisis. For this purpose, the EU and NATO agreed on mutual crisis consultation arrangements that are geared towards an efficient and rapid decision-making process in each organisation in the presence of a crisis. Such EU-NATO consultations involve the EU's Political and Security Committee and NATO's North Atlantic Council, the EU and NATO Military Committees, as well as the EU High Representative and NATO Secretary General.

Legal Framework

When a given crisis gives rise to an EU-led operation making use of NATO assets and capabilities, the EU and NATO will draw on the so-called "Berlin Plus arrangements"³. These arrangements cover one or more of three main elements that are directly connected to operations:

1. EU access to NATO planning;
2. NATO European command options; and

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² 6 of the 28 EU member states are not members of NATO (Austria, Cyprus, Finland, Ireland, Malta and Sweden).

³ Berlin Plus agreement is the short title of comprehensive package of agreements made between NATO and EU after the 1996 Berlin summit which saw the official start of WEU-NATO cooperation.

3. Use of NATO assets and capabilities.

Firstly, NATO guarantees that the EU has access to NATO planning.⁴ At the early stages, before it is known whether an operation will commence, NATO may contribute (by SHAPE in Mons) to the work carried out by the EU Military Staff on the definition of options (these are known as "military strategic options"). Subsequently, should the operation take place with the use of NATO assets and capabilities, NATO will then provide the operational planning required.

Secondly, the EU may request that NATO makes available a NATO-European command option⁵ for an EU-led military operation. In this case, Deputy Supreme Allied Commander Europe (DSACEUR) is the EU Operation Commander. He will remain at SHAPE where he would establish the EU Operation Headquarters (OHQ). The remaining command elements determined by the EU (such as the EU Force Commander and EU Force Headquarters deployed in theatre or the EU Component Commands) may either be provided by NATO or by EU Member States.

Thirdly, the EU may request the use of NATO assets and capabilities. To this end, NATO has established a first list of its assets and capabilities that NATO would likely make available to the EU should the EU need them. In addition, NATO has defined a number of principles as well as financial and legal considerations applicable to the release of its assets and capabilities to the EU. On this basis, a specific EU-NATO agreement setting out the conditions for use of NATO assets and capabilities is drafted for a given operation. Such agreement specifically provides for a possible recall of assets due to unforeseen circumstances, for example, due to the emergence of a NATO Article 5 contingency (an attack against a NATO member).

Another important element of the EU-NATO relationship is related to the development of military capabilities. More specifically, it is about how the EU and NATO and their Member States should develop in a mutually reinforcing way and deliver the military capabilities they need for crisis management. It addresses the way in which the EU and NATO could cooperate to fulfil those capabilities where both organisations have the same requirements and similar shortfalls. Work is currently underway to improve the synergy between the EU and NATO in certain capabilities areas where both have pilot projects.

EU-NATO relations proved to work well in connection with the first ever EU-led military operation. This was Operation CONCORDIA⁶ in the Former Yugoslav Republic of Macedonia⁷, in which the EU used NATO assets and capabilities and where the EU Operation Commander was Deputy Supreme Allied Commander Europe (DSACEUR).

⁴ Exchange of Letters between NATO and the EU on the Compilation of the Results of the Work on NATO-EU Relations, SG (2003)0355, 17 March 2003; Document five: "Assured EU Access to NATO Planning Capabilities able to contribute to Military Planning for EU-led Operations" (MC-198-2).

⁵ Ibid. Document nine: "Report on the European Role of DSACEUR (PO(2003)10)" and Document 10: "Memorandum on Identifying Main Elements of NATO's European Command Options for EU-led Operations" (SG(2003)0155).

⁶ UNSC Res 1371 adopted unanimously on 26 September 2001, after reaffirming resolutions 1244 (1999) and 1345 (2001) on the situation in the former Yugoslavia including Macedonia, the Council called for the full implementation of its Resolution 1345 concerning violence and terrorist activities in Macedonia and southern Serbia.

⁷ Turkey recognises the Republic of Macedonia with its constitutional name (SHAPE, SHGDS/801/07 from 08 May 2007).

Before and during the second EU-led military operation, ARTEMIS⁸ in the Democratic Republic of Congo (an operation conducted solely by the EU), NATO was regularly informed of the EU's intentions, in full respect of the spirit and of the letter of the crisis consultation arrangements. The second mission conducted under the Berlin Plus arrangements took place in Bosnia and Herzegovina in 2004. In June 2004 NATO decided to end its SFOR (Stabilisation Force in Bosnia and Herzegovina) mission and the EU Council agreed to launch a European military operation (EUFOR ALTHEA)⁹ as part of a global policy aimed at stabilising the country. On 22 November 2004, the United Nations Security Council adopted Resolution 1575 authorising the deployment of EUFOR ALTHEA under Chapter VII.¹⁰ Once again DSACEUR was appointed Operational Commander of the EU operation.

