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## Introduction

Dear Fellow NATO Legal Professionals and Persons Interested in NATO,

Greetings from Belgium where attention is focused on events leading up to the Lisbon Summit and the many significant policy decisions that will be made there for the North Atlantic Alliance and NATO. We have just completed the 2010 NATO Legal Conference hosted by the International Institute of Humanitarian Law in beautiful San Remo, Italy, and plan to share its results in our next issue of this Gazette.

We thank our two military authors for their contribution to Issue 23. Commander Jean-Paul Pierini considers the issues relating to apprehension, arrest, detention and transfer of individuals under the European Union (EU) legal framework while 2<sup>nd</sup> Lieutenant Jackie Richter provides an overview of the *Manual on Air and Missile Warfare* recently published by the Program on Humanitarian Policy and Conflict Research at Harvard University (HPCR). Our most prolific author, Mr. Vincent Roobaert reviews the book, *International Humanitarian Law and Human Rights Law, Towards a merger in International Law*, by Roberta Arnold and Noëlle Quenivet while Mr. Zdenek Hybel considers the training of multinational NATO Centre of Excellence personnel on the territory of their host nation. We welcome Mr. David R. Stringer, a new author to the pages of the NATO Legal Gazette, and his five recommendations for a new approach to the international threat of piracy.

In the coming months we look to increase the frequency of this Gazette by providing more updates on legal developments of significance to NATO, NATO nations, and partners. To this end, readers who wish to provide their views on matters of legal interest to our broad community of readers are encouraged to send short articles (ideally four to six pages) or announcements of upcoming events to me at [sherrod.bumgardner@shape.nato.int](mailto:sherrod.bumgardner@shape.nato.int) or Mrs. Dominique Palmer De Greve at [Dominique.degreve@shape.nato.int](mailto:Dominique.degreve@shape.nato.int). Our goal with this newsletter is to provide current information on the legal topics the legal offices in NATO, nations, and international organizations address every day. Articles are welcome in both English and French. The twenty-three issues of this publication have been sustained by the support of our authors and readers, an effort we look to continue in 2011 and beyond!

Best regards,  
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# Is the Grass Always Greener on the Other Side? Apprehension, Arrest, Detention and Transfer of Suspected Pirates and Armed Robbers within the Legal Framework of the European Security and Defence Policy (ESDP)

CDR Jean-Paul Pierini\*

## 1. Introduction

The aim of this article is to outline the legal implications of apprehension, arrest (as well as "capture" and any other corresponding term)<sup>1</sup>, detention and transfer of individuals under the European Union (EU) legal framework.

A short overview of the legal framework for the repression of piracy, the European Union principles and the *European Human Rights Convention*<sup>2</sup> (ECHR) is provided; references to the *Treaty on European Union* (TEU), the *Treaty on the European Community*<sup>3</sup> (TEC) and the recently renamed *Treaty on the Functioning of the European Union* (TFEU) will be made. As the "pillars-structure" disappeared on 1<sup>st</sup> December 2009 when the Lisbon Treaty came into force, this paper also takes into account the new legal framework.

The conclusions drawn will demonstrate that with regard to ECHR-obligations States operating within the ESDP legal framework are in exactly the same position as those operating either unilaterally or within the NATO framework.

## 2. Legal Framework for the Repression of Piracy and Armed Robbery in a Nutshell

The recent recrudescence of piracy and armed robbery along the coasts of Somalia stimulated the United Nations Security Council (UNSC) to adopt a set of resolutions calling States to suppress piracy.

States shall repress piracy in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), assuming that they have adopted an appropriate domestic legislation. UNSC Resolutions cannot amend domestic law in the sense of an "extension clause", or extend the regime of jurisdictional links under domestic law with regard to acts taking place in territorial waters of a foreign sovereign State. Armed robbery is to be repressed in Somali territorial waters by the Somali Federal Transitional Government (TFG) as it would be the case on high seas.

The reference to UNCLOS prevents any attempt to identify the Law of Armed Conflict (LOAC) as the legal framework – even if a State is evaluating the extension of their legal doctrine in respect of illegal combatants and "drone-warfare" to pirates and armed robbers. Counter-piracy operations are pure law enforcement operations. The only reference to LOAC can be found in respect to operations on Somali land territory.

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\* CDR, Italian Navy. This paper has been drafted relying on the readers' widest comprehension for the "principle of non attribution"; it reflects the personal views and/or opinions of the author only and does definitely not intend to reflect the views or opinions of the *Italian MOD, the Navy or NATO*. The paper reflects the author's "non understanding" of several specific aspects related to detention. Therefore, any clarification is welcome and can be sent to the author's email address ([pierini.jeanpaul@libero.it](mailto:pierini.jeanpaul@libero.it)).

<sup>1</sup> Some States whose armed forces are under a prohibition to exercise law enforcement tasks or whose domestic legislation does not establish authority to arrest the author of a flagrant crime, avoid any reference to "arrest". Other States dealing with detention have episodically referred to it as "seizure". For purpose of this paper such labelling practices will not be further commented. They do not help much and even "privatization" of arrest or apprehension ("citizen arrest" carried out by military forces) does not discharge States from their human rights obligations.

<sup>2</sup> ECHR, Rome, 4 November 1950, 5 E.T.S., as later amended.

<sup>3</sup> TCE, Rome 25 March 1957, 298 U.N.T.S.11, as later amended.

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Although short of implementation measures under domestic law, States have mostly shown the willingness to participate in the international crusade against piracy and – with some exceptions – at the same time demonstrated the unwillingness to punish pirates within their own legal systems. National legal problems relate to counter-piracy operations, which range from the constitutional prohibition of conducting law enforcement operations by military forces to absence of legal provisions for arrest and detention as well as of respective review mechanisms.

The agreements on transfer of detainees support the participating States in their efforts to deter and disrupt piracy without getting directly involved in the punishment of pirates.

The EU has shown its willingness to support member States by concluding an agreement with Kenya<sup>4</sup> and Seychelles<sup>5</sup> under ex article 24 TEU (now article 37) for the transfer of captured pirates and armed robbers.

The recent development represented by the Kenyan decision to no longer accept pirates captured by the EU coalition due to the impact of such transfer on its judicial and prison system (perhaps also determined, as a response to the ICC Pre-trial Chamber's decision to authorize the prosecutor to investigate into the 2008 deaths), led to a new strategy consisting in the destruction of pirate equipments and the release of pirates.

### 3. Arrest, Detention and Transfer of Suspected Pirates and Human Rights Obligations

The ECHR may have an exotic flavour for American colleagues; but arguments raised in Europe were taken into consideration in U.S. District Courts<sup>6</sup> and in positions adopted by the U.S. Supreme Court<sup>7</sup>.

All EU Member States (and in the future maybe the EU) are party to the ECHR. The human rights implications for the apprehension, detention and transfer of pirates and armed robbers are the following:

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<sup>4</sup> "Exchange of Letters between the European Union and the Government of Kenya on the conditions and modalities for the transfer of persons suspected of having committed acts of piracy and detained by the European Union-led naval force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya and for their treatment after such transfer" done the 6<sup>th</sup> of March 2009.

<sup>5</sup> Exchange of Letters between the European Union and the Republic of Seychelles on the conditions and modalities for the transfer of suspected pirates and armed robbers from EUNAVFOR to the Republic of Seychelles and for their treatment after such transfer, done the 9<sup>th</sup> of November 2009. The exchange had been previously approved by the Council, the 19<sup>th</sup> of October 2009.

<sup>6</sup> Reference is made to the echoes of the Saramati decision of the ECHR in *Mohammed v. Harvey*, 436 F. Supp. 2d 115, 118 (2006) and the subsequent decision of the *Court of Appeal for the District of Columbia Circuit*, 482 F.3d 582 (2007).

<sup>7</sup> *Munaf v. Geren*, [553 U.S.](#) (2008) and *R (Al-Sadoon) v Secretary of State for Defence*

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- a) **piracy and armed robbery must be criminalized under domestic law.**
- b) **deprivation of liberty must be established by law and carried out in accordance with such law** (art. 5 § 1 ECHR)<sup>8</sup>. This means that provisions with regard to deprivation of liberty must exist under the domestic law of the apprehending, arresting or detaining State, and that those provisions must be applied correctly. States have shown a tendency to interpret the ECHR decision *Medvedyev v. France*<sup>9</sup> as supporting the argument that authority to detain may be inferred from an international agreement in force, if such agreement is sufficiently precise, like UNCLOS<sup>10</sup>.
- c) **ex officio judicial review must be granted and the individual must be brought without delay before an independent judge** (art. 5 § 3 ECHR). Even when asserting the individual is detained for extradition [like] purposes, the individual must be granted the right to (minor) challenge the detention. Taking into account the circumstance of the detention, the right to *ex officio* judicial review (or the minor right to challenge the detention) can be postponed, but it cannot be annihilated, nor deferred to the authorities of the receiving State<sup>11</sup>.
- d) **fair trial guarantees** concur with guarantees established by article 6 of the ECHR.

### 4. State “Non Accountability Paradigms” In Their Evolution

The applicability of mechanisms developed by the ECHR in order to deny the jurisdiction *ratione personae* will be assessed in the event of human rights breaches.

<sup>8</sup> On the interpretation of the term “law” see, *H.L. v. The United Kingdom*, Judgment of 2 October 2004; *Kawka v. Poland*, Judgment of 9<sup>th</sup> 2001; *Baranowsky v. Poland*, Judgment of 20 March 2000.

<sup>9</sup> *Medvedyev and others v. France*, §§ 60 and 61. The case was decided on 10 July 2008 and deferred to the Grand Chamber on 1 December 2008. The decision is accordingly not definitive.

