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COMMENTARY ON ARTICLES 2 AND 3 OF THE WASHINGTON TREATY[†]

*Matjaž Kačič**

INTRODUCTION

The present essay presents a commentary on Articles 2 and 3 of the Washington Treaty. Written on the Treaty's seventieth anniversary, the commentary seeks to contribute to the NATO legal community and to the wider audience, such as academics, politicians, diplomatic personnel and civil society interested in NATO legal issues. The commentary contains an outline of the drafting history, implementation and textual legal analysis of both Article 2 and 3, and posits that NATO is much more than a purely military organization focused only on Article 5 of the Washington Treaty—collective defense against armed attack. NATO's aims and objectives, such as preservation of peace and security in the North Atlantic area and worldwide, preservation of the rule of law, democracy, and freedom are pursued through a wide variety of military and non-military ways for which Articles 2 and 3 of the Washington Treaty provide a firm basis.¹

ARTICLE 2

The Parties will contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions, by bringing about a better understanding of the principles upon which these institutions are founded, and by promoting conditions of stability and well-being. They will seek to eliminate conflict in their international economic policies and will encourage economic collaboration between any or all of them.²

A. Drafting History and Textual Analysis

For the Washington Treaty founders, the notion of peace went far beyond the mere absence of war. They believed that the Washington Treaty had to

[†] This commentary is written in author's personal capacity and may not reflect agreed upon policy or views of the NATO International Staff or the North Atlantic Treaty Organization.

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¹ The author is grateful to Mr. Steven Hill, NATO IS Legal Adviser and Director of NATO IS Office of Legal Affairs, as well as to Ms. Lone Kjelgaard and Mrs. Nadia Marsan, NATO Senior Assistant Legal Advisers, for their precious advice, comments, and suggestions on various legal issues examined in this commentary.

² North Atlantic Treaty art. 2, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

represent more than a mere collective defense arrangement.³ According to the then United States Secretary of State, John Foster Dulles, the Washington Treaty was supposed to provide a framework for strengthening “the morale and positive elements on which true peace depends.”⁴ He most likely drew inspiration from the preambles of the Brussels and Rio Treaties,⁵ which contained a general reference to morale and positive bases of peace.⁶ For example, the State Parties to the Rio Treaty considered:

That the obligation of mutual assistance and common defense of the American Republics is essentially related to their democratic ideals and to their will to cooperate permanently in the fulfillment of the principles and purposes of a policy of peace . . . Peace is founded on justice and moral order.⁷

The absence of free institutions in certain parts of the world led the Allies to commit to strengthening their free institutions and to pay continuous attention to that aspect, whereas the reference to “better understanding of the principles upon which these institutions are founded” denotes the important role of public opinion within and outside the Alliance.⁸

In order to maintain “peaceful and friendly relations,” Allies also committed to engage in economic collaboration. It is interesting to note that an earlier draft of Article 2 spoke not only about economic collaboration, but also about cultural and social collaboration, mirroring the Brussels Treaty.⁹ Specifically, the earlier draft referred to “efforts between any or all of the Parties to promote the general welfare through collaboration in the economic, social and cultural fields.”¹⁰ This was further accompanied by an additional provision stating that the different types of collaboration would not interfere with or duplicate the work and activities of other international organizations of which NATO Allies might be

³ NATO, *North Atlantic Pact: The Drafting of the Treaty*, PACT D-6/1, 8 (Mar. 29, 1949) (copy on file with the author) [hereinafter *The Drafting of the Treaty*].

⁴ *Id.*

⁵ *Id.* Inter-American Treaty on Reciprocal Assistance, Sept. 2, 1947, 21 U.N.T.S. 77 [hereinafter Rio Treaty]; Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, Mar. 17, 1948, 19 U.N.T.S. 304 [hereinafter Brussels Treaty]. The Brussels and Rio Treaties preceded the Washington Treaty, they established the Western Union and the Organisation of American States, respectively, and they both provided for a collective defense arrangement. *Id.*

⁶ See generally Rio Treaty, *supra* note 5.

⁷ *Id.* pmbl.

⁸ Report of the Committee on Foreign Relations on Exec. L, North Atlantic Treaty, 81st Cong., 1st Sess. (1949) at 10.

⁹ Brussels Treaty, *supra* note 5.

