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Introduction

Fellow Legal Professionals and Persons Interested in NATO,

This summer issue of our Gazette contains six articles. Beginning with an expository commentary on the value of learning about Islam and Sharia, it follows with a discussion of self-defence in peacekeeping operations, an observation about the involvement of the Joint Chemical, Biological, Radiological and Nuclear Defence Centre of Excellence, a description of the Provincial Reconstruction Team Rule of Law Conference held in Kabul and reports on the recently-held Wilton Park symposium on capacity building in post-conflict situations, and the European Union's annual meeting that considers responses to crises and conflict situations.

We introduce three members of our legal community in the Spotlight section, hail the arrival of three legal advisors to our community and also we wish farewell to three valued colleagues who are departing NATO for new assignments. In addition to presenting a number of matters of general international legal interest, please note our list of upcoming events including:

the next Legal Advisers Course which will be held at the NATO School from 28 September to 2 October 2009;

an Anti-Piracy Workshop which will take place at the NATO School from 20 to 22 October 2009 and;

the second Sharia Law Seminar that will be held at the NATO School from 2 to 6 November 2009.

Our next issue will include a report of the 2009 NATO Legal Conference held in beautiful Strasbourg, France from 8-12 June 2009 and any articles that you, the readers of this Gazette, may wish to contribute and that are of general interest to our extended legal community. May all of you enjoy a good summer.

Sincerely,
Sherrod Lewis Bumgardner
Legal Adviser,
Allied Command Transformation, Staff Element Europe

Islam and Sharia Law – Why should we bother?

Mr. Pedro Gauguin Fonseca – Legal Branch, Defence Command Denmark

Mr. Pedro Gauguin Fonseca is employed at the legal branch of Defence Command Denmark. The article is based on his research and studies in comparative International Humanitarian Law and Sharia Law at the University of Copenhagen with assistance of the Institute for Strategy at the Royal Danish Defence College. In addition to his law degree Mr. Fonseca has also completed a reserve officers programme as First Lieutenant in the Danish Army, where he has been trained as a military translator and interpreter and regional expert on the Middle East. Mr. Fonseca has in this capacity been deployed twice to Operation Iraqi Freedom. The contents of the article do not express the views of Defence Command Denmark, but belong to the author.

For the past recent years, Islam and Islamic thought have been the object of great discussion in the West and have from time to time been criticised for being old-fashioned or even incompatible with modern ideas and standards. In fact, one of the core features of Islam that has been criticised in the press and in the international political discourse is Sharia Law, the divine law of the Muslim world.

Many NATO countries have troops deployed to countries where Islam dominates as the main religion. In some cases, the adversary of the deployed troops even point at Sharia as their sole source of reference, including as their legal reference in regards to the conduct of hostilities. Understanding, however, the religion and legal and normative guidelines of one another may be crucial in order to improve communication, coordination, balancing of expectations, planning and execution of successful military as well as non-military initiatives, whether that 'other' is friend or foe.

So what is Sharia all about?

But what exactly is Sharia Law, what is its nature, and just as important, what does Sharia Law dictate? As it was experienced by the participants during the Sharia Seminar held at the NATO School in December 2008, these questions are not easily answered. The reasons are manifold – the Islamic or Muslim (depending on the chosen terminology) legal system is in several ways much different from most Western systems; it has characteristic sources of law and the conception of what substantial law is may vary depending on the legal scholars or recognised schools of law one chooses to consult. In the same way, differences in the nature, applicability, ability to change and other elements of Sharia Law and of Western legal systems may be observed.

In 2007, I completed a comparative analysis of the basic legal features in International Law and Sharia Law concerning war. International Humanitarian Law and International Law are the result of *international* regulation and customs. Although it may be argued that International Law in general (and specifically International Humanitarian Law) is strongly influenced by the West, it remains the domain of all nations. Nevertheless, while International Law is well-known by Western lawyers, Sharia Law is much less, which is a reason to compare both bodies of law.

While it would be overly ambitious to try to describe the convictions of every Muslim grouping, who may have very differing perceptions of the substantial legal and religious guidelines of Islam, and – for the purpose of the specific study – to narrow to one specific Muslim group, the study aims at identifying basic concepts, which may be said to be common or at least commonly accepted in Sunni-Muslim thought¹.

¹ The Muslim community consists mostly of two branches, Sunni and Shia. Presently, most Muslims are Sunnis.

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Acquaintance with the distinct features of Sharia Law and International Law is essential in order to better appreciate the similarities of their basic features relative to the regulation of war. To achieve this, my study provides a concise but comprehensive introduction to Sharia Law, explaining the challenges of comparison to International Law followed by the identification and analysis of substantial law. It is important for me to stress that it is the *comparability* of two separate bodies of law, not issues of *compatibility* that has been the aim of the study.

Is Sharia Law and International Humanitarian Law just the same?

Sharia Law is a comprehensive body of law and only parts of it are directly or indirectly relevant to the regulation of resort to war and conduct in war. While some 'rules' are specifically directed towards war and warfare (and some may even appear more as tactical advice than legal constraints), other 'rules' that should be taken into account in a comparative study may be more general in terms of application – i.e. they may be directives that apply to situations in general, not only during times of war.

In short, the answer to the raised question is 'no' – Sharia Law and International Humanitarian Law are not the same at all. Indeed, a more qualified question would be : are the two bodies of law comparable – i.e. do the same standards and qualities exist in these separate bodies of law? The answer to this question is much more complex; while some of the same considerations may have been made in both regimes, the exact implications may differ. For reasons of delimitations, my study seeks only to consider the notion of lawful and just (or justifications for) war and the concept of protected persons, although my research also suggests that Sharia Law, in line with International Humanitarian Law, contains considerations on means and methods of warfare.

When is war legitimate under the Sharia regime?

In practice, International Law and Sharia Law share a notion that wars can only be waged on the basis of certain justifiable reasons and consequently wars of aggression are outlawed. The exact implications of these notions differ between the two regimes and discrepancies exist between Sharia scholars. Furthermore, these differences are blurred by the varying use of the same terminology in the selected literatures.

In result, legitimate wars according to the selected Sharia literature – although often described as defensive – seem to be responsive in nature. A war may thus be waged on punitive grounds and not only when (immediate) self-defence is necessary. Further, the thresholds of severity for the elements that are considered to trigger the legitimate responsive act of war seem to be lower than those contained in International Law.

While the legality of humanitarian interventions is still a matter of controversy in International Law, Sharia Law seems more pragmatic about this sensitive question. This may be partially due to the fact that the thresholds of severity – as suggested just above – as to what provokes a legitimate responsive act of war, is lower under the Sharia regime. However – permissible 'humanitarian interventions' under the Sharia regime, may be limited to interventions in favour of other Muslims or groups of persons perceived to be under Muslim protection².

² Non-muslims may be seen as enjoying protection of the Muslim communities, if they have submitted themselves to Muslim rule as 'dhimmies'. This option (as an alternative to conversion) has from time to time been limited mostly to Christians and Jews, and would constitute the terms of a peace agreement.

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Who may be targeted under the Sharia regime?

When it comes to the idea that certain persons must be protected from the effects of war, International Humanitarian Law and Sharia Law share a superficial similarity: both provide protection to persons not participating in hostilities.

However, a closer examination reveals a number of differences. For example, International Humanitarian Law is concerned with the clear establishment of the *status* of persons, setting down legally detailed and advanced criteria and protection in relation to each protective status. International Humanitarian Law, thus, takes somewhat of a 'form' approach. Sharia Law, on the other hand, adopts a more amorphous yet practical approach: whilst it singles out groups of persons considered to deserve protection due to their expected abstention from hostile activity, it seems more concerned with actual abstention as a clear prerequisite for the provision of protection and provides less detailed and advanced elements of protection.