<sup>10</sup> In the subsequent Grand Chamber decision of the 31<sup>st</sup> of March, the Court substantially confirming the Chamber judgement and stressing the “predictability requirement”, incidentally confronted with the issue of DIPLONOTES as an appropriate legal base for detention.

<sup>11</sup> Kenya’s judicial authorities appeared to be ready to take care of the early aspects of the burden of proof as to the legitimacy of detention under EUNAVFOR (or participating States) based on article 72 paragraph 4, of the Kenya Constitution. The said provision establishes a 24 hours/14 days term for the judicial review following the arrest and if the individual is not brought timely in front of a judge it lies with the prosecution to show the legitimacy of the detention. Under the joint guidelines on transfer of detainees to Kenya, the Prosecutor may request a delay of the above mentioned term in respect to individuals captured/arrested by EUNAVFOR. The new draft Constitution simply sets a 24 hours time limit.

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The “*Saramati*<sup>12</sup> paradigm”, in which the UN is being held accountable, requires a resolution by the UNSC specifically authorizing detention<sup>13</sup> or at least authorizing “any necessary means” in order to fulfil a certain task: a reporting mechanism up to the UNSC<sup>14</sup>; conditions of “effective control” by the International Organization. A neglected aspect of the issue is represented by the existence of a residual discretion and capability of States to fulfil the mandate in compliance with international Human Rights standards.

The *Saramati* decision influenced the case *Al-Jedda v. Secretary of State for Defence* rendered by the UK *House of Lords*<sup>15</sup>. The international framework for responsibility of the international organization has been defined more precisely and the *House of Lords* affirmed that there must be a limit in the compression of human rights and considered that some human rights violation cannot be held compatible with a UNSCR mandate (e.g. torture, inhumane and degrading treatment, discrimination and so on).

The *Saramati* decision must have impressed the U.S. District Courts facing the issue of *habeas relief* on application of U.S. citizens detained in Iraq by the *MNF-I*. At a later stage, the U.S. Supreme Court held in *Munaf and Geren v. Genger* that U.S. Courts have *habeas* jurisdiction under 28 U.S.C. 2241 and that *MNF-I* is under a non-interrupted, fully and exclusively responsible U.S. Chain of Command.

*Munaf* and *Geren* influenced the legal arguments used in the *Al Saadoon & Mufdhi* case<sup>16</sup>. The ECHR’s admissibility of 30 June 2009 decision was rooted in the essence of the “detention on behalf of Iraqi authorities” as a matter of cooperation with Iraqi judicial authorities. In its admissibility decision, the ECHR seems to overrule *Saramati* when, in order to affirm its jurisdiction *ratione personae*, it argued that based on the CPA Regulation 17, premises (i.e. also prison facilities) were inviolable and under the exclusive jurisdiction of the U.K.

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<sup>12</sup> ECtHR, *Behrami and Saramati v. France, Germany and Norway*, GC (Grand Chamber), 2 May 2007. In the *Saramati* case the ECHR denied the responsibility of France and Norway to have committed human rights breaches pursuant to art. 5 ECHR, because the detention of Mr. Saramati by respective KFOR forces was found accountable to the UNSC which – as was said – had the effective control over KFOR and thus was held responsible for the acts in question. However, as the UN are not Party to the ECHR, the Court did not have jurisdiction *ratione personae*.

<sup>13</sup> Prior to UNSCR 1446 on Iraq, reference to exercise of detention powers can be found in the UNSG report on UNEF (UN Doc. A/3943, § 54) and in the exchange of letters constituting an Agreement between the United Nations and the Government of Cyprus concerning the Status of the United Nations Peacekeeping Force in Cyprus of 31 March 1964. For this purpose see, B. OSWALD, *The Treatment of Detainees by Peacekeepers: Applying Principles and Standards at the Point of Detention*, in R. ARNOLD (edited by) *Law Enforcement within the Framework of Peace Support Operations*, New York, 2008, p. 197ff.

<sup>14</sup> Through: a) a unified military command and b) reports by the UNSG to the UNSC. Obviously the concrete content of the Reports did not cover the topic of “detention” and was not taken into consideration in the proceeding.

<sup>15</sup> *House of Lords, R (on the application of Al-Jedda) (FC) (Appellant) v Secretary of State for Defence (Respondent)* [2007]. Respondent suggested that Mr. Al Jedda and others were detained by the British Armed Forces in Iraq under circumstances similar to the detention of Mr. Saramati in Kosovo. Subsequently, Mr. Al Jedda brought a claim at the ECHR which has not yet (as of 31.12.2009) been examined.

<sup>16</sup> Detention in support of the Iraqi judicial authorities and handover of the detainees to Iraqi authorities.

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One could try to speculate how and to which extent the paradigm of non-accountability could work with regard to authorized counter-piracy operations as the UNSC Resolution does not require a unified command for the mission, identifies the proper legal framework in the UNCLOS and contains a "human rights" compliance clause

### 5. ATALANTA and EU Involvement in the Repression of Piracy: the Legal Architecture Developed for Detention and Transfer

Issuing the Joint Action 2008/851/CFSP of 10 November 2009, the EU Council decided to conduct the military operation ATALANTA sustained by UNSCR 1814, 1816 and 1838. The goal was to support the activities of member States deploying military assets in theatre, with a view to facilitating the availability and operational action of those assets. Article 2 lit. e) defined the mandate of the mission, established that in order to allow the exercise of jurisdiction by States willing to do so, ATALANTA shall allow to arrest, detain and transfer persons suspected of having committed acts of piracy and/or armed robbery as well as seize pirate vessels and goods under the control of pirates or armed robbers. Based on article 12 Joint Action, arrested and detained pirates and/or armed robbers may be transferred for prosecution to the authorities of "the Member State or of the third State participating in the operation, of which the vessel which took them captive flies the flag"<sup>17</sup>; if such State decides not to exercise its jurisdiction it will be transferred to the authorities of any other State willing to exercise its jurisdiction provided that human rights requirements are fulfilled (article 13). Subsequently an OPLAN for ATALANTA was developed and approved on 1 December 2008.

The first capture of suspected pirates was carried out by a German frigate whose military personnel lacked law enforcement powers and whose domestic law afforded the individual with the right to *ex officio* judicial review of the detention or apprehension within the subsequent day. Soon after the apprehension, the contributing State declared not to be willing to prosecute the apprehended individuals and that they were detained under "European laws", meaning something in between EU legal sources, ECHR's "justified delay" in granting judicial review and authority to detain granted directly by UNCLOS based (*a contrario*) on the *Medvedyev* decision.

This was perhaps the "legal turning point" of the operation: detention became alternatively a "national responsibility" – if an appropriate legal basis for a detention was given under domestic law - or an "EU driven detention", in case such legal basis was missing or the State in question "somehow" decided not to exercise its jurisdiction.

Transfer of detainees to States willing to prosecute the suspects was implemented as a EUNAVFOR competence despite some initial uncertainties in transfer procedures of detainees to Kenya (e.g. notification of the transfer provided to Kenya by the State making the capture).

Apparently, the EU direct accountability (or non accountability) does not need to go through a "*Saramati* lookalike paradigm": detention for transfer purposes and the transfer itself are alleged to be directly imputed to EUNAVFOR. Besides, ECHR compliance and the legal basis for detention as required by its article 5 § 1 ECHR are asserted to exist.

<sup>17</sup> Article 12 paragraph 1 has been reworded the "*Corrigendum to Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast*", published in the *Official Journal of the European Union* L 253/18 of 25 of September 2009.

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### 6. Joint Actions and Agreements Adopted by the European Union as a Legal Basis for Detention?

Joint Actions are the formal instruments by which EU Member States decided to establish an operational step within their (former) inter-governmental cooperation<sup>18</sup>, but not an appropriate legal basis in order to establish a mechanism for arrest, detention and transfer of detainees. With the entry into force of the Lisbon Treaty on 1<sup>st</sup> December 2009, article 24 of the Treaty on European Union, replacing the former article 11, clearly defines the ambit of the Common Foreign and Security Policy (CFSP) which “*shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise*” and state that “*the adoption of legislative acts shall be excluded*”.

The legal basis for acting in Somali territorial waters is the UNSC resolutions dealing with piracy and armed robbery off the coast of Somalia and refer primarily to UNCLOS (as implemented by Contributing States) and the consent of Somalia to the exercise of (executive) jurisdiction in Somali territorial waters. There is no higher authorization which refers to detention as an implicit “tool” for countering piracy.

The (former) EC<sup>19</sup> has accessed the UNCLOS because the EC exercised some of its “exclusive competencies” in matters incidentally covered by UNCLOS like fishery. Some new competencies of the EU under the Lisbon Treaty will benefit from the accession to UNCLOS, like neighbourhood relations, but the repression of piracy has not become an exclusive EU competence.

Member States may transfer their own competencies to the EU to empower the EU to exercise jurisdiction in respect of pirates and armed robbers through appropriate bodies. Though, such a step would require an amendment of the Treaty on European Union and/or the Treaty on the Functioning of the European Union. States are not prevented from transferring such competences by the ECHR, but the transfer implies the existence *in concreto* of guarantees at least equivalent to those established under the ECHR<sup>20</sup>.

Article 5 § 1 ECHR requires legal certainty and such certainty may be granted by law and even by States jurisprudence. A Joint Action is not an international agreement nor an appropriate legal base. However, it could be asserted that UNCLOS directly establishes a proper and sufficiently precise legal basis enabling States, to capture and detain pirates.