¹⁰ *The Drafting of the Treaty*, *supra* note 3 at 8.

members. Instead, collaboration within NATO framework would be complementary to the activities and work of international organizations.¹¹ On the insistence of the United States, the earlier version was abandoned. The United States felt that the provision, if adopted, would have given the impression that the Alliance was supposed to undertake concrete measures in the fields of cultural, social and economic collaboration.¹² Allies achieved a compromise by retaining only economic collaboration.¹³

All in all, by cherishing the values of a free, prosperous, and progressive society, the Washington Treaty was also conceived as a strong antipode to communism. To this point, the then foreign minister of Canada and later its Prime Minister, Louis St. Laurent, argued that besides being a military force, the Alliance must be also an economic and morale force “as the struggle was for the control of men’s minds and men’s souls.”¹⁴

B. Implementation of Article 2

Some years after the adoption of the Washington Treaty, Allies felt the need to give more substance to Article 2, as well as to affirm the non-military mandate of the Alliance. To such an end, on May 5, 1956, the North Atlantic Council established the Committee of the Three.¹⁵ The Committee was composed of the so-called “Three Wise Men,” the ministers of foreign affairs of Norway, Italy, and Canada.¹⁶ The mandate of the Committee was to produce a report containing concrete measures and proposals to trigger and enhance non-military collaboration among Allies, such as political, economic, scientific, and cultural collaboration.¹⁷ The report was presented and endorsed at the North Atlantic Council on December 13, 1956.¹⁸

¹¹ In many ways the focus on complementarity and the avoidance of duplication with other international organizations has been a constant theme in NATO’s history, *see, e.g.* Press Release, European Council, Joint Declaration on EU-NATO Cooperation (July 10, 2018).

¹² *The Drafting of the Treaty*, *supra* note 3, at 9.

¹³ Jamie Shea, *What can we Learn Today from the ‘Three Wise Men’?*, NATO REV. MAG. (Jan. 10, 2018), <https://www.nato.int/docu/review/2016/Also-in-2016/three-wise-men-nato-military-alliance/EN/index.htm>. Economic collaboration was introduced into Article 2 by Canada. *Id.*

¹⁴ *The Drafting of the Treaty*, *supra* note 3, at 9.

¹⁵ *The Three Wise Men Report and the Origins of the NATO Science for Peace and Security Programme*, NORTH ATLANTIC TREATY ORGANIZATION (Dec. 13, 2016), https://www.nato.int/cps/en/natohq/news_139363.htm.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

With regard to political collaboration, the report urged Allies to consult among themselves on any political issues significantly affecting the Alliance or any issues of interest to the Alliance. The report called on Allies to take into account the views of other Allies when adopting national policies. In addition, the report also advocated for submission of disputes involving Allies to NATO's consideration before resorting to other international dispute settlement mechanisms.¹⁹ Finally, the report paved the way for the establishment of a NATO Committee of Political Advisers—soon renamed to Political Committee.²⁰

The report also addressed economic collaboration. It commended Allies to maintain healthy economies and to promote international trade.²¹ It further called on Allies to consult on important economic issues, especially on those economic issues giving rise to defense and security implications or economic issues having an impact on the Alliance as a whole.²² Finally, the report recommended the creation of a NATO Committee of Economic Advisers, which was eventually created in 1957.²³

In the scientific field the report discussed the important role of technology and science for the Alliance and for peace and security in general. Following the advice given by the “Three Wise Men,” Allies established the NATO Science Programme, which provided a platform for the scientific research collaboration and exchange of scientific resources. In 1958, the NATO Science Programme turned into NATO Science for Peace and Security, which provided further possibilities for scientific collaboration among Allies as well as with partner nations.²⁴

Finally, the report touched upon social collaboration and collaboration in the field of information. The “Three Wise Men” proposed, *inter alia*, the use of NATO information material(s) in schools, closer relations between NATO and

¹⁹ NATO Doc. C-M(56)127, ¶¶ 51, 57 (Dec. 1956), https://www.nato.int/cps/en/natohq/official_texts_17481.htm.

²⁰ *Report of the Committee of Three*, NORTH ATLANTIC TREATY ORG., (Oct. 5, 2017), https://www.nato.int/cps/en/natohq/topics_65237.htm.