The Berlin Plus arrangements are based on principles which improve the cooperation, interoperability and employment of the EU and NATO forces.

These guiding principles are:

- When EU are using NATO common assets and capabilities the arrangements should be separable but not separate, allowing the EU to be easily identified and visible.
- EU and NATO, in the build up of their individual forces, should avoid unnecessary duplications and must coordinate in a common effort (more efficient use of funds).
- The source of forces for both EU and NATO are common, with some exceptions, but will be aligned to either command, according to the operational needs.

EU - Common Security and Defence Policy

The European Union's Common Security and Defence Policy (CSDP)¹¹ include the progressive framing of a common defence policy which might in time lead to a common defence.¹² The CSDP allows the European Union to develop its civilian and military capacities for crisis management and conflict prevention at the international level, thus helping to maintain peace and international security in accordance with the United Nations Charter.

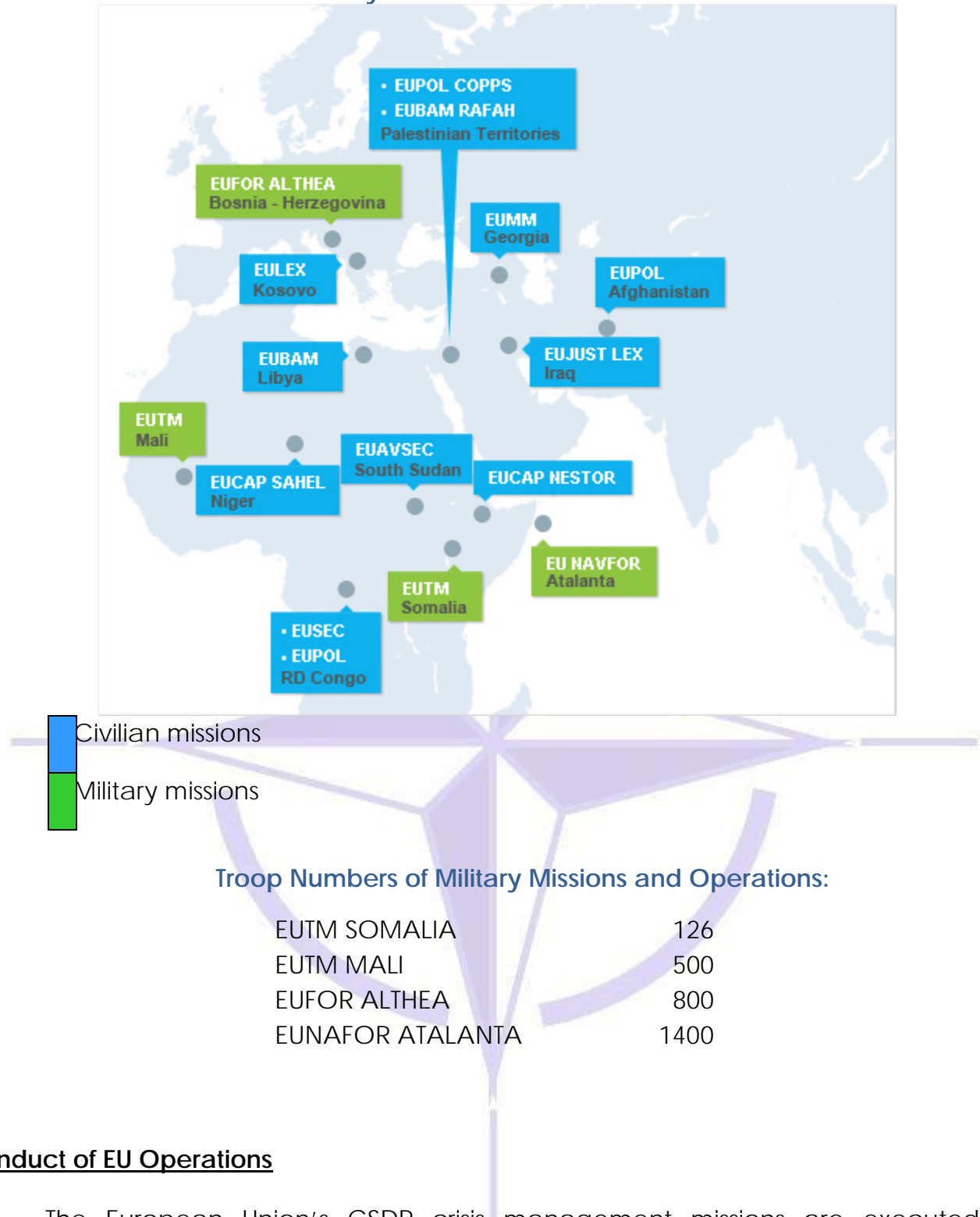
⁸ UNSCRes 1484 (2003) adopted unanimously on 30 May 2003, after recalling previous resolutions on the situation in the Democratic Republic of the Congo, the Council authorised Operation Artemis in Bunia, the capital of Ituri Province, amid the deteriorating security situation in the area.