The exact inclusion or explicit mentioning of groups of persons perceived to enjoy protection against the effects of hostilities may vary according to the selected literature on Sharia Law. A handful of texts specifically mentions 'civilians', but often ends up listing more delimited groups of persons, thus matching other texts on Sharia Law: women, children and the aged, provided they are not participating in enemy war efforts. Also, persons suffering from a particular permanent condition or chronic illness are expected to enjoy protection. Healthy men in the working age, however, seem to be presupposed to participate, or so likely to do so and they are automatically considered to be lawful targets. While in this context it seems unnecessary to define women, it seems less clear when a boy becomes a man, and thus a lawful target. A few scholars also consider peasants or merchants to be protected – but such view seems to be loosely supported by Sharia jurisprudence.

Other groups of persons largely considered to enjoy protection are persons devoted to religion (such as monks, hermits or similar), slaves (the status as slave is broadly perceived and has been abolished in Sharia), wounded/sick/dead/shipwrecked/those who have lost their weapons (whether 'civilians' or enemy fighters), those caring for the wounded, Muslims in the custody of the enemy or simply present at the military target and, finally, captives.

As to the level of protection afforded to the different groups, explicit protection may, in many cases, be defined as one against killing and molestation. Although other standards of provided protection found in more general terms in Sharia literature may be considered as aiming to the level of protection similar to the one in International Humanitarian Law, such provisions do not correspond to the detailed regime of protection provided in the Geneva Conventions and additional protocols. Guidelines or 'rules' apply to what to do with captives within the Sharia regime, and in some cases the explicit protection of the property of protected groups may, to some extent, be provided for.

Finally, the loss or compromise of protection [??] may occur pending on the protected persons' actual contribution to the enemy efforts, permissible unintentional losses or as a consequence of attacks against enemy fighters as reprisals or retaliation.

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Sharia Law and international obligations

The elements of law described above are part of Sharia Law directed against Muslims. Thus, it is perceived to apply to Muslims, and not as such to all parties in international or intercommunity relations, as it is not part of *Siyar* (which is often referred to as Islamic International Law). While Sharia Law is not based on reciprocity, but on what is considered to be the word or intention of God, it does not necessarily exclude the application of the standards or detailed provisions of International Law. International Law may, as part of an agreement between a Muslim leader and other communities, be given effect under the Sharia regime under the maxim of *pacta sunt servanda*. This may depend on several issues, such as e.g. whether the Muslim leader is perceived to be a legitimate representative of the community.

Siyar has not been the object of further examination, as it did not fit into the scope and purposes of my study – to analyse the features of a Sharia Law, this important element of Muslim thought. Although the elements of Sharia Law concerning war are unlikely to be applied by the great majority of Muslims, it may be by some. In addition, it may be expected to contribute – even unconsciously – to the understanding and interpretation by Muslims of obligations under International Law.

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Self-Defence During Military Operations: a Human Rights Perspective

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1 INTRODUCTION

Governments regulate troops serving abroad through a set of Rules of Engagement (ROE)—directives issued by competent military authorities which delineate the circumstances and limitations under which troops will initiate and/or continue combat engagement—which cover domestic and international law. The ROE governing the use of lethal force are normally the subject of guidance or *aide-mémoires* contained in a card issued to individuals.

Further limitations in operational matters depend on *caveats stemming from* national policies or regulations. Mandates to foreign troops supporting the host nation in its effort to normalisation include the power to arrest and detain individuals, as well as to search houses and seize properties.

The focus of this article is specifically on self-defence as a defence to homicide. The perspective is a rights perspective, which is the most productive route to establishing the permissibility of self-defensive killing, as Fiona Leverick suggests¹. The primary interest is the substantial implications of Article 2 of the European Convention on Human Rights on the correct interpretation of the rule permitting soldiers to kill in self-defence.

2 RULES OF ENGAGEMENT AND THE USE OF FORCE

ROE governing the use of lethal force by British troops in Iraq in 2004 were the subject of a guidance contained in a card issued to every soldier, known as “Card Alpha” (*Card A – Guidance for opening fire for service personnel authorised to carry arms and ammunition on duty*).

Card Alpha statements were as follows:

General guidance

1. This guidance does not affect your inherent right to self-defence. However, in all situations you are to use no more force than absolutely necessary.

Firearms must only be used as a last resort

2. When guarding property, you must not use lethal force other than for the *protection of human life*.

Protection of human life

3. You may only open fire against a person if he/she is committing or about to commit an act *likely to endanger life and there is no other way to prevent the danger*.

Challenging

4. A challenge MUST be given before opening fire unless: (a) to do this would increase the risk of death or grave injury to you or any other persons other than the attacker(s), or (b) you or others in the immediate vicinity are under armed attack.
5. You are to challenge by shouting: ‘NAVY, ARMY, AIR FORCE, STOP OR I FIRE.’ Or words to that effect.

¹ Leverick *Killing in Self-Defence* (2006), at 2.

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Opening fire

6. If you have to open fire you are to:
- (a) fire only aimed shots,
 - (b) fire no more rounds than are necessary, and
 - (c) take all reasonable precautions not to injure anyone other than your target².

The first consideration is that ROE do not affect the soldier's inherent right to self-defence. It means that whatever is written in the ROE, any soldier is able to use the force that the relevant law—normally his/her own national criminal law—permits, and the degree of force necessary and proportionate to counter the aggression. A second element concerns the issue of necessity and proportionality. A third point relates to the nature of the rights and values under protection. Finally, the Card issues precautions and limits in the choice of means and methods. Each aspect will be discussed below.

3. SELF-DEFENCE

A. General Principles

The justification of self-defensive killing depends on the right to life, in the sense that the defendant protects his right to life while the aggressor forfeits his right unjustly threatening the life of another. Nevertheless, self-defence suffers fundamental limitations, the right to life being the most fundamental of individual rights. According to William Blackstone, "it is an untrue position, when taken generally, that, by the law of nature or nations, a man may kill his enemy: he has only a right to kill him, in particular cases; in cases of absolute necessity, for self-defence; and it is plain this absolute necessity did not subsist, since the victor did not actually kill him, but made him prisoner."³ This formulation is similar to that contained in the 1950 European Convention, which refers to the use of force, absolutely necessary in defence of any person.

Under common law, self-defence allows a person to use reasonable force to defend himself from attack. The authority for self-defence includes the use of reasonable force to assist another person who is under threat of attack. As far as the criminal law is concerned, self-defence is a defence if the agent reasonably believes that he/she was going to be attacked and reacted with proportionate force⁴. In England, the common law principles have been partially codified by the Criminal Law Act 1967, and, recently, by the Criminal Justice and Immigration Act 2008⁵. According to section 3 (1) of the Criminal Law Act 1967 (the statutory defence): "A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

² *Al-Skeini and Others v the United Kingdom*, ECHR (2007) No. 55721/07.

³ W. Blackstone, *Commentaries on the Laws of England* (1765-1769) Book 1. Chapter 14. Section 43.

⁴ *R v Palmer* (1971) 55 Cr App R 223 (P.C.).

⁵ I. Turner, "Suicide Terrorism, Article 2 of the ECHR and the Shooting of Jean Charles de Menezes", [2008] 4 Web JCLI, at URL <http://webjcli.ncl.ac.uk/2008/issue4/turner4.html>.

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The Criminal Justice and Immigration Act 2008 states that in deciding the question of the defence of self-defence the following considerations are to be taken into account:

- (a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and
- (b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose. In this regard, the defence must be considered from the offender's own viewpoint. If he acted under an honest mistake of fact the judge should direct a jury on whether his response was commensurate with the attack which he believed he faced⁶.