²¹ N. Atlantic Treaty Org. [NATO], *Rep. of the Comm. on Non-Military Cooperation in NATO*, ¶ 61, NATO Doc. C-M(56)127 (Dec. 13, 1956), https://www.nato.int/cps/en/natohq/official_texts_17481.htm.

²² *Id.* ¶ 64.

²³ *Report of the Committee of Three*, *supra* note 20.

²⁴ *NATO's Science for Peace and Security Programme: Sixty Years Old, Still Going Strong*, NORTH ATLANTIC TREATY ORGANIZATION (Nov. 29, 2018), https://www.nato.int/cps/en/natohq/news_160936.htm.

youth organizations²⁵ and the translation of NATO material(s) into as many languages as possible.²⁶

The report of the “Three Wise Men” was a revolutionary document as it decisively reaffirmed the non-military nature of the otherwise military Alliance by establishing the basis for political, scientific, economic and technological collaboration within the Alliance.

ARTICLE 3

“In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.”²⁷

A. *Drafting History*

The first draft of Article 3 took inspiration from the United States Senate resolution 239, commonly known as the Vandenberg Resolution, which served as the principal guide for the United States delegation at the Washington Treaty negotiations. The first draft called for an “individual and collective effort, on the basis of continuous and effective self-help and mutual aid to strengthen the individual and collective capacity of the Parties to resist aggression.”²⁸ Generally, the language of the first draft differed from the current language of Article 3 in two important aspects. Namely, the first draft provided for “individual and collective effort” instead of “separately and jointly” and referred to “capacity to resist aggression” instead of “capacity to resist armed attack.”²⁹

The next, second, draft retained the reference to “aggression” but changed “individual and common effort” into “jointly and separately.”³⁰ Furthermore, it also introduced an opening sentence. The second draft read: “In order to better assure the security of the North Atlantic area, the parties will use every endeavor, separately and jointly, by means of continuous and effective self-help and

²⁵ NATO Doc. C-M(56)127, *supra* note 19, ¶¶ 75-77.

²⁶ *Id.* ¶ 86.

²⁷ North Atlantic Treaty, *supra* note 2, art. 3.

²⁸ *The Drafting of the Treaty*, *supra* note 3, at 10.

²⁹ *Id.*

³⁰ *Id.*

mutual aid, to strengthen their individual and collective capacity to resist aggression.”³¹

The reference to “the security of the North Atlantic area” turned out to be deemed inappropriate to the founding Allies, as they believed that “self-help and mutual aid” apply to the Treaty as a whole, and not only to “the security of the North Atlantic area.”³² Consequently, in the third draft the opening sentence attained its current form: “In order to more effectively to achieve the objectives of this Treaty....”³³

The fourth draft further removed the words “use every” before the word “endeavour,” making it: “the Parties will endeavor”³⁴ That was done out of fear that Article 3 might otherwise encourage an arms race or continual boost of military capacity and preparedness by the Allies. Finally, the term “endeavour” was considered too weak, which led to the adoption of the fifth draft establishing the current form: “Parties will . . . maintain and develop”³⁵

Finally, the sixth draft aligned the language of Article 3 with the language of the U.N. Charter, concretely with its Article 51.³⁶ As the U.N. Charter spoke of the “inherent right of individual or collective self-defence against armed attack,” and since the Washington Treaty holds a reference to the U.N. Charter’s right of collective self-defence, the founding Allies decided to follow the language in the U.N. Charter.³⁷ Hence, they replaced the term “aggression” with the term “armed attack.”³⁸

B. Textual Analysis

Article 3 calls on Allies to build resilience³⁹ against armed attack through “continuous and effective self-help and mutual aid.”⁴⁰ In essence, the phrase indicates that resilience of the Alliance against armed attack can be best achieved through individual and common effort. Accordingly, each Ally needs to do its

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 10–11.

³⁶ See U.N. Charter art. 51.

³⁷ *Id.*; *The Drafting of the Treaty*, *supra* note 3, at 10–11.

³⁸ *Id.* at 11.

³⁹ In plain language, resilience might be defined as capacity to recover and to bounce back after a crisis or disruption, see *Definition of Resilience*, MERRIAM-WEBSTER (2019), <https://www.merriam-webster.com/dictionary/resilience>.