⁹ Joint Action 2004/570/CFSP adopted by the Council on 12. July 2004; NATO Headquarters Sarajevo continued beyond this date as a NATO mission, tasked to support in the defence reform area.

¹⁰ UNSCRes 1575 adopted unanimously on 22 November 2004, after recalling previous resolutions on the conflicts in the former Yugoslavia, including resolutions 1031 (1995), 1088 (1996), 1423 (2002), 1491 (2003) and 1551 (2004), the Council defined the role of EUFOR Althea in Bosnia and Herzegovina as a legal successor to the Stabilisation Force (SFOR).

¹¹ The Treaty of Lisbon renamed the ESDP to Common Security and Defence Policy (CSDP).

¹² Article 24 TEU (ex Art. 11 TEU).

Military and civilian missions in 2013:¹³**Conduct of EU Operations**

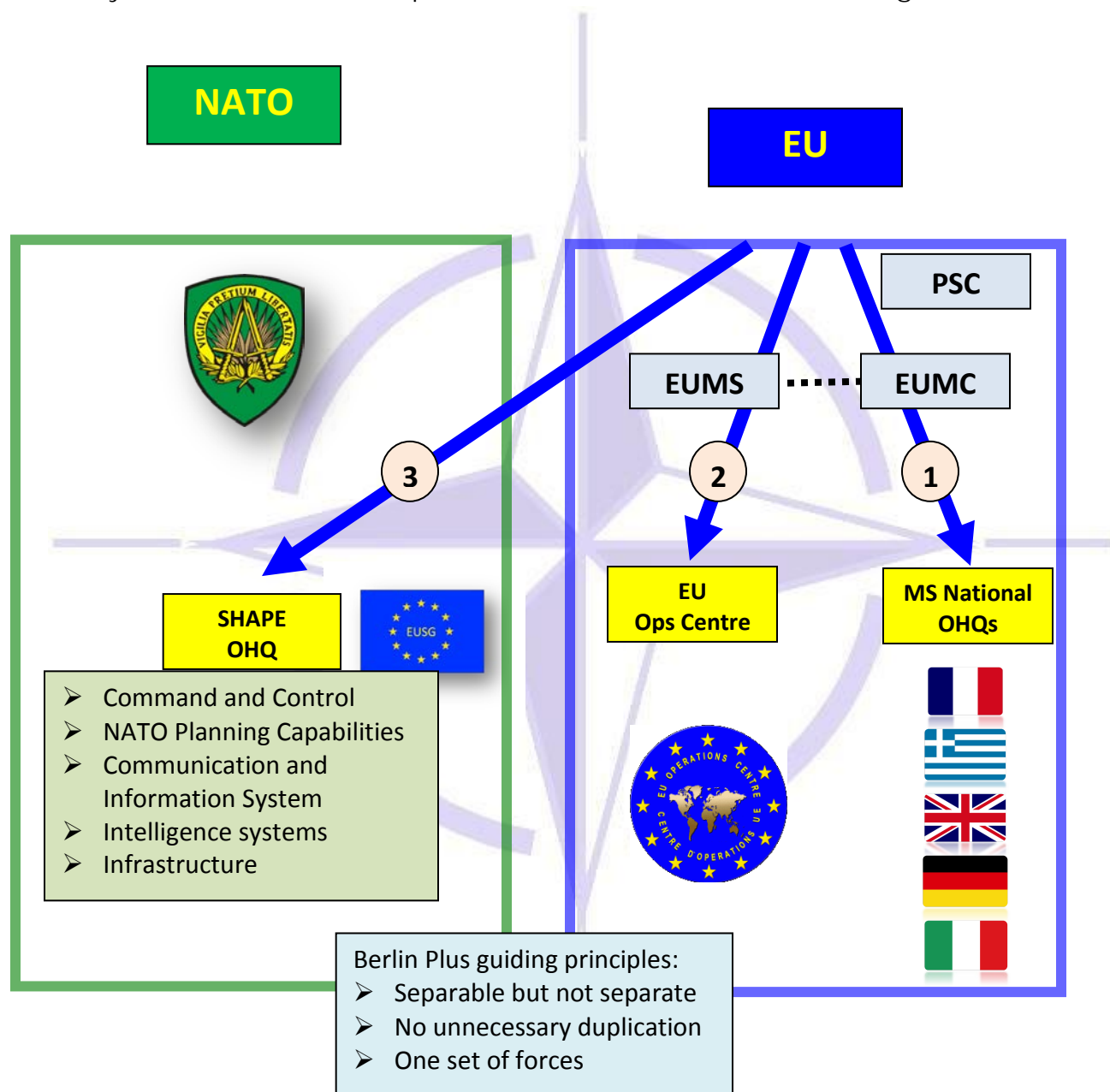
The European Union's CSDP crisis management missions are executed in accordance with the UN Charter and, in some cases, in cooperation with NATO. The EU has adopted a concept of three options for commanding EU operations:

Option one is to use facilities provided by one of the 5 Operation HQs currently available in EU member states (French OHQ in Mont Valerien, Paris; UK OHQ in Northwood; German OHQ in Potsdam, Berlin; Italian OHQ in Rome and Greek OHQ in Larissa).

¹³ http://eeas.europa.eu/csdp/missions-and-operations/index_en.htm. (22. 11.2013).

Option two, effective from 1 Jan 2007, is to use the EU Operations Centre in Brussels, which commands missions and operations of limited size (up to a Battle Group of about 2,000 troops).

Option three is through recourse to NATO common assets and capabilities, under the Berlin Plus arrangements. This includes use of the NATO command and control assets such as Operation Headquarters located at SHAPE. This option is currently used for the EU-led Operation ALTHEA in Bosnia and Herzegovina.



EU OHQ at SHAPE

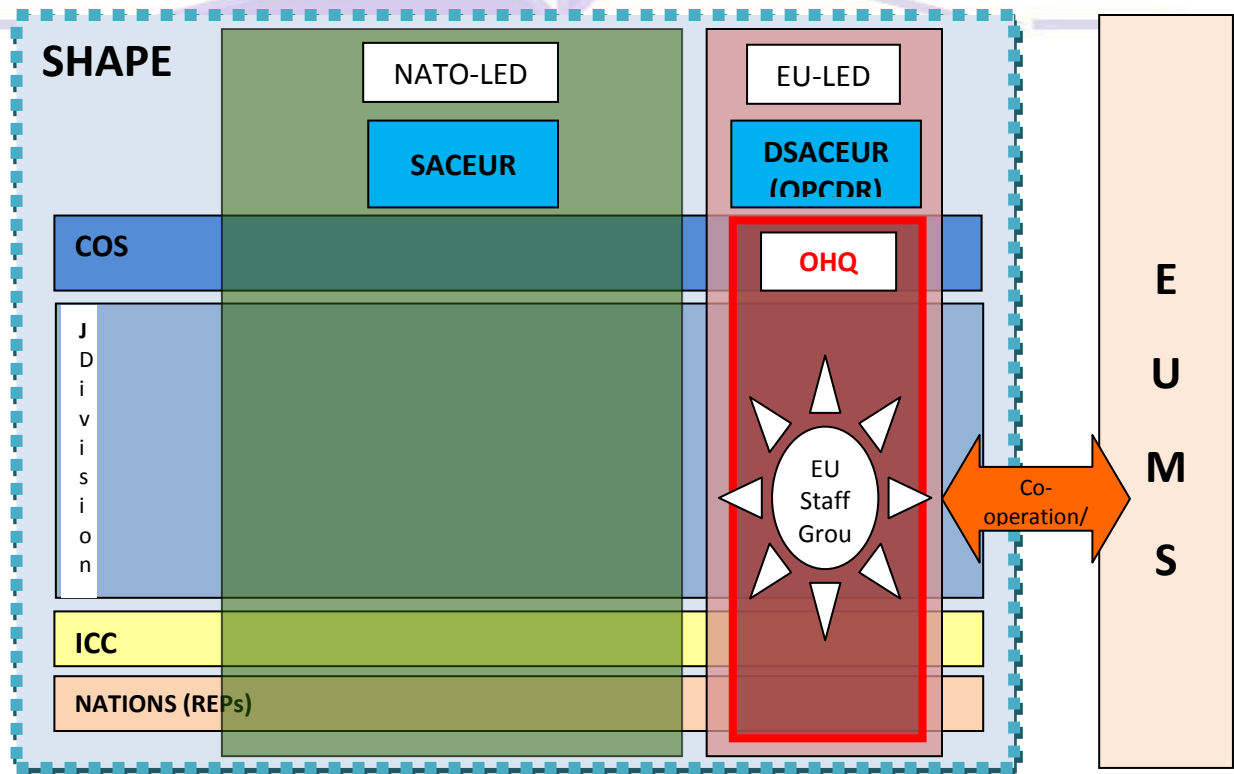
The EUSG supports DSACEUR in his role as Operation Commander, in the conduct of the EU-led Operation ALTHEA. It draws upon EU doctrines and procedures, and brings the necessary EU perspective, thereby providing the essential EU expertise and connectivity.