Generally speaking, in the continental or civil law systems, self-defence—as intended in the relevant law and doctrine, corroborated by judicial decisions—is the action which is permitted in order to prevent a present unlawful attack. An attack is considered present if it is happening or about to happen. A reaction to an attack which will happen—namely a pre-emptive reaction—is unlawful. The action in self-defence must be necessary to ward the attack and must be proportionate. This essentially requires that any action in self-defence (or defence of another) be proportionate to the nature and intensity of the attack and reasonable given the circumstances. Proportionality requires a comparison between the object of the protection—which can be life or limb but also other recognized legal interests—and the object which has to be sacrificed⁷. The judgment on proportionality must be objective. However, the individual under attack *non habet stateram in manu* (he is not holding a balance).

B. The ECHR System

EU member states are also part of the European Convention on Human Rights (ECHR). The ECHR and the jurisprudence developed are persuasive authority which may be of assistance in interpreting the significance of the rules on self-defence.

In the ECHR system, the acceptable use of force is the one that is *absolutely necessary* and the admissible degree of force is the one that is *strictly proportionate*⁸. To better clarify the position of the Court it is useful to recall *Bubbins v the UK*, in which the Court assessed that “the use of lethal force [...] was not *disproportionate* and did not exceed what was *absolutely necessary* to avert what was honestly perceived by Officer B to be a *real and immediate risk to his life and the lives of his colleagues* (emphasis added).”⁹ The case is also useful to ascertain the issue of mistaken perception about the need to use lethal force, which will be discussed below.

⁶ Oatridge [1991] 94 Cr App Rep 367.

⁷ Italian Court of Cassation, First Criminal Division, 10 November 2004, n. 45407.

⁸ McCann and Others v the United Kingdom, ECHR (1995) Series A, No. 324, 149.

⁹ Bubbins v the United Kingdom, ECHR (2005) No. 50196, 140.

The European Court of Human Rights



(source:www.echr.coe.int)

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Requisites for self-defence under the Convention are thus *proportionality*, *absolute necessity* and an *imminent threat* to human life. Self-defence includes situations in which agents have a genuine and honest belief in the need to fatally shoot, as the Court explained in *McCann*¹⁰. In the recent *Usta and Others v Turkey*, the Court reaffirmed its jurisprudence—in particular the cases of *Andronicou and Constantinou*¹¹ and *Perk and Others*—to point out that it could not substitute its own assessment of the situation for that of the officers who were required to react in the heat of the moment¹². In particular, in *Andronicou*, the Court assessed that it could not substitute its own assessment of situation with the one of officers confronted with the agonising dilemma between the need to neutralise any risk caused by young men to lives of others. The Court concluded that the fact that officers used as much fire power as they did was clearly regrettable, but not unlawful¹³.

In case of an operation, *Bubbins v the UK* is also useful to prevent arbitrary use of lethal force. The Court observed that the conduct of the operation had at all times been under the control of senior officers and that the deployment of the armed officers had been reviewed and approved by tactical firearms advisers.

C. Mistake about the Need to Use Lethal Force

In *McCann* cited above, the military option might expressly include the use of lethal force for the preservation of life. According to the Rules of Engagement issued by the Ministry of Defence (Rules of Engagement for the Military Commander in Operation Flavius), soldiers could only open fire against a person if they had reasonable grounds for believing that terrorists were currently committing, or were about to commit, an action which was likely to endanger human life of soldiers or passers-by, i.e. against an occurring or imminent attack¹⁴. In that occasion, the Court was satisfied that the soldiers honestly believed, in the light of the information that they had been given, that it was necessary to shoot the suspects in order to prevent serious loss of life¹⁵. The Court also stated that to hold otherwise would be to impose an unrealistic burden on law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others¹⁶. In *McCann* the minority judges noted that “[t]he authorities had at the time to plan and make decisions on the basis of incomplete information [...] It would be wrong to conclude in retrospect that a particular course would, as things later transpired, have been better than one adopted at the time under the pressures of an ongoing anti-terrorist operation and that the latter course must therefore be regarded as culpably mistaken.”¹⁷

These conclusions were anticipated by the Commission in *Kelly v the UK*. In that incident a 17-year-old joy rider was shot, killed at a checkpoint on the wrong assumption that he was a terrorist. At the domestic level, the High Court of Northern Ireland had concluded that the serviceman acted in the reasonable belief that the occupants of the car were terrorists. In espousing the same findings, the Commission specified the points to be considered: an overall climate of terrorism and violence, a stolen car belonging to a security officer and the effort made by the victim to escape the checkpoint¹⁸.

¹⁰ *McCann*, *supra* at note 8, 200.

¹¹ In *Andronicou and Constantinou* a rescue operation resulted in the killing of both the assaulter, a young man known to be armed and the hostage, his fiancée. *Andronicou and Constantinou v. Cyprus*, ECHR (1997) No. 25052.

¹² *Usta and Others v Turkey*, ECHR (2008) No. 57084, 59.

¹³ *Andronicou and Constantinou*, *supra* at note 40, 192.

¹⁴ *McCann*, *supra* at note 8, 15-18.

¹⁵ *R v Palmer* (1971) 55 Cr App R 223 (P.C.).

¹⁶ *McCann*, *supra* at note 8, 200.

¹⁷ *Ibid.*, dissenting opinion, 8.

¹⁸ *Kelly v the UK*, (1993) 16 EHRR CD20, 22.

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It is worth noting that, in the European Court of Human Rights view, a standard of justification such as “reasonably justifiable,” although less compelling than the Convention standard “absolutely necessary,” is not sufficient to entail a violation of Article 2¹⁹.

D. The Use of Force in Defence of Property

While the concept of self-defence in the European legal systems seems to be consistent with Article 2 of the European Convention, the use of lethal force to protect property—formally permitted in the major parts of the domestic legal systems—may violate Article 2 of the Convention. According to Article 2, deprivation of life is not regarded as inflicted in contravention to the right to life when it results from use of force absolutely necessary to defend *any person* against unlawful violence. The Court stressed on numerous occasions that the rules enshrined in Article 2— which rank as one of the most fundamental provisions in the Convention— must be strictly construed. In the second paragraph there is no reference to the defence of property²⁰. Clearly, the use of deadly force to merely defend possessions is considered unacceptable.

On this point, the Rules of Engagement for the British personnel deployed in Iraq in 2004 significantly prescribed that a soldier may open fire against a person only if he/she is committing or about to commit an act likely to endanger life and there is no other way to prevent the danger, while adding that when guarding property, a soldier must not use lethal force other than for the protection of human life²¹.

This matter remains highly controversial, as the courts in different states consider the proportionality of the reaction to be pivotal. For example, killing a thief who is stealing an item of minor value— lacking the requisite of proportionality— should not be considered to be a lawful form of defence. In this respect, for example, the Italian Court of Cassation held recently that the use of arms in defence of possessions is lawful only when the defender acts to prevent a credible prejudice to his/her physical integrity²².

E. Self-Defence during Military Operations

Self-defence is at the core of the use of force regulations in current operations. As a general rule, individuals belonging to forces deployed abroad retain the right of self-defence, under their domestic law—as usually, a status of forces agreement²³ prescribes that personnel deployed is subject to the exclusive jurisdiction of the sending State²⁴. The use of lethal force in preventing loss of life or serious bodily harm is accepted as a general form of self-defence—regardless of the minor differences—in the various national laws and also *under international human rights and international humanitarian law*.

¹⁹ *Ibid.*, 155.

²⁰ *Leverik supra* at note 1, at 181.

²¹ *Al Skeini and Others v U.K.*, ECHR (2007) No. 55721.

²² *Italian Court of Cassation, First Criminal Division*, 8 March 2007 no. 16677.

²³ A comprehensive analysis in *D. Fleck, The Handbook of the Law of Visiting Forces (2001)*.

²⁴ See, e. g., Regulation No. 2000/47 (UNMIK/REG/2000/47) on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo, at section 2, or the Military Technical Agreement between the International Security Assistance Force (ISAF) and the Interim Administration of Afghanistan—Arrangements Regarding the Status of the International Security Assistance Force (Annex A).