⁴⁰ North Atlantic Treaty, *supra* note 2, art. 3.

best for its own resilience—national resilience—and contribute in any other way to the resilience of other Allies. By developing and maintaining “capacity to resist armed attack,” an Ally does not only diminish the likelihood of being a victim of armed attack—the concept of deterrence—but it also increases its ability to adequately respond to an actual armed attack. Moreover, it makes itself capable of receiving assistance from other Allies and providing assistance to other Allies. With regard to the latter, the nature and type of “mutual aid” or assistance that Allies would need to provide to one another has been at the heart of the debates during and after the negotiations of the Washington Treaty. In order to clarify this and other issues concerning the interpretation of the Washington Treaty, the founding Allies—Belgium, Canada, Denmark, France, Luxembourg, the Netherlands, Norway, the United Kingdom and the United States—adopted informal and non-binding interpretative minutes to the Washington Treaty, which contained, *inter alia*, a definition of the term “Mutual Aid.”⁴¹ “Mutual Aid” was defined as “the contribution by each Party, consistent with its geographic location and resources and with due regard to the requirements of economic recovery, of such mutual aid as it can reasonably be expected to contribute in the form in which it can most effectively furnish it, e.g. facilities, manpower, productive capacity, or military equipment.”⁴²

Soon after the Washington Treaty came into force, the U.S. provided assistance to European Allies under the so-called military assistance program.⁴³ Approximately 1.4 billion dollars were given to European Allies with the aim of boosting their military capacities.⁴⁴ If one were to look at recent cases of assistance, one can point at the deployment of four NATO-led multinational battlegroups in the eastern part of the Alliance in 2017 in order to deter Russia from engaging in aggressive behavior vis-à-vis Eastern Allies.⁴⁵

The phrase “capacity to resist armed attack” also calls for interpretation.⁴⁶ In the first place, one can note that the phrase does not specify the exact type of individual capacity required to resist armed attack. For example, it does not refer strictly to military capacity. The general reference to capacity as well as the

⁴¹ Interpretative Minute of the 18th Meeting of the Washington Exploratory Talks on Security on 15 March 1949.

⁴² *Id.*

⁴³ See *North Atlantic Treaty Organization (NATO), 1949*, OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/nato>.

⁴⁴ *Id.*

⁴⁵ *Boosting NATO's Presence in the East and Southeast*, NORTH ATLANTIC TREATY ORG. (Jan. 21, 2019), https://www.nato.int/cps/en/natohq/topics_136388.htm?selectedLocale=en.

⁴⁶ North Atlantic Treaty, *supra* note 2, art. 3.

article's initial general reference "to achieve the objectives of [the] Treaty"⁴⁷ leads to the conclusion that the capacity to resist armed attack goes beyond military capacity. It also includes, *inter alia*, civil readiness, economic strength,⁴⁸ ability to make financial contributions to NATO missions, morale, etc.⁴⁹

One can also note that Article 3 does not set out the exact level of national capacity required "to resist armed attack." The founding Allies envisaged that the level of national capacity required would be the subject of regular assessment taking into account the likelihood of a potential aggression, the strength of a potential aggressor, the prevailing general security situation, and the capacity of the U.N. to safeguard peace and security in the North Atlantic area and outside of it.

Finally, the term "resist" is a matter of interpretation.⁵⁰ Does the term imply that an Ally needs to be in a position to defend itself and to repel an armed attack on its own, or does it mean that an Ally needs to be strong enough to be able to hold off an enemy until the rest of the Alliance can come to its assistance? There can be no straightforward answer to that question since much will depend on the circumstances of a concrete case.

C. Implementation of Article 3

1. National Resilience

a. Military Capacity, Fair Burden-Sharing and Interoperability

Military capacity is definitely one of the strong components of national resilience. Each Ally is encouraged to maintain and develop a strong-armed force and military equipment, capable of being deployed and capable of resisting any form of armed attack. Nevertheless, failing to do so does not necessarily put the Ally in violation of Article 3 of the Washington Treaty if the Ally contributes to its resilience and resilience of the Alliance in other forms as it has been described before. In this regard, Iceland is a perfect example. Although the Ally

⁴⁷ *Id.* The Preamble of the Washington Treaty speaks of peace, freedom, human rights, democracy, common heritage, individual liberty and the rule of law. *Id.* pmb1.

⁴⁸ *Resilience and Article 3*, NORTH ATLANTIC TREATY ORG. (June 25, 2018), https://www.nato.int/cps/en/natohq/topics_132722.htm.