Operational planning at the strategic level is the main focus. OHQ updates the operational plans as required in coordination with NATO Strategic Operational Planning Group.

The OHQ is also responsible for Force Generation and Manning issues. The aim is to ensure that the quantity and quality of troops, and the Crisis Establishment (CE) organisation (for the Force HQ) and functions, including those elements shared with NATO Headquarters Sarajevo (NHQ Sa), are aligned in accordance with the OPLAN and Force List (Combined Joint Statement of Requirements (CJSOR) in NATO terms).

The OHQ is the link between EUFOR and the Special Committee of Athena.¹⁴ ATHENA's legal basis was amended most recently in December 2011.¹⁵

The OHQ reports on a weekly and bi-monthly basis to the EU about the political and security situation of Bosnia and Herzegovina and prepares the Six-Monthly Review (SMR).



¹⁴ ATHENA is a mechanism which administers the financing of common costs of EU operations having military or defence implications. It does so on behalf of EU Member States contributing to the financing of EU military operations. ATHENA was set up by the Council of the European Union on 1st March 2004.

¹⁵ <http://www.consilium.europa.eu/policies/common-security-and-defence-policy-csdp/financing-of-csdp-military-operations> (09.12.2013)

EU Military Operation in Bosnia and Herzegovina (Operation EUFOR ALTHEA)

The military operation ALTHEA in Bosnia and Herzegovina (BiH) was launched on 2 December 2004 and has contributed to the maintenance of a safe and secure environment in BiH. The EU decision to launch Op ALTHEA followed the decision by NATO to conclude its SFOR operation and the adoption by the UN Security Council of resolution 1575 authorizing the deployment of an EU force in BiH. In the framework of Op ALTHEA, the EU initially deployed 7000 troops. In light of the improving security situation, Op ALTHEA has been reconfigured four times and continues to act in accordance with its peace enforcement mandate under Chapter VII of the UN Charter, as specified in the latest UN Security Council Resolution 2123 (2013).

The main objectives of Operation ALTHEA are:

- To provide support to the overall EU comprehensive strategy for BiH;
- To provide capacity-building and training support to the Armed Forces of BiH (AFBiH); and
- To support BiH efforts to maintain the safe and secure environment in BiH.

EUFOR ALTHEA supports the implementation of a number of residual tasks that have been transferred from the operation to local authorities, such as: countermining activities, control of military and civilian movement of weapons, control of ammunition and explosive substances, as well as management of weapons and ammunition storage sites.

EUFOR ALTHEA retains its presence throughout the country through Liaison and Observation Teams (LOTs) and has manoeuvre units, based in Camp Butmir, Sarajevo, to react to security challenges throughout the country; it also has a credible reserve force to draw upon. The contributing states are: 18 EU Member States, Albania, Chile, The Former Yugoslav Republic of Macedonia¹⁶, Switzerland and Turkey.

LOTs structure and strength (17 LOTs: 130 members; LOT Coordination Center-LCC: 14 members):¹⁷



¹⁶ Turkey recognises the Republic of Macedonia with its constitutional name.

¹⁷ <http://www.euforbih.org>.

Conclusion

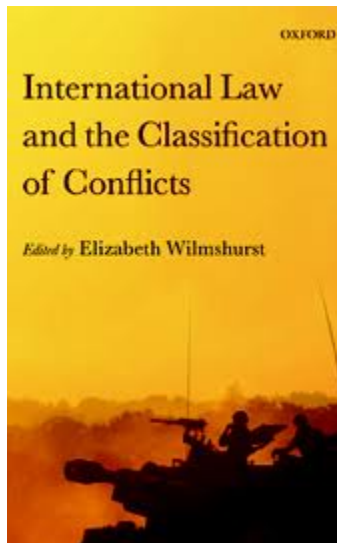
Today, there are several lingering questions regarding the Berlin Plus agreements. Only two out of all EU-led operations have been conducted under Berlin Plus. When the two organisations are engaged simultaneously in the same theatre of operations, the sharing of classified information poses a problem.