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Self-defence includes the right to react to an imminent threat. In official documents released by the military authorities "imminent" means a necessity of self-defence against a threat which is instant, manifest and overwhelming, in accordance with the so-called Webster's doctrine of anticipatory self-defence (normally referred to State-to-State relations)²⁵.

A threat is imminent when the situation has reached a point where it is unlikely that it will be possible to save both parties' life. The imminence requirement ensures that deadly force will be used only when it is necessary and as a last resort in the exercise of the inherent right of self-preservation. It also ensures that before a homicide is justified and, as a result, does not constitute a legal wrong, it will be reliably determined that the defendant reasonably believed that absent the use of deadly force, not only would an unlawful attack have occurred, but also that the attack would have caused death or great bodily harm²⁶. This connects imminence with necessity and proportionality. Necessity refers to the need of use force *at all*, i. e. if an attack could be avoided by, for example, withdrawing²⁷ (however, a military unit is not required to withdraw or surrender its position in order to avoid the authorized use of force). Proportionality refers to the degree of force, "once it has been established that it is necessary to use at least some force to avoid an attack"²⁸.

CONCLUDING REMARKS

In modern warfare, human rights principles act alongside the laws of war to regulate the scope of military action. Operations involving potential use of lethal force have to be planned and controlled by the authorities so as to minimise the risk to life threat for peaceful civilians. The jurisprudence of the European Court of Human Rights contributes to the interpretation of specific rules on the use of force normally issued to national authorities, without affecting the inherent right to use lethal force in situations when soldiers have a genuine and honest belief in the need to fatally shoot.

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²⁵ The criteria for this right of anticipatory self-defence were enunciated in a statement issued in 1837 by the US Secretary of State Webster as a necessity of self-defence instant, overwhelming, leaving no choice of means and no moment for deliberation. See L. Rouillard, *The Caroline Case: Anticipatory Self-Defence in Contemporary International Law* (2004) *Miskolc J. of Int'l Law* 1, No. 2, p. 104-120.

²⁶ *State v. Watkins*, 283 No. C. 504, 196 S.E. 2d 750 (1973).

²⁷ *F. Leverick, supra at note 1, at 5.*

²⁸ *Ibid.*

Legal Aspects of the Centre of Excellence Involvement in NATO Operations and NATO Response Force

Mr. Zdeněk Hýbl – Legal Adviser - JCBRN Defence COE

First, I would like to emphasize that there is no lead nation for the Combined Joint CBRN Defence Task Force (CJ CBRN D TF) of NRF-13 and that the Joint Chemical, Biological, Radiological and Nuclear Defence Centre of Excellence (JCBRN Defence COE) is the only COE involved in NATO Response Force (NRF). Therefore, this article is solely based on the JCBRN Defence COE experience with the NRF-13 preparation phase. There is also no intention to discuss all possible aspects of COE involvement in operations but to describe, from my point of view, the basic challenges that emerged during the preparation phase of NRF-13.

In September 2009, the JCBRN Defence COE Steering Committee (JCBRN Defence COE SC) approved the proposal for the JCBRN Defence COE to take the lead role of Joint Assessment Team of CJ CBRN D TF (JAT) for NRF-13 in 2009. The JCBRN Defence COE SC is the main body set up by the Sponsoring Nations for guidance, oversight and decisions on all matters concerning the establishment, administration and operation of the JCBRN Defence COE. The JCBRN Defence COE SC decision was a stepping stone for JCBRN Defence COE involvement in NRF.

According to all documents, which are relevant for all COEs¹ and both Memoranda of Understanding² of JCBRN Defence COE, a COE is a non-deployable international military organization. For this reason, JCBRN Defence COE only provides the JAT Commander and permanent staff for CBRN JAT of NRF-13 and as an organization will never be sent into operation as long as the above-mentioned documents are valid.

The key question is whether the JAT Commander and permanent staff are provided by the JCBRN Defence COE or by the Sponsoring Nations (SN). From my point of view, the staff is provided by SNs and it is under a national responsibility to decide whether to deploy them or not. Due to their legislation, some SNs can have an issue with such a deployment due to the fact that their soldiers are appointed to the JCBRN Defence COE under its the manning document. There is certainly another question – whether the JCBRN Defence COE Director is empowered to influence this process, or if it is within his remit to send COE staff into operation.

The JCBRN Defence COE Director is a principal advisor to SACT for transformation in the field of CBRN Defence³. In accordance with Operation Memorandum of Understanding, in all matters and national duties, the Senior National Representatives (SNRs) or their delegates hold all powers conferred on them by their national laws and regulations. The JCBRN Defence COE Director has no power to influence the SNRs decision-making process in the case of deploying COE Staff into operations and he has no right to send them there based on his own decision. On the other hand there is an open space for discussion on the Director's right to send COE Staff to theater to collect Lessons Learned. Discussions are still ongoing on this issue, and no conclusion has been reached yet.

Other issues which have been solved in JAT preparation phase, were dealing with the use of personal weapons, ammunition and other equipment. Firstly, it is probably necessary to explain what the term "other equipment" refers to; for this particular purpose, the term means "individual protection equipment". This equipment is always provided by nations and there is no issue here; however, some problems can arise if there is a requirement to transport medicine.

¹ Document MCM-236-03: "MC Concept for Centres of Excellence" dated 4 December 2003

² Document "Operation Memorandum of Understanding" dated 26 October 2006

Document "Functional Relationship Memorandum of Understanding" dated 26 October 2006

³ Document "Operation Memorandum of Understanding" dated 26 October 2006, Annex D

Legal Aspects of the Centre of Excellence Involvement in NATO Operations and NATO Response Force

Use of arms and ammunition can be seen from two different perspectives:

First, in the case the arms are used for training. In this particular case, training of the JCBRN Defence COE staff as well as training of other non-COE JAT members, has been ensured thanks to the approval of the Chief of General Staff of the Armed Forces of the Czech Republic who permitted the training to be completed with Czech pistols and ammunition.

Secondly, the dealing with personal arms in the operational area, the soldiers assigned to be deployed may be equipped with either their national weapons or with somebody else's, i.e. in this particular case with Czech arms. Two scenarios were possible: the first approach was to ask nations to equip their soldiers with their own arms. The second possibility was to equip soldiers with Czech arms. The first scenario was adopted.



(source:Wikipedia.org)

In accordance with the Czech Constitution⁴, Article 43 par. 4, point a) the Government shall decide to dispatch Czech military forces outside the territory of the Czech Republic and the presence of foreign military forces on the territory of the Czech Republic for up to 60 days at most, when it concerns fulfillment of international contractual obligations concerning common defence against aggression. In case of the activation of NRF-13 all CBRN JAT will be located in one area (assembly area), in an assigned garrison on the territory of the Czech Republic. Therefore the Czech Government, in accordance with Article 43 of the Constitution of the Czech Republic, has to decide on the presence of foreign military forces on the territory of the Czech Republic.

I would like to emphasize that the JCBRN Defence COE involvement in NRF-13 should be seen as an ad-hoc task. If there is any possibility to consider it as a permanent task for the JCBRN Defence COE, I see open doors for discussion on revising the MC Concept for Centres of Excellence and both Memoranda of Understanding. This statement was one of the outcomes of the 1st COE Coordination Meeting which was conducted on 1 April 2009 in Vyškov, Czech Republic. The purpose of the meeting was to offer a forum for sharing information between COEs, the HQ SACT Transformation Network Coordination Cell and other branches of HQ SACT⁵.

The previous paragraph can be perceived as a conclusion to this article, but from my point of view, the role of a COE is to be found somewhere else besides being a deployable unit if there is such a request from NATO. I understand that there is a necessity to involve COEs more into NATO operations but, from my perspective, these organizations should be specifically engaged in areas of expertise, for example reach-back support.