⁴⁹ Report of the Committee on Foreign Relations on Exec. L., *supra* note 8, at 9–10.

⁵⁰ North Atlantic Treaty, *supra* note 2, art. 3.

does not have a proper armed force, it is nonetheless highly valued within the Alliance especially because of its strategic geographical location, solid infrastructure,⁵¹ and for its financial and civilian contributions to NATO-led missions in the Balkans and Afghanistan.⁵²

Apart from Iceland, it is true that all Allies indeed maintain armed forces and military equipment, whose strength and status are regularly discussed in the context of a broader “fair burden-sharing” debate.⁵³ Fair burden-sharing has been at the heart of the Alliance since the beginning and came to prominence even more in the post-Cold War period, which marked a significant decline of the majority of European defense budgets.⁵⁴ In that regard, European Allies have been criticized for neglecting and not investing in their military capabilities, and for being consequently overly reliant on the United States.⁵⁵ Being faced with emerging modern security threats, such as hybrid and cyber threats, and Russian illegal and illegitimate annexation of Crimea on March 18, 2014, all Allies openly and officially declared their commitment to reverse declining defense budgets most prominently at the Wales Summit in 2014.⁵⁶ The pledge called on each Ally to aim at spending at least 2% of its Gross Domestic Product (GDP) on defense and spending at least 20% of its defense budget “on major new equipment, including related Research & Development”⁵⁷

By 2018, only eight Allies met the 2% target,⁵⁸ whereas by 2024 fewer than half of the Allies are planning to meet it.⁵⁹ When it comes to meeting the 20% target, the picture is much better as twenty-four Allies plan to meet the target by

⁵¹ The Keflavik Air Base is used by Allied navies for military exercises and air policing (surveillance) among other things. See Megan Eckstein, *Iceland Embracing Its Strategic Location by Supporting NATO Air Defense*, USNI NEWS (Oct. 24, 2018), <https://news.usni.org/2018/10/24/iceland-embracing-its-strategic-location-though-supporting-nato-air-defense-hosting-us-planes>.

⁵² *NATO Deputy Secretary General Thanks Iceland for its Contribution to European Security*, NORTH ATLANTIC TREATY ORG. (Mar. 8, 2017) https://www.nato.int/cps/en/natohq/news_142025.htm?selectedLocale=en.

⁵³ See Alexander Mattelaer, *US Leadership and NATO: Revisiting the Principles of NATO Burden-Sharing*, 46 PARAMETERS 25, 25 (2016).

⁵⁴ See *id.* at 28, 33.

⁵⁵ *Id.*

⁵⁶ See *id.* at 32.

⁵⁷ Press Release, NATO, Wales Summit Declaration (Sept. 5, 2014).

⁵⁸ Ryan Heath, *8 NATO Countries to hit Defense Spending*, POLITICO (May 7, 2018), <https://www.politico.eu/article/nato-jens-stoltenberg-donald-trump-8-countries-to-hit-defense-spending-target/>.

⁵⁹ Steven Grundman, *NATO's 2 Percent Guideline: What About the United States?*, ATLANTIC COUNCIL (July, 10 2018), <https://www.atlanticcouncil.org/blogs/new-atlanticist/nato-s-2-percent-guideline-what-about-the-united-states>.

2024.⁶⁰ From a legal perspective, the question that is posed is whether a breach of the 2% and 20% targets by 2024 will have any implications for the non-compliant Allies. In other words, are NATO Summit Declarations and the 2% and 20% targets legally binding on Allies? The answer to that question is not straightforward. In general terms, NATO Summit Declarations are legally binding on Allies as they can be treated/considered as decisions adopted by the North Atlantic Council.⁶¹ Yet, the language used in NATO Summit Declarations might sometimes indicate otherwise. This seems to be the case in relation to 2% and 20% targets contained in the Wales Summit Declaration. Namely, the Wales Summit Declaration says that Allies will “aim” to hit the 2% and 20% targets by 2024.⁶² Therefore, it seems possible to argue that the concrete defense spending pledge is of political, rather than legal nature.⁶³