In my view, Article 105 of UNCLOS and the provision that the apprehending State “may” apply its laws, though not obliged to do so, represents an intrinsically contradictory element, weakening the assertion that article 105 provides itself legal certainty as to the existence of a cause for detention.

<sup>18</sup> Article 14 § 1 of the Treaty on the European Union reads as follows: “*The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.*”

<sup>19</sup> The former “supranational pillar” of the EU.

<sup>20</sup> *Bosphorus v. Ireland*, Judgement of 30 June 2005, §66. The Court considered also that the Convention does not «*prohibit Contracting Parties from transferring sovereign power to an international (including a supranational) organisation [...] even as the holder of such transferred sovereign power, that organisation is not itself held responsible under the Convention*». The Court observed further that «*absolving Contracting States completely from their Convention responsibility in the areas covered by such a transfer would be incompatible with the purpose and object of the Convention*».

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The authorization *vis-à-vis* other States to capture pirate vessels and its crew and to apply its own criminal laws needs to be supported by proper and adequate provisions under domestic law in order to grant legal certainty.

Additionally, if detention powers are to be exercised directly by the EU, the standards developed under article 5 § 1 ECHR would require the conferral of competence to be assisted by the same degree of legal certainty.

Agreements concluded by the European Union may well be internationally binding under the Treaty on the European Union even if national constitutional constraints and procedures are neglected. Though, this does not *per se* prevent a scrutiny of the Treaty on the European Union under national constitutional rules if, for example, the subject matter of an agreement is covered by a "caveat" requiring a formal ratification by law. This may happen if the agreement covers issues pertaining to the freedom of the individual.

"As long as", "*so lange*" and similar expressions are, on the other side, the paradigm adopted to justify the enduring "self restraint" of constitutional Courts in exercising their control in respect of acts of the EC, subject to the existence of a substantially equivalent framework of guarantees provided by the *European Court of Justice* (ECJ) and the (European) *Court of First Instance*; guarantees which does not extend to the ESDP.

Bearing in mind the prohibition to adopt "legislative acts" within the ESDP (new articles 24 and 31), agreements the Union concluded within the ESDP framework will have no substantive direct effect and will require implementation through legislative acts by the Union – if the subject matter competence has been conferred to it – or by the Member States, if such competence is retained as in all matters involving deprivation of liberty<sup>21</sup>.

There are also limits to the content of agreements which may be negotiated by the EU: agreements may not be used to establish or enhance powers and amend principles established under the TEU. This point is less obvious than it may appear, taking into account that the agreement with Kenya contains references to persons captured and detained by the European Naval Force (EUNAVFOR) and provisions on the transfer of the detainee upon request by EUNAVFOR (art. 2). The agreements concluded between the EU and Kenya and Seychelles does expressly not affect the participant's rights and obligations under any law, this includes domestic law ... and human rights obligations.

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<sup>21</sup> The circumstances would require an assessment on the effects of agreements negotiated prior to the 1<sup>st</sup> of December 2009.

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### 7. The Current and Future Relationship Between the ECHR and the EU in a Nutshell

Reciprocal relationships between the ECHR and the EU are indeed complicated and are still in a metamorphosis. This relationship may be defined as follows:

- a) Conflicts between obligations under the ECHR and the EU are addressed primarily by article 351 TFEU<sup>22</sup>, expressly preserving obligations member States have entered prior to 1 January 1958.
- b) Under article 6 § 2 TEU, the "Union" shall respect fundamental rights, as guaranteed by the ECHR and "*as they result from the constitutional traditions common to the Member States*" (§ 3), as general principles "*of the Union's law*".
- c) When States confer competences to the Union, until the Union itself is bound and obliged by the ECHR, such States remain liable if the competencies are conferred in the absence of guarantees equivalent to those established under the ECHR (see: *Bosphorus v. Ireland*, prefiguring EU accession to the ECHR); a requirement which necessarily takes into account the different levels of involvement of the ECJ.
- d) Since the entry into force of the Lisbon Treaty "*the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. [...]*". These rights include the "*right to security and liberty*"<sup>23</sup> and the "*right to an effective remedy*"<sup>24</sup>. The addressees of the Charter are "the institutions and bodies of the Union" and Member States, but only when implementing Union law (art. 51).
- e) With the entry into force of the Lisbon Treaty, article 6 § 2 TEU has been rephrased and now reads: "*the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties*". This accession will be possible following the entry into force of Protocol 14 ECHR<sup>25</sup>. The Protocol annexed to the Lisbon Treaty deals specifically with the structure of the "accession agreement" to the ECHR, in order to establish a competence (accountability) sharing between the EU and its member States<sup>26</sup>.

<sup>22</sup> Former article 307 of the Treaty on the European Community.

<sup>23</sup> Article 6: "Everyone has the right to liberty and security of person."

<sup>24</sup> Article 47 § 1: "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this article ..."

<sup>25</sup> Protocol no. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, done at Strasbourg the 13 of May 2004. The Protocol has entered into force after the Russian ratification the 15<sup>th</sup> of January 2010. Previously some of the provisions of Protocol no. 14 (but not those on the EU accession) had entered into force following the agreement of Madrid of 12 May 2009.

<sup>26</sup> Protocol relating to Article 6(2) of the Treaty on European Union on the Accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms.

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### 8. Conclusion

The legal basis for apprehension, arrest, detention and transfer of suspected pirates or armed robbers is primarily remains a matter of domestic laws implementing UNCLOS even under ESDP framework.

EU member States remain bound by the ECHR when participating in the anti-piracy crusade and the current EU framework does not provide for any EU direct responsibility which can justify non-accountability of contributing States under ECHR for apprehension, arrest, detention and transfer of suspect pirates and/or armed robbers.

The development represented by the entry into force of the Lisbon Treaty is only apparent. The role of the EJC is limited to situations in which the CFSP invades other EU spheres of competence within the so called "border control competence". This hampers the "effective remedies principle" (art. 47 Charter).

Even the future EU accession to the ECHR must necessarily comply with the asset and powers of the EU. Accordingly, States will remain accountable under the ECHR for those powers and competences retained by them and - in the author's view - also for all those competences conferred to the EU or exercised through the EU for which the competence to adopt effective remedies has not been transferred.

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## Training of COE Personnel on the Territory of the Host Nation

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First, let me point out that the Joint Chemical, Biological, Radiological and Nuclear Defence Centre of Excellence (JCBRN Defence COE) is the first International Military Organization (IMO) on the territory of the Czech Republic and there has not been so far a Supplementary Agreement to the Paris Protocol<sup>1</sup> covering the establishment and operation of IMO on the territory of the Czech Republic. This article is solely based on the experience at the JCBRN Defence COE and there is no intent to describe all possible aspects of establishment and operation of an IMO but rather give my point of view on the basic challenges which emerge during the operation of an IMO, especially training of COE personnel.

The JCBRN Defence COE was accredited and activated by the North Atlantic Council (NAC) as a NATO Military Body on 31 July 2007. 2007 was also the year when the first personnel members from different Sponsoring Nations (SNs) joined the JCBRN Defence COE.

During 2008, several SNs examined if there was a possibility for their personnel assigned to the JCBRN Defence COE to have military training on the territory of the Czech Republic. This training covered physical training, first aid and live shooting.

Based on our experience with establishment of a Joint Assessment Team of Combined Joint CBRN Defence Task Force (JAT CJ CBRN D TF) for NATO Response Force (NRF-13), I was aware that live shooting would be the most difficult part to solve. The reason was very simple: using arms and ammunition by other than Czech military personnel is not covered by Czech national law.

Use of arms and ammunition during live shooting can be seen from two different perspectives. The first one is the use of national arms and ammunition. This is covered by Art. VI of the NATO SOFA<sup>2</sup> where it is clearly stated that: *"Members of a force may possess and carry arms, on condition that they are authorized to do so by their orders. The authorities of the sending State shall give sympathetic consideration to request from the receiving State concerning this matter."* This solution requires two things – the first one is an order issued by the Sending State, which is missing in the case of the COE personnel and the second one – the possibility to store arms and ammunition. Under Czech law storage of weapons is a complicated issue. That is the reason why we decided to look for another option.

The second issue, in case there is no Supplementary Agreement signed, is to conclude a special agreement covering training and operation of the COE on the territory of the Host Nation. The first question is: who should sign such an agreement? Does the JCBRN Defence COE have a right to sign a legally binding agreement with the Czech Republic? To find an answer to this question I looked at Art. XIV Para 1 of the Paris Protocol: *"The whole or any part of the present Protocol or of the Agreement may be applied, by decision of the North Atlantic Council, to any international military Headquarters or organization (not included in the definitions in paragraphs b. and c. of Article I of this Protocol) which is established pursuant to the North Atlantic Treaty."*

<sup>1</sup> Protocol on the Status of International Military Headquarters Set up Pursuant to the North Atlantic Treaty, signed in Paris, 28 Aug. 1952

<sup>2</sup> Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, signed in London, 19 June 1951

## Training of COE Personnel on the Territory of the Host Nation

By decision of the NAC the JCBRN Defence COE was granted the status as an IMO pursuant to Art. XIV of the Paris Protocol (\*). The NAC in its decision did not exclude any part of the Paris Protocol. My conclusion is that if there is no exclusion, the whole Paris Protocol should apply (even the Articles dealing with Supreme Headquarters). Juridical personality is derived from Art. X of the Paris Protocol: *"Each Supreme Headquarters shall possess juridical personality; it shall have the capacity to conclude contracts and to acquire and dispose of property. The receiving State may ...."*

The conclusion from above statements is that the JCBRN Defence COE can sign an agreement with the Host Nation, the Czech Republic. A Technical Agreement (TA) between the Ministry of Defence of the Czech Republic and the JCBRN Defence COE Regarding Training and Operation of the JCBRN Defence COE Personnel on the Territory of the Czech Republic was signed on 22 February 2010 in Prague. The TA was signed on behalf of the Ministry of Defence of the Czech Republic by the Chief of General Staff of the Armed Forces of the Czech Republic and on behalf of the JCBRN Defence COE by the JCBRN Defence COE Director.