For more information on COEs, please refer to <http://Transnet.act.nato.int/WISE>

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⁴ Document – Act No. 1/1993 Coll., Constitution of the Czech Republic

⁵ Document – COE Coordination Meeting, dated 16. April 2009

Provincial Reconstruction Team Rule of Law Conference

LTC Pam Meyers – Chief, Rule of Law, HQ ISAF

HQ ISAF hosted a Provincial Reconstruction Team Rule of Law (PRT RoL) Conference following the Provincial Reconstruction Team (PRT) Conference on 27 and 28 February 2009. Although the target audience was PRT representatives, invitations were also extended to those working in RoL in Kabul including the Combined Security Transition Command Afghanistan (CSTC-A), the U.S. Embassy, the International Community RoL actors, and Afghan colleagues, from both the Government of the Islamic Republic (GIROA) and the private sector.

COL Prescott opened the conference with welcoming remarks and provided the participants a short overview of NATO EBAO (Effects-Based Approach to Operations), the methodology being used at ISAF to provide a Rule of Law assessment for COMISAF. The intent was to help the PRTs understand the purpose for requests from HQ ISAF for Rule of Law information and to help them understand the objectives that are achieved by providing this information, as well as to provide them a framework for engaging justice sector officials and international rule of law actors at their levels.

The first presentation was given by Mr. Kelly Gavagan with the USAID Afghanistan Rule of Law Project (AROLP). His presentation covered the Afghanistan Court Administrative System (ACAS) which has been trained throughout the country. This is a simplified court filing system. The goal of ACAS is to assist the Supreme Court with developing simplified court procedures and processes that will be consistently used by all courts in Afghanistan. This block of instruction was intended to provide PRT representatives with the tools and skills they need to make sure ACAS is being implemented. The first session was in English followed by a session in Dari which was helpful for Afghan attorneys working with the PRTs. The ACAS procedure handbook will be provided to the PRTs in English and Dari.

Ms. Kim Motley with the Justice Sector Support Program (JSSP), a US State Department funded training program to support the Rule of Law in Afghanistan gave the next presentation. She discussed numerous challenges facing defense attorneys, to include lack of formal training on the rights of defence attorneys, their duties, and responsibilities; lack of cooperation from government authorities and courts and lack of access to incarcerated clients. Interviews with accused revealed that the vast majority are unrepresented; they do not understand the role of the defense attorney; they are rarely advised of Constitutional rights or provided with translators, and statements are often coerced. After outlining the many challenges facing defense attorneys, she described the JSSP Defense Training Programs which include collaborative efforts with the legal community and International NGOs.

The third presentation was on Focused District Development (FDD) Police Mentor Teams and Rule of Law given by CDR Caren McCurdy with the Combined Security Transition Command-Afghanistan (CSTC-A). CDR McCurdy stated that the desired end state of FDD was to have the Afghan National Police (ANP) prevent and detect crime and comply with the law. This end state includes having police interface with prosecutors to enable criminal investigations, interface with Ministry of Justice and the Afghan Central Prisons Department to ensure timely and proper processing of pre-trial and trial detainees, and having a competent and professional national uniformed police force in every district that is trusted by the local populace. She discussed the relationship between FDD and RoL, stating that the police are not fit for intended purposes unless they are broad-based law enforcement agents. In order for the police to be broad-based law enforcement agents, they must be able to coordinate with an effectively operating criminal justice system. Development is required across the justice institutions: police, prosecutions, and prisons (cops, courts and corrections). To the extent that a district is in chaos and lacking RoL because of an insurgency, the police must coordinate with the Army, recognizing the unique role of each force.

Provincial Reconstruction Team Rule of Law Conference

The fourth presentation was given by Mr. Edward Sodden-Bird on the European Union Police Mission in Afghanistan (EUPOL Afghanistan). EUPOL is currently present in 15 of 34 provinces. Mr. Sodden-Bird stated that objectives of EUPOL are to develop ANP sustainability; to establish robust internal procedures and clean recruitment procedures; curb influence of 'raw power' and opportunities for corruption; strengthen civilian policing command and control structures from Ministry of Interior to provincial levels; determine the balance between paramilitary capabilities and civilian policing functions and assist strengthening of RoL structures and policies. The EUPOL mandate provides that "the EU police mission will be set in the wider context of the international community's effort to support the GIRoA in taking responsibility for strengthening Rule of Law, and in particular, in improving its civil police and law enforcement capacity. Close coordination between the EU police mission and other international actors involved in security assistance, including the International Security Assistance Force (ISAF), as well as those providing support to police & rule of law reform in Afghanistan, will be ensured."

The EUPOL presentation was followed by a presentation by Mr. Ken McKellar, the Director of Corrections System Support Program (CSSP). Mr. McKellar explained that the mission of CSSP is to assist the Ministry of Justice's Prison Administration in developing GIRoA capacity for the effective security, safety, and humane treatment of persons detained and incarcerated within the Afghan civilian correctional system. CSSP focuses on the following areas: training; mentoring; capacity building-systems; infrastructure program management and Counter-Narcotics Justice Center (CNJC) Project Development and Operational Management. The CPD was placed under the Ministry of Justice in 2003 and is inadequately funded. The state of corrections in Afghanistan presents many challenges. Infrastructure is in a dismal condition for the 34 provincial and 203 operational district prisons/detention centers confining approximately 13,300 prisoners. Transportation and equipment are extremely limited and information management is antiquated. Corruption is problematic. Training needs are critical. To meet these needs, the CSSP and CPD have developed the new Afghan National Corrections Training Program for all civilian detention centers and prisons in Afghanistan. Courses are conducted at the National Training Center (Kabul) and at four Regional Training Centers located in Mazar-e-Sharif, Herat, Jalalabad and Gardez (Paktya Province). Training is followed by mentoring. Senior Warden Advisors/Mentors, Provincial Team Leads and Advisors all mentor their Ministry of Justice -CPD counterparts inside the prisons on operational procedures in accordance with the formal training. Similarly, CSSP executive staff mentor their counterparts at the Ministry of Justice-CPD Headquarters. In summary, the CSSP approach is "Do not do for; Do with Afghans for Afghanistan."

Brigadier General Guy Sands-Pingot with the U.S. Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) gave the final presentation for the first day. SIGAR works within Afghanistan conducting audits, inspections and investigations. They monitor the status of reconstruction initiatives and work towards an integrated strategy. Their efforts ensure contract compliance and help to identify waste, fraud, abuse and corruption. They work in concert with other organizations to produce effective and timely findings, evaluations, and recommendations.

Provincial Reconstruction Team Rule of Law Conference

The second day of the Rule of Law conference began with presentations by Mr. James Agee and Ms. Andrea Muto with the USAID Afghanistan Rule of Law Project (AROLP). There are many challenges facing Afghanistan's justice sector such as the lack of systems and qualified personnel in the justice sector; little or no access to laws; low-quality legal education, as a result of universities decimated by 30 years of war; the roles of the formal and informal justice sectors remain unclear in the minds of Afghans; and customs and traditions restrict the rights of women in Afghanistan. To address these challenges AROLP's work focuses on seven major areas: legal education; legal information; commercial dispute resolution; judicial training; women's rights under Islam; access to justice; court management and administration including implementation of ACAS. The speakers described the numerous AROLP programs and brought copies of USAID public awareness materials. Templates for printing additional materials are available at the following USAID website: www.afghanistantranslation.com.