Taking into account that NATO embodies military cooperation among Allies, Allies should not make sure only to have well-equipped and operational armed forces but also, they have to ensure that they are interoperable among them. In this respect, interoperability is another very important capability envisioned under Article 3 of the Washington Treaty. NATO’s interoperability policy defines the notion as “the ability of Allies to act together coherently, effectively and efficiently to achieve tactical, operational and strategic objectives.”⁶⁴ In other words, operability seeks to enable effective cooperation among Allies, to achieve, for example, maximum use of existing resources, to avoid their duplication, and most importantly to overcome differences among Allies in military equipment, communication systems, military procedures and tactics and legal regulations.⁶⁵ It does not necessarily seek to impose on Allies unified military equipment and procedures; rather interoperability strives to find a way for different equipment, systems and procedures to operate and work together. Interoperability is pursued mainly through standardization, exercises, training, tests, trials, missions, partnerships and cooperation with industry.⁶⁶

⁶⁰ Press Release, NATO, Brussels Summit Declaration, (July 11, 2018).

⁶¹ Federico Fabbrini, *Do NATO Obligations Trump European Budgetary Constraints?*, 9 HARV. NAT’L SECURITY J.L 121, 133 (2018).

⁶² Wales Summit Declaration, *supra* note 57.

⁶³ Jan Techau, *The Politics of 2 Percent: NATO and the Security Vacuum in Europe*, CARNEGIE EUROPE (Sep. 2, 2015), <https://carnegieeurope.eu/2015/09/02/politics-of-2-percent-nato-and-security-vacuum-in-europe-pub-61139>. *But see* Federico Fabbrini, *Do NATO Obligations Trump European Budgetary Constraints?*, 9 HARV. NAT’L SECURITY J. 121,133 (2018).

⁶⁴ *Interoperability: Connecting NATO Forces*, NORTH ATLANTIC TREATY ORG. (June 6, 2017), https://www.nato.int/cps/em/natohq/topics_84112.htm.

⁶⁵ *Id.*

⁶⁶ *Id.*

The standardization process plays a key role in the field of interoperability. NATO Standardization Agreements (STANAGs) seek to provide uniform procedures and equipment between NATO member states. STANAGs address a variety of subjects, such as the use of language in joint Allied operations,⁶⁷ procedures for environment protection during military operations, refueling procedures and specifications for common ground station for unmanned aerial vehicles used by NATO forces. STANAGs are adopted and published by the NATO Standardization Office.⁶⁸ While STANAGs might be deemed crucial for achieving interoperability, they do not have binding force on Allies. Rather they are considered as guidelines or recommendations to Allies.

Trainings and exercises are also vital for strengthening interoperability of Allies as they test the Allied level of interoperability in practice. Exercises enable Allies to develop best practices and to identify fields for improvement.

With regard to missions, Allies have strengthened and tested their interoperability in missions in the Balkans, Libya, the Mediterranean, and Afghanistan.⁶⁹

NATO also seeks to achieve interoperability with partner nations. Different partnership programmes, such as Partnership for Peace Programme, Mediterranean Dialogue and Istanbul Cooperation Initiative, *inter alia*, aim at enabling partner nations to act jointly with NATO-led forces.⁷⁰

Interoperability is needed also in the legal field since it often happens that Allies have different or divergent legal regulations—for example, on the use of force in self-defense. In such cases, dialogue among national and NATO legal advisers helps to clarify the different legal views of different Allies and may lead to a more uniform or common legal understanding or legal regime.⁷¹

b. Civil Readiness and the Role of the Private Sector

In case of armed attack, the ability of the attacked state to effectively resist

⁶⁷ The very first STANAGs recognized the importance of a common language for interoperability purposes. In this respect, they laid down the common standards for English and French language proficiency. See *NATO Standardization Office*, NORTH ATLANTIC TREATY ORGANIZATION (June 9, 2017), https://www.nato.int/cps/en/natohq/topics_124879.htm.

⁶⁸ *Backgrounder-Interoperability for Joint Operations*, NORTH ATLANTIC TREATY ORGANIZATION (July 2006), https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_publications/20120116_interoperability-en.pdf.

⁶⁹ *Interoperability: Connecting NATO Forces*, *supra* note 64.

⁷⁰ *Backgrounder-Interoperability for Joint Operations*, *supra* note 68.