The TA itself consists of 13 Articles starting with definitions and ending with final provisions. The purpose of the TA is to establish principles of the training of the JCBRN Defence COE Personnel on the territory of the Czech Republic. The term "JCBRN Defence COE Personnel" means the JCBRN Defence COE Personnel as described in the Annex A of the JCBRN Defence COE Operational Memorandum of Understanding, signed in Norfolk on 26 October 2006.

In the TA it is clearly stated that the JCBRN Defence COE Personnel will follow the Czech safety and security regulations during the training which will be conducted in accordance with the annual training plan of the JCBRN Defence COE. The JCBRN Defence COE is asked to send the annual training plan well in advance to appropriate Czech authority. The reason for this is very simple: the JCBRN Defence COE does not have its own training facility and in this particular case fully relies on the Host Nation support. Probably the most important part of the TA is Art. 7. Article 7 defines logistic support provided by the Czech Republic. This also covers use of arms and ammunition of the Host Nation. Logistic support is provided free of charge. Other areas like medical support as well as environmental protection and firefighting are also part of the TA. The TA will remain in effect for an unlimited period of time and was signed in the English language.

To have such a TA in effect means that the JCBRN Defence Personnel can take training on the territory of the Host Nation, the Czech Republic. This can be the way for the SN to save money because if it is possible under their national regulations that the personnel appointed to the JCBRN Defence COE fulfill his military requirements without traveling back home.

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*(\*) Disclaimer : The NATO Legal Gazette contains articles written by persons working at NATO, Ministries of Defence, or selected in their individual capacity. This Gazette is not a formally agreed NATO document and does not represent the official opinions or positions of NATO or individual governments. The article reflects the personal views and/or opinions of the author only.*

## Training of COE Personnel on the Territory of the Host Nation

As I mentioned above there is a need to prepare an annual training plan of the JCBRN Defence COE. The annual training plan will consist of three parts – military training, team building and professional development. The term "military training" means but is not limited to physical training, first aid training and shooting. Team building will be used to strengthen the team spirit of the JCBRN Defence COE. And last but not least a part will be used for developing and improving CBRN skills of the JCBRN Defence COE Personnel.

The Steering Committee (SC) members will be informed about the content of the annual training plan. The SC will be asked for approval to use the JCBRN Defence COE money to cover expenses connected with the events incorporated in the annual training plan. The SC decision must be made unanimously so that each SN has the power to influence content of the annual training plan.

The JCBRN Defence COE approach can be used by those COEs that are established on the territories of Host Nations without having any agreement regarding training and operation in force. This could be one way to solve some problems concerning the establishment and operation of the COE on the territory of the Host Nation.

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## Book review: International Humanitarian Law and Human Rights Law

Mr. Vincent Roobaert, Assistant Legal Adviser NC3A<sup>1</sup>

The relationship between international humanitarian law and human rights law has been the topic of great discussions in the academic world. Where the applicability of human rights law in situations of armed conflict was initially disputed, concurrent applicability of the two regimes is generally accepted today. In *International Humanitarian Law and Human Rights Law*<sup>2</sup>, Roberta Arnold and Noëlle Quenivet collected various contributions to explore whether this relationship has not reached a new step, namely convergence between the two legal regimes.

In the introductory chapter, N. Quenivet retraces the history of the relationship between the two legal regimes: from separation to complementarity. This sets the background for the following contributions which are organized in five main themes:

- (i) concepts and theories;
- (ii) issues of applicability;
- (iii) issues of implementation;
- (iv) the protection of specific rights and persons; and
- (v) specific situations.

Due to the changing nature of conflict, M. Odello argues that the traditional framework is not adequate. Considering that the current situation leads to uncertainties in the applicability of legal rules, he reviews the attempt to develop a set of rules that would be applicable in all situations of violence. In the following chapter, Ms. Jachec-Neale looks at the applicability of human rights and humanitarian law in what has been known as the war against terror. She reviews in particular the legal issues arising out of torture and detention. Finally, the last contribution devoted to concepts examines the notion of *lex specialis*, which has been used to solve conflicts between the rules of humanitarian law and those of human rights.

The second section starts with a contribution on the applicability of human rights standards in situations of occupation. This raises particular issues as occupation may not necessarily occur in relation to an armed conflict. The next contribution looks at the geographical scope of application of human rights obligations as interpreted in relation to the main human right treaties on civil and political rights. In particular, the author examines the notion of effective territorial control which triggers the applicability of human rights obligations. The last contribution of the section is a case study about the conflict between the Democratic Republic of Congo and Uganda. The authors examine the thresholds for application of international humanitarian law and human rights law in belligerent occupation and the interplay between the two legal regimes in the occupied territories.

The third section, on implementation, reviews the rights and responsibilities of individuals as interpreted by human right bodies and courts, as well as the UN Security Council. This section starts with a contribution on the rights and duties that individuals derive from international law, viewed in a historical perspective and then continues with different analysis of enforcement mechanism available in various situations and jurisdiction (e.g., European Court of Human Rights, Inter-American Human Right System). The concluding contribution reviews the role of the Security Council in implementing international humanitarian law and human rights law.

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<sup>1</sup> This review does not represent the views of NATO, NC3A and/or the NATO nations.

<sup>2</sup> R. ARNOLD AND N. QUENIVET (eds), *International Humanitarian Law and Human Rights Law. Towards a merger in International Law*, Martinus Nijhoff Publishers, 2008 (ISBN 978 90 04 16317 1).

## Book review: International Humanitarian Law and Human Rights Law

The fourth section of the book starts with a contribution on the right to life, based on the European Court of Human rights case-law. Although the European Court of Human Rights does not as such apply the rules of international humanitarian law, the author considers that it is inspired by these rules when taking a decision. The next contributions deal with the protection entitled to specific persons, namely women, children, unaccompanied minors and refugees.

The fifth and final section deals with specific situations and serves as an anchor to contributions that could not easily be fitted in the other sections. This includes contributions on the fair trial guarantees in occupied territories, terrorism and military commissions (including developments on the notion of unlawful combatant), targeted killings and a case study on the protection of civilians in the framework of the MONUC.

In *International Humanitarian Law and Human Rights Law. Towards a merger in International Law*, Roberta Arnold and Noëlle Quenivet gathered very valuable contributions covering a broad range of relevant topics on the relation between human rights and humanitarian law. Although the theme of convergence could have been examined in more depth in some contributions, the book nevertheless fully serves its purpose, *i.e.* to make a plea for convergence - and hence simplicity - in the application of law in armed conflicts.

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# An Alternative Response to the Piracy Threat

Mr. David R. Stringer<sup>(\*)</sup>

## Introduction

The rise of modern maritime piracy around the world represents a growing threat to international peace and security on the high seas. In response to attacks off Somalia, major maritime powers have deployed warships and patrol aircraft to monitor a sea transit corridor through the Horn of Africa in an attempt to deter pirates. For its part, the shipping industry has adopted new anti-piracy procedures that seek to make it more difficult for pirates to approach and board their ships. Yet, these strategies are falling short of what is needed to address the piracy problem.

By primarily seeking to deter pirates at sea, pirates are able to establish safe havens in which to continue their operations, to expand their criminal activities on land, and to subvert the rule of law. The increasing trend of hijacking and ransoming of commercial ships represents a troublesome change in the nature of piracy itself. The problem of piracy requires innovative solutions among a range of actors including maritime states, littoral states, international organizations, and private industry.

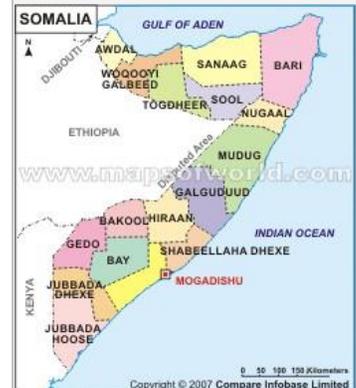
According to the International Maritime Bureau (IMB), pirate attacks have increased worldwide every year for the past four years beginning with 239 attacks in 2006, 263 in 2007, 293 in 2008, and 406 attacks in 2009.<sup>1</sup> While most of these attacks (217 attacks of the 406 in 2009) occurred in the much-publicized waters off East Africa (see figure 1), pirates are active along international shipping lanes from Southeast Asia and the South China Sea, in the Gulf of Guinea off West Africa, to the Pacific coast of Peru and along the Caribbean coasts of Colombia and Venezuela, highlighting the global character of the piracy problem.

Using Somalia as a case study, this analysis suggests that current counter-piracy is an alternative strategy that seeks to strengthen local law enforcement capacity while adopting a coordinated sea-to-shore response that directly targets pirate bases. Secondly, this strategy would seek to identify, capture, and prosecute under international law the leadership in pirate organizations rather than the low-level pirates. And thirdly, the strategy promotes the use of public-private partnership aimed at creating economic development opportunities for under-developed maritime communities.

## UN Security Council Actions

The UN Security Council has passed several resolutions defining a number of available actions to combat piracy. Key points of these resolutions are presented here to show the legal framework available to states conducting counter-piracy operations in the region. It should be noted, however, that many of the available actions have not been exercised.