The second presentation was by Mr. David Galilee with United Nations Assistance Mission in Afghanistan (UNAMA), Provincial Justice Coordination Mechanism (PJCM). He indicated that at the Rome Conference in July 2007 consensus was reached on the way forward for justice reform in Afghanistan. The need to elaborate the National Justice Sector Strategy (NJSS) was recognized and an agreement to implement the NJSS through a National Justice Program (NJP) was agreed upon. An agreement was reached to fund the NJP through an Afghanistan Reconstruction Trust Fund (ARTF). The Rome Conference also provided for the establishment of the PJCM to support rule of law reform and to coordinate the delivery of justice assistance in the provinces, consistent with NJSS and NJP. The PJCM was launched on 1 July 2008. The PJCM will conduct comprehensive assessments of the justice systems in the provinces. Those assessments will be used to identify and highlight the key needs of the justice system for the GIRoA and the Donor Community. In addition, the PJCM will facilitate effective coordination of justice reform projects in the provinces to ensure the delivery of strong support for justice sector reform in a targeted manner and build the capacity of the justice institutions to manage coordination within the justice sector at the regional and provincial level. PJCM will monitor implementation of recommendations of PJCM Criminal Justice Assessment Report. Future plans include providing support to ongoing projects in the field of Traditional Dispute Resolution and conducting an assessment of the civil law system – focusing on land disputes.

The third presentation was by Mr. Andreas Schweitzer with the International Committee of the Red Cross (ICRC). He began by noting the steady increase of prison population since 2001. According to the CPD there were 600 detainees at the end of 2001. By the end of 2008, there were 12,700 detainees. However, capacity and resources of the CPD have not kept pace with the increase. This has resulted in overcrowding and poor conditions in most facilities. There is an urgent need for construction of additional facilities and refurbishment of existing structures. At the end of 2008, a new comprehensive ICRC/CPD report on the state of the 33 provincial prisons was completed. The report concludes that in order to ensure a humane environment for detainees, detention facilities have to be improved. The aim of the report is that this information will mobilize PRTs, embassies, Afghan authorities and any organization/institution working in prisons to engage in much needed prison projects.

Provincial Reconstruction Team Rule of Law Conference

This was followed by a presentation by Ms. Dianne Livesey with UNAMA on Juvenile Corrections. She stated there are tremendous needs in Juvenile Corrections and the requirements of the Juvenile Code are rarely complied with. She highlighted some of these provisions. For example, the Juvenile Code states that the confinement of a child should be the last resort for rehabilitation and re-education of the child. Juvenile Court has the authority to consider other alternatives instead of detention and the court shall consider minimum possible duration for confinement. There should be Special Juvenile Prosecutors to assess, investigate and prosecute juvenile crimes. Ms. Livesey stated that it is very unlikely that there are Juvenile Prosecutors in each province. Juvenile Rehabilitation Centers operate under a separate department in the Ministry of Justice. They are not part of CPD and are underfunded by GIRoA. Often juveniles are not separated from adult offenders. Juvenile facilities are typically overcrowded and have very poor conditions without heat and adequate sanitation. There are few rehabilitative programs such as literacy, education, vocational training or leisure activities. Health services are very limited and inconsistent. The staff are poorly paid with minimal, if any, staff training or specialization in working with juveniles. Currently, unlike the adult corrections, there are no assessments of facilities such as those conducted by the ICRC. Finally, there are few social services networks to assist children in trouble with the law or to provide a venue for alternative sanctions.

The last presentation of the morning was by Mary Noel Pepys and Sanzar Kakar with JSSP. Mary Noel Pepys provided an overview of JSSP programs and Sanzar Kakar provided a presentation on the Case Management System (CMS). He began by describing how a case flows through the system from initial detection by the police through sentencing. The goal of the Case Management System (CMS) is to improve communication between the Justice Institutions and increase transparency, accountability and efficiency. This will be accomplished by implementing standard operation procedures, a standard registry, standard forms and standard case file jackets.

The sixth presentation was given by MAJ McGovern with CJTF 101st, in Regional Command East (RC (E)). He presented an overview of Rule of Law initiatives in RC (E), focusing on three critical areas covered by the NJP: building infrastructure; building human and professional capacity and increasing public awareness and confidence in the Justice System of Afghanistan. The CJTF-101 RoL Strategy is to ensure that Courts, Prosecutors, the Ministry of Justice and the Afghan Independent Bar Association (AIBA) will have adequate buildings, transportation, equipment, and supplies. In terms of Human Capacity, the goal is that Justice Sector officials will have sufficient education and training to effectively perform their official duties. Finally, Afghans will be aware of their legal rights and be willing to use the formal system or the informal system in conjunction with the formal system, to secure those rights. Projects currently being implemented in RC (E) include the U.S. Institute of Peace's Informal Justice Rule of Law pilot program; distribution of Dari/Pashtu civics guides and constitutions, providing assistance to the Afghan International Bar Association (AIBA) in identifying and registering all attorneys by June 2009, coordinating training for AIBA attorneys on the Rule of Law Toolkit and providing support to the AIBA public awareness campaign. The recently built Khowst Justice Center is now operational and they are working with Justice Sector officials to determine infrastructure priorities within RC (E).

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The seventh presentation was given by Mr. John Dempsey, U.S. Institute of Peace (USIP) Director. He began by highlighting some of the challenges facing implementation of the formal State justice system in Afghanistan: the formal system is unfamiliar to most Afghans; it lacks professional capacity and resources; it lacks physical infrastructure; it struggles with corruption and low levels of trust among Afghans; inadequate salaries; the lack of security, and opposition to modern, secular system. In contrast, the Non-State Dispute Resolution or traditional justice system is centuries old and dominates the dispute resolution landscape, often filling the vacuum in the absence of state institutions. It is marked by regional variations. Some of the benefits of non-State justice are that it is efficient and effective; familiar to parties; reconciliation-based; enforceable and legitimate. Other characteristics that distinguish it from formal justice include that it is: ad hoc and voluntary; driven by elders and influential community leaders; restorative-justice focused; consensus-based, non-adversarial; enforced through community pressure, and the community and social order are viewed as more important than individual rights. However, there are problems with traditional justice such as the exclusion of women and minorities; violations of human rights and other laws; the decisions are often not recorded; cases are handled that should be in the exclusive jurisdiction of the state; traditional justice can hinder the legitimacy of courts; power relations among the personalities in the system can skew results, and the rise of Taliban justice in traditional justice settings. Mr. Dempsey described a U.S. IP pilot project currently underway to explore linking the two systems. The goals of the pilot project are to develop concrete links that reinforce positive aspects of each system and improve access to fair justice in the country; to inform state policy and build trust between the two systems. It has been determined that there is a need for formal links between both systems because neither system is sufficient on its own. Linkage will build on the respective strengths of each system and institutionalize best practices. Ultimately it is hoped that a national policy will be developed with the Ministry of Justice taking the lead. In closing, he stated that the intent is not to supplant the traditional justice system.

The next presentation was by Michael Hartmann with the United Nations Office on Drugs and Crime. He covered Criminal Law Reform and Anti-corruption initiatives.

The following brief was by Mr. Mohammad Zarif Estanikzai, Deputy of the AIBA. Mr. Estanikzai discussed the recent establishment of the AIBA and the role ~~the~~ attorneys play as private attorneys in Afghanistan. He explained the many challenges the bar is facing as they become established and requested support from donors.

The final topic covered was gender justice with presentations by Two Gender Justice Advisors from the JSSP, Ms. Nooria Faizi and Ms. Mimi Smith, who presented an overview of the treatment of women in Afghanistan in an historical context, the rights of women under Sharia law, and a report on efforts to help the victims of domestic and familial violence. The Ministry of Interior's creation of Family Response Units (FRUs), the establishment of Referral Centers and the Ministry of Women's Affairs (MOWA) has coordinated and registered a number of shelters for victims of family violence, funded and operated by international and Afghan groups. Ms. Beth Presson, the gender justice advisor for CSSP, spoke of the female juveniles and women imprisoned for "running away," which is not a crime under National or Sharia law. The fourth speaker on the subject of Gender Justice was Dr. Siawash, an orthopedic doctor, and director of Bright Future, which handles some 300 cases of family violence a year, often resolving the cases informally, often in remote provinces with no access to the formal justice system.