To ensure optimum operational cooperation it is necessary to go beyond the Berlin Plus agreements which do not cover the whole range of EU-NATO cooperation scenarios. An important step in this direction was done by NATO Secretary General Fogh Rasmussen who attended the last meeting of EU foreign and defence ministers on 19 November 2013. Mr. Fogh Rasmussen called for closer ties between EU and NATO "to coordinate, not duplicate" and to ensure that the two organisations complement each other's efforts. The Secretary General stated that "we need to develop capacities, not bureaucracies; to commit to investing in security in those areas where we all need more capabilities, such as drones for surveillance, intelligence and reconnaissance, heavy transport and air-to-air refuelling."



Book Review: International Law and the Classification of Conflicts, by Elizabeth Wilmshurst (ed.)¹

By Vincent Roobaert²



The law of armed conflict can be divided into two branches: one governing international armed conflicts and another setting out fewer and more lenient rules governing non-international armed conflicts.

This distinction first appeared and can still be found in the four 1949 Geneva Conventions. Although the Geneva Conventions mainly cover international armed conflicts, they contain a Common Article 3 setting out minimum rules applicable to "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties." In 1977, the second Additional Protocol to the Geneva Conventions prescribed a more extensive set of rules applicable in internal armed conflicts. Unfortunately, the second Additional Protocol sets out a rather high threshold for its applicability, and thus may not be applicable in practice. As the second Additional Protocol will not be applied in situations of internal disturbances and tensions, this raises challenges in determining the rules applicable to a specific conflict. The act of determining which legal framework is applicable to a specific situation is called classification.

Mrs. Wilmshurst, in her book, explores the difficulties arising from the classification of conflicts, both in theoretical and practical terms, through a number of very valuable contributions. The book starts with an examination of the changing nature of armed conflict by Steven Haines. Since the end of the Cold War, the world has witnessed conflicts that were much more complex than ever before. While recent history provides various cases of international armed conflicts, the number of internal armed conflicts significantly prevails. The complexity of these situations has been accentuated by foreign intervention but also by the participation of new non-state actors such as transnational terrorism groups or organized crime. The typology of conflicts is also more complex. Today, one hears of non-legally defined terms like insurrection, irregular and/or simply hybrid warfare.

As the two excellent subsequent contributions by Mr. Akande and Mrs. Pejic show, classification does have serious consequences for parties and persons involved in the conflict. It determines not only the rules applicable to the conduct of hostilities but also, for instance, rules applicable in detention.

¹ E. Wilmshurst, *International Law and the Classification of Conflicts*, Oxford University Press, 2012.

² Assistant Legal Adviser, NCI Agency. The views expressed in this review are solely those of the author and may not represent the views of NATO and the NCI Agency.

As further evidence of the complexity of classification, the book continues with 10 case studies covering Northern Ireland, the Democratic Republic of the Congo, Colombia, Afghanistan, Gaza, South Ossetia, Iraq, Lebanon, the war against Al-Qaeda, and future conflicts. The case studies are built on the same canvas, that is, on an examination of how the parties to the conflict considered the issue of classification, along with the views of the author of the contribution. The case studies have been carefully selected to cover a wide range of situations, including armed conflicts whose nature changed during the conflict (e.g. following a foreign intervention – a case of Afghanistan since 2001).

After reading the contributions, one understands what a daunting task the classification of modern conflict can be. Indeed, it is striking to note that deciding on the proper classification may require the benefit of hindsight and the knowledge of facts that may not all be available at the beginning of the conflict. The challenge is increased in the case of multinational operations, such as those carried out under the auspices of NATO or the European Union, where the participants may not all be parties to the same international treaties. This raises the question of the remaining relevance of the distinction between non-international (internal) and international armed conflicts. It also explains why some nations have moved away from this classification and have decided as a matter of policy to apply some of the rules applicable to international armed conflicts in non-international armed conflict, as well.

Mrs. Wilmshurst's book has gathered very valuable contributions from distinguished academics in the field of armed conflict. Her book is a welcome and valuable addition to the literature on the law of armed conflict. Thanks to the inclusion of the case studies, the book has managed to move away from a purely academic monograph to become an exceptionally useful tool to assist nations and their operational lawyers when making classification decisions. It therefore deserves the attention of students, academics and practitioners alike.



Name: Svein Lystrup

Rank/Service/Nationality: OF-4/NAVY/NORWAY

Job title: Chief Legal Adviser, NSHQ

Primary legal focus of effort: Supporting COM NSHQ with all legal aspects concerning the headquarters

Likes: Swimming, cars and good food

Dislikes: Bad weather and vacuuming

When in Mons everyone should: take the time to walk in the city centre and discover all the nice buildings, alleys, history and restaurants the city has to offer.