United Nations Security Council Resolution (UN SCR) 1814, dated 15 May 2008, authorized peacekeeping operations with African Union Mission to Somalia (AMISOM) and requested protection of shipments of humanitarian relief supplies going to Somalia. This resolution was the first international recognition of the growing threat of piracy in the region.



(Source:www.mapsofworld.com)

<sup>(\*)</sup> Writer and recent graduate from the Fletcher School of Law and Diplomacy, Tufts University

<sup>1</sup> ICC International Maritime Bureau, p.6

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UN SCR 1816 (2 June 2008) stated while "taking into account the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (TFG) to interdict pirates or patrol and secure either the international sea lanes off the coast of Somalia or Somalia's territorial waters" urged member states operating in the region to coordinate efforts in deterring piracy. The resolution authorized those states to use "all necessary means to repress acts of piracy and armed robbery" within Somali territorial waters for a period of six months. This authorization to breach Somali sovereignty has continued to be extended in subsequent resolutions.

UN SCR 1846 (2 December 2008) "calls upon States and regional organizations to coordinate, including by sharing information through bilateral channels or the United Nations, their efforts to deter acts of piracy and armed robbery at sea off the coast of Somalia in cooperation with each other, the IMO, the international shipping community, flag States, and the TFG."

UN SCR 1846 also raised the issue of prosecution of pirates by urging States to work "with the Secretary-General and the IMO to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia" in accordance with the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention").

UN SCR 1851 (16 Dec 2008) endorsed the use of force against suspected pirate bases on land. SCR 1851 goes on to note that "the lack of capacity, domestic legislation, and clarity about how to dispose of pirates after their capture, has hindered more robust international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice." It also suggests the use of regional law enforcement personnel as "ship riders" aboard naval forces to investigate and take custody of suspected pirates.

Lastly, UN SCR 1897 (30 November 2009) reaffirmed Somali rights to its offshore natural resources including its fisheries. This resolution acknowledged the growing illegal, unregulated and unreported (IUU) fishing by foreign fleets within Somali waters. However, there has been little direct coordination to date due to the continuing land-based conflict among the various warlords. Meanwhile, at-sea enforcement continues to be complicated by collective action problems such as differing rules of engagement (ROEs) among coalition forces. Moreover, there are also competing or overriding security interests among the major maritime powers in the region, most notably among India, Iran, China, and the United States.

### **Why the current strategies are insufficient?**

While current strategies have reduced the success rate of pirate attacks in the Gulf of Aden, it has not reduced the frequency of the attacks overall as shown by the 95% increase in the number of attacks from 2008(111) to 2009 (217). And, none of the approaches tackle the danger presented by this type of piracy in other regions.

#### Cat and mouse game

While naval task forces raise the risk/reward ratio of pirates where they are present, the area of operations in the Gulf of Aden is over a million square miles of ocean. The larger area of the Red Sea and Indian Ocean represents an area of operations of over 2.2 million miles. The current presence of roughly forty warships is simply not enough to protect the 30,000+ ships that transit the area each year. The current situation has become a 'cat-and-mouse' game where the pirates can engage prey beyond the reach of the task forces.

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At sea, pirates will always have the advantage of being able to adapt their tactics in response to actions by naval forces operating in the area. As an example, while international naval forces were patrolling the Gulf of Aden, Somali pirates hijacked a supertanker, the *M/V Sirius Star*, 500 nautical miles off the coast of Kenya in the middle of the Indian Ocean. The supertanker was carrying \$100 million in crude oil and was sailed back to the port city of Ely where the ship and its crew of 25 were held for an estimated ransom of \$3M<sup>2</sup>.

### No land component

Most experts agree that piracy is "as much a land-based activity as a maritime activity"<sup>3</sup>. Yet, there has been little direct action to combat piracy from the sea to the shore despite the various UN resolutions authorizing such member state interventions. Admittedly, there are several obstacles to engaging pirates on land. Firstly, there is limited capacity for either AMISOM forces or regional law enforcement to investigate, arrest, prosecute, or imprison suspected pirates in Somalia. This lack of capacity is further complicated by reluctance on the part of AU forces in AMISOM to engage too actively in Somali domestic politics<sup>4</sup>. Secondly, military action against pirates in coastal villages would likely result in collateral damage and casualties among civilians leading to calls to resist the foreign intervention leading to further destabilization. There is also a danger of reprisals against captives by the pirates. Lastly, there is a justified reluctance of major maritime powers to become directly engaged with Somali population. In light of the 1993 US withdrawal from Somalia following the infamous "Blackhawk Down" incident as well as the USS Cole bombing across the straits in Yemen, it is not surprising that the major powers prefer to remain on the high seas.

### Paying Ransoms

Piracy is crime based on economics. Pirates attack commercial ships because it pays: an estimated \$18 – 30 million in ransoms was paid in 2008<sup>5</sup>. By continuing to pay ransoms, the shipping industry continues to incentivize these criminal entrepreneurs and provide funding for the pirates to expand their operations and pay-off corrupt officials. At the same time, ransoms are used locally by the various clan warlords to arm their militias to continue to subvert the rule of law thereby making long-term peace more difficult.

It has been suggested from several quarters that the shipping industry should stop paying ransoms even to the point of a proposal for a UN ban against ransom payments. To make this option viable, national governments would have to be more willing to conduct rescue operations to free hostages. It would be necessary to track captured ships and deploy special counter-piracy teams to attempt to retake captured ships. Obviously, there is a real possibility that lives of hostages and rescuers will be lost in raids until the pirates decide the risks have become too high. Without ransoms, pirates could choose to continue to hijack ships in order to sell off the cargos in remote ports or turn the ships into phantom ships<sup>6</sup> as pirates in Southeast Asia have done in previous years.

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<sup>2</sup> Hasni 2008

<sup>3</sup> Murphy, p130.

<sup>4</sup> Williams 2009

<sup>5</sup> Middleton 2008

<sup>6</sup> Middleton 2008, p.35

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### Prosecution of pirates

Another shortcoming with the current strategies is the lack of a clear mechanism for prosecuting suspected pirates or, more importantly, their financiers. According to the UN Convention of the Law of the Sea (UNCLOS), all states have jurisdiction to prosecute suspected pirates. The United Nations, in accordance with customary law, has encouraged littoral states to accept suspected pirates and prosecute them under their laws. The United States, European Union and United Kingdom have signed bilateral agreements with Kenya to prosecute suspected pirates captured by their naval forces. The Kenyan government has expressed concerns about its capacity to handle the expense and volume of prosecutions<sup>7</sup>.

Other regional states including Somalia simply lack the judicial capacity to investigate, prosecute and imprison pirates. In fact, some states do not have local laws in place that define the act of piracy as a crime<sup>8</sup>.

### Shortcomings

The final shortcoming of current strategies is that they do not address the legitimate concerns of Somali people in coastal villages. With the collapse of the Somali government, Illegal, Unreported and Unregulated (IUU) fishing fleets from Europe and Asia have been plundering the territorial waters off the coast of Somalia taking an estimated \$300 million of tuna, shrimp, and lobster from Somali waters annually<sup>9</sup>. It is in response to this threat that many Somali fisherman began to take matters into their own hands to defend their local fisheries. These early "pirate attacks" were aimed at stopping these foreign fishing vessels. Along with promoting stability in Somalia, strategies to address these concerns would go far to cajole Somali fishermen to abandon piracy and potentially remove one tier of the pirate organizational structure.

### Recommendations

While Somalia may represent a current "perfect storm" of conditions for modern piracy, Nigeria, Yemen, Bangladesh and other similar nations are likely candidates to be the next hotspot where pirates can prey on international shipping lanes. Weak or failing littoral states will continue to provide spaces in which pirates or other criminal entrepreneurs can operate. This study offers the following recommendations to adjust the current strategies to more effectively counter the current piracy threat and provide a basis for longer term mechanisms to control piracy.

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<sup>7</sup> Boot July / August 2009. p.106

<sup>8</sup> Middleton, Pirates and How to Deal with Them 2009,p.8

<sup>9</sup> Alunan III 2009

## An Alternative Response to the Piracy Threat

### Strengthen Local Capacity

The most immediate action the international community can do in the case of Somalia is to provide additional resources so that a lasting solution to the ongoing political conflict is found. The United Nations and AMISOM are working closely with the TFG to address the complex political and humanitarian crises, but more aid in the form of manpower and technology is necessary. There remains an urgent need to develop regional capacity to enforce the rule of law against pirates as well as the illegal fishing fleets equally. In the near term, law enforcement needs to be supplemented by African Union forces on land and air/naval elements from UN-authorized naval task forces in a coordinated land and sea response. There has been discussion of subcontracting some counter-piracy operations to private military companies to act as 'pirate hunters' on behalf of the Somali government. But, this solution seems unlikely in the near term due to questions about the applicability of the current legal framework, difficulties in exercising control, and monitoring of these contractors. Whichever method of enforcement arises, unified international action against the illegal fishing fleets may help create legitimacy for international actions among local populations in coastal villages.

### Adopt New Tactics

As seen over the course of the 2009, pirates have adjusted their tactics in response to the various naval task forces in the Gulf of Aden and have move further out into the Indian Ocean. Consequently, there have been calls to send additional warships to the region. But, this is ultimately a losing proposition as there would never be enough ships to effectively police the entire area. Rather, the current naval forces should be redeployed under authorization of UN SCR 1851 to blockade the coastal villages where pirates are known to operate and hold their captured prizes.