Provincial Reconstruction Team Rule of Law Conference

Ms. Stephanie McPhail, Acting Chief for the UNAMA Rule of Law Unit, made closing remarks. She discussed UNAMA's role in coordinating Rule of Law efforts. She explained how information sharing played a critical role in coordination efforts and thanked HQ ISAF for hosting the conference. LTC Meyers acknowledged and thanked the PRT representatives for all their Rule of Law efforts and emphasized that ISAF was committed to facilitating information sharing and would appreciate feedback on the conference.

All presentations were videotaped and a DVD of the conference has been sent to all the Regional Command LEGADS and PRTs. A CD of the PowerPoint presentation was made and has also been sent to them. The presentations on the CD have been translated into Dari and Pashtu and shared with our Afghan colleagues.

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Civil-Military Strategic Principles and Doctrines: Creating Common Tools for Stabilization Operations

Ms. Annabelle Thibault, Legal Intern – ACT/SEE

A three-day conference was organised at the Winston House, East Sussex, England, from 22nd to 25th April 2009 on the theme "Civil-military strategic doctrine and principles: creating common tools for stabilisation operations". This conference was organised by the Wilton Park Conferences, an academically independent agency of the British Foreign and Commonwealth Office, in partnership with the United States Institute for Peace (USIP) and the U.S. Army Peacekeeping and Stability Operations Institute (PKSOI).

Approximately fifty government officials, military officers, journalists and academics from various civilian and military organisations such as NATO, the EU or the World Bank, attended the Conference. The list of speakers included, among others, Espen Barth Eide, Deputy Minister of Norway, Major General Per Arne Fjerve, Deputy Military Advisor to the UN Under-Secretary General for Peacekeeping Operations and Daniel Sewer, Vice-President of the Centre for Post-Conflict Peace and Stability Operation, USIP. The debates were conducted under Chatham House rules.

All participants, from both civilian and military organisations, took an extremely active part in the discussions which made for very interesting and thorough debates.

The main objective of the conference was to assess how establishing a shared body of civil-military strategic principles and doctrine could lead to more effective stabilisation operations.

Stabilisation operations are extremely complex and multifaceted and all participants agreed that a point of exhaustion has been reached. The international community spends a lot of money on defence and too many operations are run at the same time. Besides, the financial crisis and the lack of political appetite in the western countries are going to make it difficult to engage in other theatres of operations abroad in the future. Finally, stabilisation operations have an aftertaste of colonialism which makes one realise that state building and peacekeeping should be thought of differently.

This does not mean, however, that stabilisation operations should not be planned in the future. Despite their extremely difficult nature, it appears that alternatives to stabilisation operations, such as remaining passive, may be worse. In the globalised world we live in, the inability of a state to prevent piracy, drug, weapons, [illegal trade of ?] cultural goods or human trafficking will have repercussions on others. For this reason, the international community has a responsibility to act but needs to find better ways to do so, to "do more with less". Most discussions revolved around the example of the stabilisation operation in Afghanistan.

The challenges in stabilisation operations are numerous. Most importantly, clear strategic goals should be set out. There was a consensus among participants that state building and the establishment of state legitimacy constitute a realistic strategic vision for stabilisation operations. There are tools to measure the progress in a conflict environment. These measuring tools consist of identifying the goals to be reached and then establishing which factors would determine that the goals have been successfully reached. These tools are meant to quantify the success of an operation but it should be stressed that stabilisation operations remain highly political.

Civil-Military Strategic Principles and Doctrines: Creating Common Tools for Stabilization Operations

Participants agreed that there is a very strong need to improve coordination and coherence across stabilization operations. There should be a clear division of labour, not only between the UN, NATO and the EU, but also between the various NGOs, civilians and the military. The relationship between these entities should not necessarily be formalised but at least networked. The lack of civilian capacity and expertise needs to be addressed and the coordination with military should be enhanced. It appeared from the debates that civilians and military personnel do not have the same understanding of what a civil-military operation is. The roles of each body and the goals they are to reach should be clearly set out before an operation is launched, so as to avoid tensions and miscommunication.

Planning is an essential phase in stabilisation operations. More time and resources should be spent in the planning phase in order to anticipate what is needed, why and how. The international community needs to be more innovative and reach out to the vast reservoir of expertise available. A base of experience should be built at the technical level and all actors should be encouraged to exchange experience. Despite the economic situation, an effort should be made at the national and regional level in order to build capacities and deliver better quality on the theatre.

The theme of empowerment of local actors was recurrent during this conference. Stabilisation operations should be led jointly with local people and local organisations in order to gain legitimacy. In order to empower local people, one recommendation was that western countries should give up power themselves. More generally, non-OECD members should be encouraged to take part in the process of stabilisation. Western countries are not going to be able to launch stabilisation operations in all parts of the world, which is why the support of both Asian and African continents is needed. It is important to 'de-westernise' the way operations are led and better understand what is needed at the local level.

Concerning the civil-military strategic principles and doctrine, various points were raised. First, the USIP/PKSOI (United States Institute for Peace/US Army Peacekeeping and Stability Operations Institute) manual was presented. This manual is a guiding document for stabilisation and reconstruction process. The essential aim of the document is to capture all the points various doctrines have in common.

The main challenge identified was to set principles which must be intelligible and concise to all readers and to agree on what is understood by common doctrine, to whom it should be addressed, and how it should be taught. The word 'doctrine' itself proved to be a difficult word since it is understood differently by different people. Participants agreed that doctrine is a common set of definitions, a document encapsulating common knowledge and lessons learned. Doctrine should be addressed to the widest possible public, government officials, military personnel, NGOs, etc... Common doctrine is neither desirable nor achievable since it would be too rigid. The instrument needed would be a common lexicon.

Civil-Military Strategic Principles and Doctrines: Creating Common Tools for Stabilization Operations

Throughout and in conclusion, Brigadier-General Blanchette led discussion among the participants on the issues that had been raised during the seminar. Topics discussed included the importance of minimizing civilian casualties in the counter-insurgency effort in Afghanistan, the challenges of dealing with an insurgency that does not recognize LOAC, and the need for cultural sensitivity on the part of ISAF and USFOR-A soldiers in working with Afghan civilians. Brigadier-General Blanchette was pleased with the results of the seminar, and said, "It was an honor to be part of this conference, which focused on the critical tenet all nations must accept – that those entrusted to bear arms on behalf of their nation must be trained to use their power to protect the innocent, whenever and wherever their duty requires them to use force."

Regarding the implementation of doctrine and principles, participants agreed that joint implementation is not always the best solution because it implies necessary coordination and complementarity. Network management might be more efficient. It is important to accelerate the process of awareness and education among practitioners and policy makers but a lot of questions remain unanswered. Who should train who, where, and how? It appeared from the debates that all emerging doctrine should systematically be taught as jointly as possible and at the highest possible level.

In conclusion, participants recognised stabilisation operations are needed but that their planning and organisation should be improved. The international community has all the pieces to solve of the challenges of stability operations, it now must put the puzzle together

The transcripts of most presentations given during the conference can be found on this webpage: <http://www.wiltonpark.org.uk/themes/defence/conference.aspx>.

A summary of all discussions is provided at this site..

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Wilton Park



(Source: www.wiltonpark.org.uk)

Spotlight



Colonel Alan

Moore, Chief

Legal Adviser, HQ

ARRC



Name: Alan Moore

Rank/Service/Nationality Colonel, British Army

Job title: Chief Legal Adviser HQ ARRC

Primary legal focus of effort: Legal advice in support of ARRC planning, training and operations.

Likes: My family, fine food and restoring old country houses.

Dislikes: Prejudice, arrogance and courgettes!

When in Rheindahlen, everyone should: Enjoy the locality, but also use it as a base to travel; you can have breakfast in Germany, lunch in Holland and dinner in Belgium.

Best NATO experience: Deploying to Bosnia with IFOR in 1995, immediately after the Dayton Agreement was signed; and seeing the difference the NATO presence had made after 6 months.