Best NATO experience: Legal adviser to COM CTF 508 (Counter Piracy Operation Ocean Shield) in 2013

My one recommendation for the NATO Legal Community:

The NATO legal community isn't very big, and I therefore believe that it is important to build relations within it in order to benefit from each other's expertise

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Name: Patrick Hill

Rank/Service/Nationality: Canadian civilian

Job title: Senior Assistant Legal Adviser, NATO HQ

Primary legal focus of effort: So far, staffing issues, contracting, privileges and immunities, treaty law - and whatever else is in the inbox.

Likes: Running, good food, Belgian beer (best if enjoyed in that order!)

Dislikes: Bureaucratic wrangles

When in Brussels everyone should: go for a run, walk or bike in the Forêt de Soignes. It is a treasure.

Best NATO experience: The variety of work, the good people, and the importance of NATO's mission. What more could a lawyer ask for?

My one recommendation for the NATO Legal Community:
Share!



Name: PREVOTEAU, Jean-Luc

Rank/Service/Nationality: Captain/French Air Force

Job title: NCI Agency, Assistant Legal adviser

Primary legal focus of effort: NATO communication and Information Agency (NCI agency) Legal Office

Likes: Law of Armed Conflicts/International Law/Diplomacy

Dislikes: Not being on the field- Be a bookworm

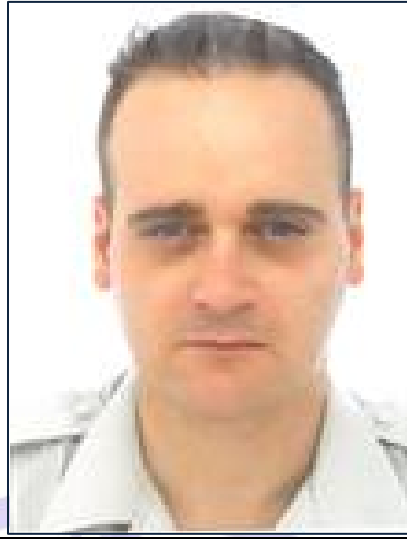
When in Brussels everyone should:

- Walk and get lost in the streets of the districts of Sablons and Marolles (Brussels city centre);
- Have some local food at the restaurant called "Le clan des Belges" near the place Saint-Boniface (Brussels city centre).

Best NATO experience: Legal Adviser for French Air operations in ISAF

My one recommendation for the NATO Legal Community:

Share information and meet as frequently as possible



Name: Rohel Gregory

Rank/Service/Nationality: OR7 / Army / France

Job title: NCI Agency Legal Office, Administrative Assistant

Primary legal focus of effort: Ease the lawyers' tasks

Likes: Honesty and frankness

Dislikes: Zeppelin guys: Very huge people but full of air!

When in danger everyone should: not be afraid, because the fear only exists in your head.

Best NATO experience: NATO Multi sensor intelligence brigade.

My one recommendation for the NATO Legal Community: Cooperation in information sharing.

HAIL & ...

Bienvenue...

AC HQ Ramstein	WG CDR McDougall, Rachel (UK AF)
ACT SEE	CPT Pison, Cyrille (FR AF)
ARRC HQ	Mr. Rosati, Andrew (US CIV)
CCD COE	Maj Ferrari, Massimo (IT A)
	Mr. Minarik, Tomas (CZ CIV)
	CPT Brangetto, Pascal (FR)
EU Staff Group (SHAPE)	Mr. Trummler, Walter (AU)
HQ SACT	Mr Robert "Butch" Bracknell (NIC)
	Ms Piter, Johanna "Hanneke" (NL CIV)
JALLC	Col Castel, Gilles (FR A)
JCBRN Defence COE	Mr. Hybl, Zdenek (CZ CIV)
JFC HQ Brunssum	Maj Oosterveer, Arn (NL A)
	Capt Vègh, Karoly (HU A)
	Mr. McKendrick, Andrew (NIC)
JFC HQ Naples	WG CDR Wetton, Steve (UK AF)
	LtC D'Andrea, Pietro Mario (IT A)
KFOR HQ	Col Arpaia, Bruno (IT A)
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	Mr. Hill, Patrick (NIC)
NCI Agency	Ms Dicheva, Milena (NIC)
	CPT PrevotEAU, Jean-Luc (FR AF)
	OR-7 Rohel, Gregory (FR A)
NHQ Sarajevo	Col Roderic, Michael (US)
NRDC-DEU/NLD	LRDir Scholze, Michael
NRDC-GRC	Maj Karatzias, Vasileios (GR A)
	CPT Zalidis, Vasileios (GR A)
NSHQ	LtC Lystrup, Svein (NO N)
SHAPE	PO Briand, Lydia (FR AF)
	Mrs Sebastian Moncho, Maria Teresa (SP CIV)
	Ms. Dimitrova, Stanila (BU CIV)



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...FAREWELL

Bon Voyage...