Admittedly, it may be necessary to modify the make-up of the naval task force. Currently deployed frigates and destroyers are only capable of limited operations in littoral regions due to force protection concerns. Therefore, it may be necessary to supplement the current force with smaller cutters for interdiction and pursuit operations in the more constrained coastal waters. Such action is not without precedence, a US Coast Guard cutter was deployed to North Africa to monitor and combat illegal fishing operations<sup>10</sup> in 2009. These cutters are equipped with heavy weapons and small boats designed for use close to shore and their crews are specifically trained to conduct interdiction operations.

Naval presence close to these coastal villages would be a strong visual deterrent to local pirates and supplement whatever local coast guard capacity currently exists. Closer to shore, the air and sea elements will be able to gather valuable intelligence by monitoring maritime traffic to identify and track suspected pirate vessels. Lastly, if a ship is hijacked, the task force would be in a strong position to intercept and conduct rescue operations before the pirates reach the safety of their ports.

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<sup>10</sup> McCluney 2009

## An Alternative Response to the Piracy Threat

Concurrent with the naval presence close to shore, a multinational land element, most likely an extension of the current AMISOM mission, could supplement national or regional law enforcement personnel to investigate the pirate networks, round up suspected pirates, or even rescue hostages held in the ports.

### Go after the Bosses and Financiers

The international community of intelligence and law enforcement agencies has done much to follow the funding flows for suspected terrorist organizations and their leaders as well as other criminal organizations like drug traffickers. These same mechanisms need to be applied to pirate organizations in order to identify, capture, and prosecute the pirate leaders and financiers. As long as these criminal entrepreneurs are able to avoid punishment for their crimes, they will always be able to find labor pools from which to recruit potential pirates.

### Establish International Mechanisms for Prosecuting Pirates

Using advanced criminal investigation tools will be wasted if a clear mechanism for prosecuting the pirate leadership is not found. As discussed, the United Nations has encouraged regional states to prosecute suspected pirates in their courts. There are significant challenges to this in practice due to weak levels of judicial capacity and the absence of local laws against piracy as well as the complexity of gathering evidence from crews, military commanders, and ship owners of various nationalities.

As an alternative, it is recommended that an international court be authorized to investigate and prosecute acts of piracy on the high seas. Two mechanisms exist through which this could be accomplished: the International Criminal Court (ICC) or ad hoc tribunals sanctioned by the Security Council<sup>11</sup>.

The ICC is the standing international court that deals with crimes committed by individuals, but its jurisdiction is limited to four areas: war crimes, crimes against humanity, genocide and ethnic cleansing. It would be very difficult to amend the ICC's mandate to address piracy without opening a grand debate over other transnational crimes such as terrorism or trafficking. However, it might be worth further studying the idea to determine if this is an appropriate path in the long run.

For the present situation, the Security Council should create an ad hoc tribunal similar to previous tribunals it created for the former Yugoslavia and Rwanda. An ad hoc tribunal consisting of judges from African Union nations would alleviate the shortage of judicial capacity. Such an independent court would be outside the corrupt influence of some leaders who are patrons of piracy in Somalia. An internationally-mandated tribunal would be authorized to prosecute pirate leaders and gather evidence regardless of the nationalities of the parties involved.

### Economic development through public-private partnership

Private industry and governments should seek to establish public-private partnerships aimed at economic development opportunities for under-developed maritime communities. Projects could range from training and equipping local or regional coast guards, maintaining navigation aids, improving port facilities, or modernizing fishing practices. These projects would be targeted to provide alternative livelihoods choices for the under-employed labor force thus breaking the triad of fishermen, technicians, and militiamen.

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<sup>11</sup> Johnstone 2010

## An Alternative Response to the Piracy Threat

Given the estimated \$300M per year in illegal fishing, there is certainly a potential return on investment for private firms willing to rebuild Somalia's fishing industry. "International shipping companies could play a role in supporting the development of impoverished regions they transit, as it would be in their interest to appear more as a friendly face with a helping hand, and less as just a rich passer-by."<sup>12</sup> As the International Maritime Organization (IMO) works with both the shipping and fishing industry on international maritime issues, it may be in the best position to coordinate discussions on these public-private partnerships.

### **Conclusion**

Modern maritime piracy presents a real and growing threat to international peace and security that requires more direct action by multiple actors to defeat. Littoral states need to increase their capacity to enforce the rule of law along their coastlines and address issues of political and economic development to assist disenfranchised populations. Maritime states need to adopt new strategies for protecting the flow of trade on the high seas through increased coordination and cooperation with littoral states. And, the international community at-large needs to act sooner in assisting weak or failing states, to supplement their law enforcement capacity, and to create judicial mechanisms for the prosecution of transnational crimes like piracy.

In the case of Somalia, the current strategies taken by these actors have fallen short of what is needed. The cost/benefit analysis for the pirate leaders must be adjusted so their actions have increasing risk with declining rewards. Pirates must be engaged from the high seas to the beaches where they plan their operations and spend their plunder. The pirate leaders and financiers must be identified and brought to justice. Alternatives to paying ransoms must be explored despite the potential risks to hostages. And, the natural resources of Somalia must be protected from illegal fishing fleets so that coastal villages have economic opportunities to rebuild and flourish with investments from private industry.

This analysis suggests there are clear alternatives available to address the piracy issue more effectively, but these solutions require a deeper appreciation of piracy as a global security threat. Only then, will the political determination be created within the international community to commit resources and take actions necessary to implement these policy recommendations. It is hoped that it will not take a major maritime catastrophe to raise the desire to take action sooner than later.

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<sup>12</sup> Young 2007, p.117

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# The HPCR Manual on International Law Applicable to Air and Missile Warfare

2<sup>nd</sup> LT Jacqueline Richter, Intern, ACT/SEE

## I. Introduction

In January 2003 at a high-level expert meeting on current challenges to international humanitarian law organized by the *Program on Humanitarian Policy and Conflict Research* (HPCR) at Harvard University and the Swiss Federal Department of Foreign Affairs experts examined how to address potential gaps in the present law of armed conflict. This expert group identified the topic of air and missile warfare as a high-priority area for a restatement of existing international law. A group of experts of about 30 international scholars and experts with both military and civilian backgrounds was formed and met for the first time in January 2004 at Harvard University where they developed their agenda. Over the following years the group of experts met several times, in order to revise their research papers and discuss legal issues. In March 2006 at a meeting in Brussels, the group of experts drew up a first version of the *HPCR Manual*, which was finally adopted in Bern on 15 May 2009. The completed work may be downloaded at <http://www.ihresearch.org/amw/aboutmanual>.

## II. Summary on the Commentary of the HPCR Manual on International Law Applicable to Air and Missile Warfare

The *HPCR Manual* itself is a slender volume of 56 pages containing 175 rules that are divided into 24 sections of different norms. Some sections are divided into sub-sections of General Rules, which can be applied in any armed conflict, and specific rules only applicable to air and missile warfare. Most of the guidelines exposed in the *HPCR Manual* are derived from the Geneva Conventions, the Amended Protocols, and other international agreements, for instance, the UN Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, the Hague Rules of Air Warfare (HRAW) and the Commentary on the HRAW as well as the *Commentary on the San Remo Manual on International Law Applicable to Armed Conflicts at Sea*. However, in order to understand the purpose of this manual it is important to not only read the rules themselves but also the accompanying commentary of about 320 pages which provides more details and a deeper insight on the different issues of air and missile warfare.

In section "B" (rules 2–4) the basics of the General Framework are laid out. The objective of the manual is to produce a restatement of existing law applicable to air or missile operations in international armed conflict. In cases not covered by this manual, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principle of humanity and from the dictates of public conscience.<sup>1</sup>

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<sup>1</sup> See Rule 2(c), *Manual on International Law Applicable to Air and Missile Warfare*.

## The HCPR Manual on International Law Applicable to Air and Missile Warfare

The following section (rules 5-9) sets out which weapons used in armed conflicts are allowed or prohibited in air and missile warfare. In general, weapons used in air and missile warfare must comply with the basic principle of distinction between civilians and combatants and between civilian objects and military objectives. Therefore, it is prohibited to conduct air or missile combat operations which employ weapons that cannot be directed at a specific lawful target or the effects of which cannot be limited as required by the law of international armed conflict. The *HPRC Manual* lists specific weapons prohibited in air or missile operations.

Section "D" (rules 10-21) deals with general rules and specifics of air and missile operations in terms of attacks. In this context it is important to bear in mind that attacks must be confined to lawful targets such as combatants, military objectives and civilians directly participating in hostilities and that attacks directed against civilians or civilian objects are prohibited. The details to these rules can be found in Amended Protocol I to the Geneva Conventions.

As with section "D," section "E" (rules 22-27) sets out general rules and specifics of air and missile warfare concerning military objectives. In general, in order to qualify as a military objective the following criteria must apply. First, the "nature" of an object symbolizes its fundamental character. Therefore, the object in question must have an inherent characteristic or attribute which contributes to military action. Second, the application of the "location" criterion can result in specific areas of land, for instance a mountain pass, becoming military objectives. Third, the "purpose" of an object is concerned with the intended future use of an object. It is important to distinguish "purpose" from "use," as "use" refers to the present function of an object, whereas "purpose" concentrates on intended future use. Concerning the specifics of air and missile operations, aircraft may be the object of an attack only if they are military objectives. The following activities may render any enemy aircraft a military objective: engaging in hostile actions in support of the enemy, facilitating the military actions of the enemy's armed forces, being incorporated into or assisting the enemy's intelligence gathering system, refusing to comply with the order of military authorities and otherwise making an effective contribution to military action.

Section "F" (rules 28-29) - *Direct Participation in Hostilities* summarizes the basic principles of the ICRC Interpretive Guidance "Direct Participation in Hostilities as a Specific Act."