My one recommendation for the NATO Legal Community: We can achieve far more collectively than individually.

Arcc.legal@bfgnet.de

Spotlight



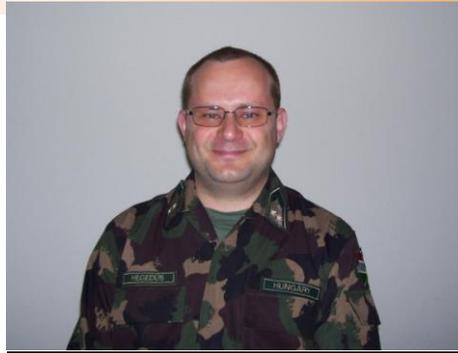
Lieutenant

Colonel Zoltán

Hegedüs,

Assistant Legal

Advisor, ACT/SEE



Name: Zoltán Hegedüs

Rank/Service/Nationality: Lieutenant Colonel, Hungarian Army

Job title: Assistant Legal Advisor, Legal Office, ACT Staff Element Europe

Primary legal focus of effort: International law, IHL, status agreements, legal training.

Likes: My family, cycling, swimming, historic castles.

Dislikes: Seafood, too much beer (right man in the right place in Belgium ? ...)

When in Mons, everyone should: First gently touch the little monkey's head in front of the City Hall then look around to see the old history of the city and the wonderful nearby places.

Best NATO experience: Strategic Airlift Capability negotiations, and running during the Make a Wish event at SHAPE.

My one recommendation for the NATO Legal Community: Keep each others' business card and stay in touch.

Zoltan.hegedus@shape.nato.int

Spotlight



Mr. Ulf Häußler

Assistant Legal

Advisor, HQ SACT



Name: Ulf Häußler

Rank/Service/Nationality: Regierungsdirektor, German Armed Forces Legal Service, Germany

Job title: Assistant Legal Advisor Operational Law, HQ SACT

Primary legal focus of effort: OpLaw contributions to doctrine development & COE diplomacy.

Likes: Cycling, jogging, reading books & playing chess.

Dislikes: Too much humidity and too many weeds in my front yard.

When in Norfolk, everyone should: Move on to Virginia Beach.

Best NATO experience: Being able to draw directly from my experience grown at the IS Legal Office in early 2006 during my KFOR deployment later in the same year, and to the benefit of the whole KFOR legal community.

My one recommendation for the NATO Legal Community: Stay proactive and grow.

Ulf.Haeussler@act.nato.int



HAIL

&

FAREWELL

Hail

NAMSA : Mrs Andrée Clemang (LUX Civ) joined in May 2009

NAMSA : Mr Sylvain Lavoie (CAN Civ) joined in May 2009

CC-Air Izmir : LT COL Robin Kimmelman (USA AF) joined in July 2009

Farewell

CC-Land Heidelberg : Colonel David Caldwell (USA A) left in July 2009

ISAF : Colonel Jody Prescott (USA A) left in July 2009

CC-Air Izmir : LT COL Patricia McHugh (USA AF) left in July 2009

GENERAL INTEREST

- Late April 2009, the International Criminal Court (ICC) launched the new version of the Legal Tools, an online library on international criminal law and justice which will empower victims and others who seek a judicial response to atrocities by providing a central vehicle to obtain information on international criminal law. The Legal Tools amount to a knowledge-transfer platform for international criminal and human rights law made freely available to the general public through the website of the ICC. It contains more than 40,000 documents, including decisions and indictments from all international or internationalised criminal tribunals, preparatory works of the ICC, case documents from the ICC, treaties, information about national legal systems and relevant decisions from national courts. For more information, please go to: <http://www.legal-tools.org/en/what-are-the-icc-legal-tools/>

- The United Nations has face-lifted and restructured its website. Please visit : <http://www.un.org/en> and <http://www.un.org/en/law/>

- Latest information on “the Rule of Law in Armed Conflicts Projects” which is an initiative of the Geneva Academy of International Humanitarian Law and Human Rights is available at <http://www.adh-geneva.ch/RULAC/>

Through its global database and analysis, the Project aims ultimately to report on every concerned State and disputed territory in the world, considering both the legal norms that apply as well as the extent to which they are respected by the relevant actors.

- Short article on ICRC involvement in a military exercise in Hungary is available at http://www.hm.gov.hu/news/hazai_hirek/civil_szakerto_a_zarogyakorlaton
- United Nations University – please visit their site at <http://www.unu.edu/> to get more information on their mission, their publications and online training possibilities.
- The latest newsletter of the International Institute of International Law can be found at http://www.iihl.org/iihl/Documents/news34-2009_ENG.pdf

GENERAL INTEREST/NATO IN THE NEWS

- The Archives Committee of NATO Headquarters will hold a Workshop on Thursday November 19 and member nations have been invited to contribute topics which they believe would be of interest to the Committee. One of the tasks of the Committee will be to revise the NATO Information Management Manual which provides general guidance on Information Management.

As a first step, nations are asked to share their national experiences, best practices and applicable standards of relevance to the NATO Archives programme. A questionnaire on archives standards and directives applied in member states is being circulated.

More information on this initiative can be found in AC/324-N(2009)005.

- For information on Allied Command Operations, please go to SACEUR's blog at <http://acositrep.com/>. Information on Afghanistan, Exercises, Anti-piracy operations in the Gulf is available.
- A brief summary of the 2009 NATO Legal Conference held in Strasbourg, France from 8 to 12 June 2009 has been published on the SHAPE website :
<http://www.nato.int/shape/news/2009/07/090717a.html>



UPCOMING EVENTS

- The 9th Budapest International Military Criminal Law Conference hosted by the Military Prosecutor general's office of Hungary together with Hungarian Society for Military Law and Law of War will be held in Budapest from 3 to 5 September 2009.

The topic of the conference will be Military Appeal and Review, focusing on how legal supervision – either military or otherwise – is carried out in criminal cases where servicemen are being prosecuted.

For more information, please contact Col Lazlo Venczl at venczl.laszlo@mku.hu

- A Workshop on the Law of Armed Conflict and Human Rights in International Peace Support Operations will be held at the NATO School from 14 to 18 September 2009. Discussion will include exploration of the role of military forces, as well as the role of the United Nations and regional organizations, in the protection and promotion of international human rights and humanitarian law in peace operations. Basic knowledge of LOAC is required.

- Next Legal Advisers Course will be held at the NATO School from 28 September to 2 October 2009.

- An Anti-Piracy Workshop will take place at the NATO School from 20 to 22 October 2009. It aims at providing a holistic overview of the topic of piracy from the historical, commercial and NATO's view. It will outline the legal framework for anti-piracy operations and especially the legal problems relating to detention, extradition and prosecution of suspected pirates. The workshop will be classified NATO Secret.

- The Second Sharia Law Seminar will be held at the NATO School from 2 to 6 November 2009. It will provide instruction to military officers, legal advisors, operational planners, political and policy advisors, and will be given by internationally pre-eminent scholars on Sharia.

For more information on these courses and workshops, please visit www.natoschool.nato.int

"Wait for that wisest of all counselors, Time"

Pericles

GENERAL INTEREST/UPCOMING EVENTS

- The International Relations Defence (IRD) and the International Courses Command (ICC) will conduct for the second time the International Humanitarian Law (IHL) Competition. The IHL Competition will take place in November 2009 and is open to all NATO, Partnership for Peace and Mediterranean Dialogue Nations as well as to countries of the Istanbul Cooperation Initiative (ICI). The Competition is aimed at middle-rank officers who are designated for or holding a command or staff function at battalion level. The application form has to be returned not later than 31 August.

For more information, please contact LTC Fredi Kugler, at the Swiss Armed Forces College – hka.ilg@vtg.admin.ch

“Everything that irritates us about others can lead us to an understanding of ourselves.”

Carl Jung

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