AC HQ Ramstein	WG CDR Billingham, Tim (UK AF)
ACT SEE	Ms Burden, Emma (UK CIV)
	Ms Wright, Jessica (US CIV)
	Ms Harrell, Marissa (US CIV)
ARRC HQ	LTC D'Andrea, Pietro
	Maj Keery, Neil
CCD COE	Dr.iur Ziolkowski, Katharina (GE CIV)
EU Staff Group (SHAPE)	Mr. Dohr, Siegfried (AU)
JCBRN Defence COE	Mr. Oskera, Ales (CZ CIV)
JFC HQ Brunssum	Cpt Cossidente, Enrico (IT A)
JFC HQ Naples	WG CDR Phelps, Mark (UK RAF)
	CDR Broekhuizen, Henriette (NL N)
	LCDR Inglis, April (CA N)
KFOR HQ	Maj Hirsch, Christian (AU A)
NHQ Sarajevo	LtC May, Christopher
	Maj Thompson, Brian
NRDC-DEU/NLD	LtC Thurnher, Jeffrey S. (US A)
NRDC-GRC	Maj Geropoulos, Nikolaos (GR A)
	CPT Valasis, Leonidas (GR A)
NSHQ	LtC Johannessen, Stein Westlye (NO A)
SHAPE	PO Leforestier, Jessye (FR)



UPCOMING EVENTS OF LEGAL INTEREST...

...in NATO School, Oberammergau, Germany:



May 2014 will be a busy month in the NATO School for the Legal Advisers interested in the NATO Legal Regime. They will have the unique opportunity to attend the NATO Legal Advisers' course, and the NATO Operational Law Course, which are organised in two consecutive weeks.

The **NATO Legal Advisers' Course**, from **12 to 16 May 2014**, aims to provide military and civilian legal advisers, in national or NATO billets, an understanding of legal aspects of NATO operations and activities. Note that the Legal Advisers' Course is also taking place from **6 to 10 October 2014**.

The **NATO Operational Law Course**, from **19 to 23 May 2014**, aims to provide in-depth training and practical exercises focused on legal issues faced during NATO military operations.

Co-sponsored by the US Naval War College, the NATO School in Oberammergau also hosts the **NATO Maritime Operations Law Seminar**, from **28 July to 1 August 2014**.

The Seminar will provide military and civilian legal advisers in national or NATO billets with an introduction to international legal norms for maritime security, NATO policy and doctrine for naval operations, and public international law as it applies to peacetime and armed conflict operations at sea.



To register, please use this link: <https://www.natoschool.nato.int/conferences.asp>

For more information related to all the above advertised events, please visit NATO School web page at: <https://www.natoschool.nato.int>



...in Cooperative Cyber Defence Centre of Excellence:

The CCD COE in Tallinn, Estonia organises a Seminar on **International Law of Cyber Operations**, from **9 to 12 June 2014** that will give an in-depth overview of the application of the jus ad bellum and international humanitarian law to cyber operations. The Seminar is immediately following the annual International Conference on Cyber Conflict.

The Seminar is also offered jointly by the CCD COE, NATO School Oberammergau and U.S. Naval War College, on **21-25 July 2014** in the **NATO School**, Oberammergau, Germany.

For more info please visit the CCD COE web page: <http://ccdcoe.org/352.html> and the NATO School web page at: https://www.natoschool.nato.int/new_website/courses/CyberSeminarFlyer2014.pdf:



... by the Centre of Excellence for Operations in Confined and Shallow Waters:

The COE CSW organises the **2nd Conference on Operational Maritime Law**, in **Rome, Italy**, from **19 to 23 May 2014**. This conference will emphasize legal issues in Maritime Security, address legal positions from experts current in supporting naval operations, identify future fields of naval operations and train legal advisors prior to deployment to Maritime Security Operations, including anti-piracy and anti-terrorism missions.

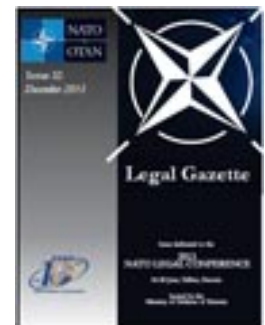
Registrations will be accepted until 1st May 2014 via e-mail to legalconference@coecsw.org.

...of NOTE



- Useful information on the NATO- EU Relations can be found on the NATO Multimedia Library web page: <http://natolibguides.info/nato-eu>

- The NATO Legal Gazette can also be found on the official ACT web page : <http://www.act.nato.int/publications>



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