Section "G" (rules 30-41) is divided into general rules, specifics of air and missile operations and specifics of attacks directed at aircraft in the air concerning precautions in attacks. This chapter deals with active precautions, which are those precautions that have to be taken by an attacking belligerent party to protect civilians and civilian objects. It is of the utmost importance to avert any kind of danger from the civilian population, civilians and civilian objects and that only lawful target be attacked. This is to be noted especially in air and missile operations. Furthermore, there are some guidelines to be followed in attacks directed at aircraft in the air. First of all, before an aircraft is attacked in the air it has to be verified that it constitutes a military objective. Factors relevant to verification may include visual identification, responses to oral warnings over radio, infra-red/radar/electronic signature as well as identification modes and codes, the number and formation of aircraft, altitude, speed, track, profile and other flight characteristics and pre-flight and in-flight air traffic control information regarding possible flights.

## The HCPR Manual on International Law Applicable to Air and Missile Warfare

Under Section "H" (rules 42-46) the precautions which have to be taken by a belligerent party subject to attack have been summed up. A Belligerent Party subject to attack has to avoid locating military objectives within or near densely populated areas, hospitals, cultural property, etc. and should remove the civilian population, individual civilians and other protected persons from the vicinity of military objectives. Section "I" (rules 47-57) which is divided into subsections of general rules, enemy civilian aircraft, neutral civilian aircraft and safety in flight summarizes the issues of protection of civilian aircraft. In general, it is prohibited to attack any civilian aircraft, whether enemy or neutral, as they are civilian objects. However, they can be the object of an attack if they constitute military objectives. Thus enemy civilian aircraft is liable to be attacked if engaged in any activities which render them a military objective. In order to guarantee their safety whenever in the vicinity of hostilities, civilian aircraft must file with the relevant air traffic control service required flight plans. When possible, a Notice to Airmen ought to be issued by belligerent parties, providing information on military operation dangerous to civilian or other protected aircraft.

Rules 58 to 70, under section "J," give more detailed information about the particular protection of civilian airliners, aircraft granted safe conduct and the provisions common to civilian airliners and aircraft granted safe conduct. Section "K" (rules 71-74) focuses on the specific protection of medical and religious personnel, medical units and transports. Section "L" (rules 75-87) deals with specific protection of medical aircraft. Both sections are complementary. While Section "K" addresses the specific protection granted to medical units and transports, Section "L" concerns the specific protection afforded to medical aircraft, singled out due to their particular relevance and importance in the context of air and missile warfare. Medical and religious personnel must not be the objective of an attack.

To distinguish them from combatants they ought to wear a distinctive emblem provided by the law of international armed conflict, i.e. the Red Cross, Red Crescent or Red Crystal. This rule equivalently applies to medical aircraft which have to be marked with this distinctive emblem and their national colors, on its lower, upper and lateral surfaces. The medical aircraft is not allowed to engage in activities inconsistent with its medical status, otherwise it may be seized. However, a medical aircraft may be equipped with deflective means of defense, such as flares, and carry individual weapons to protect the aircraft, the medical personnel and the wounded on board.

Under section "M" (rules 88-89) one can find the guidelines concerning the specific protection of the natural environment. The two principal treaties relevant to this Section are Amended Protocol I and the ENMOD Convention.

Section "N" (rules 90-99) complements Sections "K", "L" and "M" as it addresses the specific protection of other persons and objects, such as civil defense, cultural property, objects indispensable to the survival of the civilian population, and UN personnel, as well as protection by special agreement. It is to be noted that specific protection must be provided to civil defense organizations and their personnel, whether civilian or military. Specific protection must also be granted to buildings and material used for civil defense purposes. In terms of cultural property, belligerent parties must refrain from any use of cultural property and its immediate surroundings, for purposes which are likely to expose it to destruction or damage. Cultural property may only be used for military purposes in cases where military necessity imperatively so requires. In this context, any attacks against cultural property are forbidden.

## The HCPR Manual on International Law Applicable to Air and Missile Warfare

Regarding objects indispensable to the survival of the civilian population, starvation as a method of warfare is prohibited. Furthermore, it is illegal to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying the civilian population their use.

With regard to UN personnel, attacks against them or their material, installations, units and vehicles are prohibited.

The rules set out under section "O" deal with issues of humanitarian aid. These rules are derived from the Geneva Convention IV and the Amended Protocol I and indicate that if the civilian population of any territory under the control of a belligerent party is not sufficiently provided with essential supplies to its survival, humanitarian relief actions should be undertaken either by States or impartial humanitarian organizations such as the ICRC. Concerning the specifics of air and missile operations belligerent parties conducting such operations ought to suspend these attacks in order to permit the distribution of humanitarian assistance. Technical arrangements such as the establishment of air corridors or air routes, organization of air drops, agreement on flight details and the search of relief supplies shall be conducted.

Section "P" (rules 105-110) sets out the legal framework of two zones that have become part of the State practice: "exclusion zones" and "no-fly zones". For the purpose of this manual, an "exclusion zone" is defined as a three dimensional space beyond the territorial sovereignty of any State in which a belligerent party claims to be relieved from certain provisions of the law of international armed conflict, or where the belligerent party declares to be entitled to restrict the freedom of aviation of other States. A no-fly zone is a three dimensional airspace by which the belligerent party restricts or prohibits aviation in its own or in enemy national territory. In general, it is important to know that a belligerent party is not absolved of its obligations under the law of international armed conflict by establishing any of these kind of zones. If a belligerent party establishes an "exclusion zone" in international airspace, the same rules of the law of international armed conflict will apply inside as well as outside this zone. The extent, location and duration of the "exclusion zone" and the measures imposed must not exceed military necessity, as well as the restrictions entailed, must be appropriately notified to all concerned. The same rules apply to no-fly zones, but subject to the rules set out in Sections "D" and "G" of this manual, aircraft entering a no-fly zone without specific permission is liable to be attacked.

In Section "Q" (rules 111-117) the basic guidelines of deception, ruses of war and perfidy are exposed. Generally it is prohibited to kill or injure an adversary by resort to perfidy, for instance, feigning of civilian, neutral or other protected status. Moreover, the following acts are strictly prohibited at all times: improper use of the distinctive emblem of the Red Cross/Crescent/Crystal or other protective emblems, improper use of the flag of truce, improper use by a belligerent party of the flags or military emblems, insignia or uniforms of the enemy or neutrals, or use by a belligerent party of the distinctive emblem of the UN. In air or missile combat operations the following acts can be examples of perfidy: the feigning of the status of a protected medical aircraft, the feigning of the status of a civilian aircraft or neutral aircraft, the feigning of another protected status or the feigning of surrender. It is prohibited at all times for aircraft to misuse distress codes, signals or frequencies and use any aircraft other than military aircraft as a means of attack. Mock operations, disinformation, false military codes, electronic optical or acoustic means to deceive the enemy, the use of decoys and dummy construction for aircraft and hangars as well as the use of camouflage are ruses of war and therefore lawful means of war.

## The HCPR Manual on International Law Applicable to Air and Missile Warfare

The rules set forth under Section "R" (rules 118-124) deal with the topic of espionage. Espionage consists of activities by spies. A spy is defined as a person who acts clandestinely or on false pretences in order to gather information of military value in territory controlled by the enemy, with the intention of divulging this information to the opposing party. Espionage as such is not illicit under the law of international armed conflict. Military aircraft on missions to gather, intercept or otherwise gain information are not to be regarded as carrying out acts of espionage.

Concerning the issues of surrender (Section "S," rules 125-131), enemy personnel may offer to surrender themselves to a belligerent party with the consequence that they lose the status of combatants and automatically become *hors de combat*. Aircrews of military aircraft wishing to surrender ought to communicate their intention on the distress frequency. Subject to Rule 87, surrendering combatants are entitled to prisoner of war status.

Concerning parachutists from an aircraft in distress (Section "T," rules 132-133) it is to be noted that no person descending by parachute from an aircraft in distress may be attacked during his descent. When a person who descended by parachute from an aircraft lands in territory controlled by the enemy this person is entitled to be given an opportunity to surrender in advance of being attacked, unless the person engages in hostilities.

Section "U" (rules 134-146) recognizes the right of a belligerent party to interfere with enemy aircraft as well as with neutral civilian aircraft, if they engage in activities mentioned under this section. Enemy aircraft and goods on board such aircraft may be captured as prize on the ground or be intercepted and ordered to proceed to an airfield that is safe for the type of aircraft involved. Captured enemy civilian aircraft and goods on board may be destroyed when military circumstances prevent taking the aircraft for prize adjudication. As for neutral civilian aircraft, belligerent parties are authorized to intercept these aircraft outside neutral airspace.

Neutral civilian aircraft are subject to capture as prize if one of the following conditions are fulfilled: they are carrying contraband, they are on a flight undertaken to transport members of the enemy's armed forces, they are operating directly under enemy control, or orders, they present irregular or deceptive documents, lack necessary documents or destroy, deface or hide them, they are violating regulations established by a belligerent party within the area of military operations, or they are engaged in breach of an aerial blockade. In all circumstances of capture of a neutral or enemy civilian aircraft, the safety of passengers and crew members has to be guaranteed.

Section "V" (rules 147-159) sets out the basic guidelines in the context of an aerial blockade. An aerial blockade is a belligerent operation to prevent aircraft from entering or exiting specified airfields or coastal areas belonging to, occupied by, or under the control of the enemy. The blockade has to be declared and must specify the commencement, duration, location and extent of it as well as the period in which neutral enemy may leave the blockaded area. Moreover, it must not bar access to the airspace of neutrals. For an aerial blockade to be considered effective it is required that civilian aircraft believed on reasonable grounds to be breaching an aerial blockade be forced to land, inspected, captured or diverted. It is strictly prohibited to establish or maintain an aerial blockade if its purpose is to starve the civilian population or to deny that population other objects essential for its survival.

## The HCPR Manual on International Law Applicable to Air and Missile Warfare

Section "W" (rules 160-164) deals with the issues on combined operations. A combined operation is defined as an operation in which two or more States participate on the same side of an international armed conflict, either as members of a permanent alliance, such as NATO, or an *ad hoc* coalition. This section exclusively applies to international armed conflict and focuses on how legal rights and obligations of a State are affected by the activities of the armed forces of its co-belligerent. The main purpose of this section is to identify the applicable law in combined operations addressing the problems that arise when different legal obligations exist among the partners in a combined operation.

The last Section of the *HPCR Manual*, Section "X" (rules 165-175), sets forth the rules in terms of neutrality. It is important to keep in mind that where the Security Council takes binding preventive or enforcement measures under Chapter VII of UN Charter, no State may rely upon the law of neutrality to justify conduct which would be incompatible with its obligations under the UN Charter. In neutral territory it is prohibited to carry out any hostile acts, establish bases of operations or use such territory as sanctuary. Additionally neutral territory must not be used by a belligerent party for the movement of troops or supplies. A neutral must not allow any of this kind of actions and is entitled to use all means to prevent or terminate the violation of neutrality. Belligerent parties must not attack or capture persons or objects located in neutral airspace, use neutral territory or airspace as a base of operations against enemy targets, conduct interception, diversion or capture of vessels or aircraft in neutral territory or perform any other activity involving the use of military force or contributing to the war-fighting effort.

### III. Conclusion

The goal of the experts group of the *Program on Humanitarian Policy and Conflict Research* is to provide in this manual the most up-to-date restatement of existing law applicable to air and missile warfare. The experts group's intention was to contribute to the practical understanding of this important international legal framework. As a young Air Force Officer reading the *HPCR Manual on International Law Applicable to Air and Missile Warfare* and its commentary, I found the manual quite helpful as it provides a very detailed overview of the legal framework as such. In this context, it is to be noted that it is not the rules themselves which contribute to a deeper understanding of these legal issues, but - as pointed out before - the longer commentary that offers details and explanations concerning the application of the rules that are very helpful. However, the question must be asked, whether it is necessary for this commentary on air and missile warfare to repeat all of the basic guidelines and general rules that already can be found in many documents, training handbooks and texts on international law.

Therefore, for military education and training purposes I would highly appreciate a manual with a commentary only focusing on the specifics of air and missile operations. Nevertheless, although the *HPCR Manual* and its commentary are perhaps more general than their title suggests and do not have binding force, I am convinced that it will serve as a valuable resource for military personnel on training courses and in combat operations.

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## Spotlight



**Dr. iur. Björn**

**Schubert, Legal**

**Adviser**

**NATO School**



Name: Dr. iur. Björn Schubert

Rank/Service/Nationality: Oberregierungsrat (OF-4) /DEU-CIV/German

Job title: Legal Advisor NATO School, Oberammergau

Primary legal focus of effort: Operational Law, NATO School Issues

Likes: Sports, Literature, Music

Dislikes: Bureaucratic barriers

When in Oberammergau, everyone should: enjoy the Alps, visit the Passion Play

Best NATO experience: Meeting people from all over the world, Nato School's uniqueness

My one recommendation for the NATO Legal Community: Quidquid agis prudenter agas et respice finem.

[schubert.bjoern@natoschool.nato.int](mailto:schubert.bjoern@natoschool.nato.int)



**HAIL**

**&**

**FAREWELL**

## Hail

**SHAPE** : CPT Francois Tremenbert (FRA N) joined in August 2010.

**SHAPE** : Second Maître Jessye Leforestier (FRA N) joined in August 2010.

**SHAPE** : LtCdr Marc Dakers (GBR N) joined in October 2010.

**HQ MC Northwood**: LtCdr David Goddard (GBR N) joined in August 2010.

**JFC Naples** : Col Anne Ehram-Holland(USA A) joined in August 2010.

**JFC Naples** : WG CDR Mark Phelps (GBR N) joined in August 2010.

**JFC Brunssum** : WG CDR Victoria McKillop-Duffy (GBR N) joined in August 2010.

**JFC Lisbon** : Col Philippe Trouve (FRA A) joined in August 2010

**JWC** : Maj Eric Aguera (FRA A) joined in August 2010

**JWC** : Col Brian Brady (USA A) joined in August 2010

## Farewell

**SHAPE** : LTCol Mike Cole left in July 2010.

**JFC Brunssum** : WG CDR Mark Phelps (GBR N) left in August 2010.

**HQ MC Northwood**: LtCdr Rob Hunt (GBR N) left in August 2010.

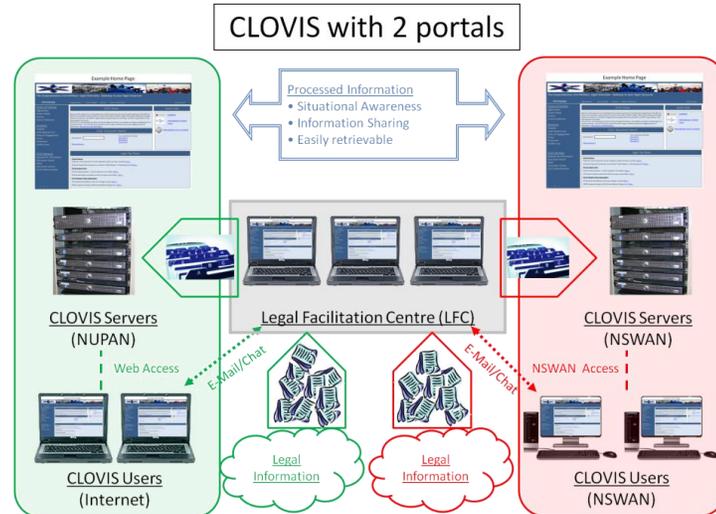
**JWC** : Col Kevin Luster (USA A) left in July 2010.

**JFC Naples**: Col Richard Gross (USA A) left in August 2010.

## GENERAL INTEREST/NATO IN THE NEWS

### CLOVIS (Comprehensive Legal Overview Virtual Information System)

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



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

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

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

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

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

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

## GENERAL INTEREST/NATO IN THE NEWS

- A commentary about the declaration of statehood by Kosovo can be found at the following link:

<http://intlwgrrls.blogspot.com/2010/08/leviathan-below-kosovo.html>

- A good summary of State opinions before and after the ICJ opinion on Kosovo is available at:

[http://en.wikipedia.org/wiki/International\\_Court\\_of\\_Justice\\_advisory\\_opinion\\_on\\_Kosovo's\\_declaration\\_of\\_independence](http://en.wikipedia.org/wiki/International_Court_of_Justice_advisory_opinion_on_Kosovo's_declaration_of_independence)

- Articles on Gender issues, armed conflicts, humanitarian law can be downloaded from the International Review of the Red Cross:

[http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section\\_review\\_2010\\_877?OpenDocument](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section_review_2010_877?OpenDocument)

- The optional Protocol to the Convention on the Safety of United Nations and Associated Personnel that had been signed in 2005 entered into force on 19 August 2010. More information can be found at:

<http://www.haguejusticeportal.net/eCache/DEF/11/969.TGFuZz1FTg.html>

- Homeland Security Digital Library (HSDL) opened many US federal government documents to the public:

<https://www.hsdl.org/>

- German military drops case against Kunduz airstrike colonel:

<http://www.dw-world.de/dw/article/0,,5926249,00.html>

## UPCOMING EVENTS

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

For more information on courses and workshops, please visit

<http://www.natoschool.nato.int>

- Please note the dates of the Law of Armed Conflict courses which will be conducted at the Turkish Partnership for Peace Training Center in Ankara :
  - 01-12 November 2010
  - 21 February-11 March 2011
  - 24 October-04 November 2011

For more information, please contact Ms. Hulya KAYA – Tel +90 312 402 5712 ext 146 or [hulkaya@tsk.tr](mailto:hulkaya@tsk.tr)

- The NATO School in cooperation with the International Institute of Humanitarian Law of Sanremo announces its 2010 Workshop on the Law of Armed Conflict and Human Rights in International Peace Support Operations which will be held 29 November – 3 December at the NATO School.

<http://www.iihl.org>

- A specialised course on the Laws of Armed Conflict for Planners and Executors of Naval and Air Operations will take place at the International Institute of Humanitarian Law in Sanremo. The course will provide planners and executors with a comprehensive theoretical and practical knowledge of the Laws of Armed Conflict which will enable them to apply naval and air power in compliance with LOAC in times of armed conflict, whether international or non-international status.

<http://www.iihl.org>

*"Facts are facts and will not disappear on account of your likes."*

Jawaharlal Nehru

## UPCOMING EVENTS

- The Anti-Piracy Workshop which aims to provide a holistic overview of the topic of piracy from the historical, commercial and NATO's point of view will be held at the NATO School from 21 to 23 February 2011. This workshop will outline the legal framework for anti-piracy operations and especially the legal problems related to detention, extradition and prosecution of suspected pirates. More information at:

<http://www.natoschool.nato.int>

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

<http://www.natoschool.nato.int>

- AU urges UN to impose naval blockade, no-fly zone in Somalia

<http://allafrica.com/stories/201010180921.html>

*"Happiness lies in the joy of achievement and the thrill of creative effort."*

Franklin D. Roosevelt

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

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