⁷¹ See generally Marten Zwanenburg, *International Humanitarian Law Interoperability in Multinational Operations*, 95 INT'L REV. RED CROSS 681 (2013).

armed attack will be heavily dependent on the status of its civil infrastructure and the availability of civil resources. For example, good infrastructure enables a high level of mobility of the military personnel and military equipment. Likewise, military forces when deployed rely on civil resources, such as energy, food, water, medical resources.

In the past, the infrastructure—railways, ports, airfields, grids, airspace, etc.—was mainly state-owned and consequently easily available to the state or NATO armed forces in a crisis. The state administration was solely and exclusively responsible for maintaining a well-functioning infrastructure together with sufficient civil resources. With the end of the Cold War, however, the ownership of the state infrastructure began to shift steadily in the hands of the private sector. Hence, the private sector began to play a crucial role in crisis management. Nowadays, the interdependence of the military and private sector is fully recognized and acknowledged. It is estimated that around 90% of the NATO supplies and equipment is transported by private companies and approximately 75% of the support given by eastern Allies to NATO forces deployed on their territories is provided through contracts with private companies.⁷² Judging from the figures, it is clear that there can be no civil preparedness without the involvement of the private sector. It is therefore imperative for NATO and Allies to establish a good cooperation with the private sector.

Throughout the years, Allies have devoted a lot of attention to civil preparedness. In the “Commitment To Enhance Resilience” adopted during the Warsaw Summit 2016, Allies pledged to strengthen their civil preparedness and affirmed that civil preparedness is a national responsibility.⁷³ Allies further agreed to fulfil seven baseline requirements for national resilience, including:

- 1) Assured continuity of government and critical government services;⁷⁴
- 2) Resilient energy,⁷⁵ water, food, and medical supplies;
- 3) Resilient transport system;

⁷² Jamie Shea, *Resilience: A Core Element of Collective Defence*, NATO REV. MAG. (Jan. 10, 2018), <https://www.nato.int/docu/review/2016/also-in-2016/nato-defence-cyber-resilience/en/index.htm>.

⁷³ Press Release, NATO, Commitment to Enhance Resilience (July 8, 2016).

⁷⁴ See *Resilience and Article 3*, *supra* note 48. Ability to make decisions, communicate and enforce them in a crisis. *Id.*

⁷⁵ Stable and reliable energy supply, the diversification of import routes, suppliers and energy resources, and the interconnectivity of energy networks are of crucial importance, see Press Release, NATO, Warsaw Summit Communiqué, (July 9, 2016).

4) Resilient civil communications systems and cyber networks.⁷⁶

Among all the enumerated fields, cyber defense capacity deserves special attention. Military assets—airplanes, tanks, ships, etc.—have become increasingly reliant on digital technology. A large number of systems used on or by ships, aircrafts, submarines and unmanned vehicles, such as mechanical and electrical systems, weapons and navigations systems, aviation systems, and control systems are in one way or another connected to the internet. While on one hand internet and other technologies contribute to the better functioning of military assets and infrastructure, they at the same time put the same assets and infrastructure at greater risk of cyber-related intrusions, such as unauthorized access and stealing of data, introduction of malware and direct malicious attacks to systems and networks.⁷⁷ These systems can be attacked by anyone from anywhere, and at any moment by cyber means. The unpredictable nature of cyber-attacks makes cyber-attacks very difficult to anticipate and repel.

In light of the increasing number of threatening cyber-attacks both on national and NATO networks, Allies adopted a NATO Enhanced Cyber Defence Policy at the Wales Summit in 2014.⁷⁸ The policy recognized that cyber-attacks may threaten “national and Euro-Atlantic prosperity, security, and stability” and may reach the threshold of an armed attack.⁷⁹ It also affirmed that international law as a whole applies to cyber space and that cyber defense falls under NATO’s mandate of collective self-defense.⁸⁰ Finally, and most importantly in the context of resilience, it underlined that while NATO’s core task in the area of cyber defense is to protect its own networks⁸¹ and to provide cyber defense assistance to Allies upon request,⁸² Allies are primarily responsible to guard and protect their national networks—national cyber

⁷⁶ *Resilience and Article 3, supra* note 48. Allies envisaged that NATO’s role would be to assist and facilitate the process of enhancing civil preparedness of Allies. *Id.*

⁷⁷ Ralph D. Thiele, *Game Changer: Cyber Security in the Naval Domain*, 530 INST. STRATEGIC POL. ECON. CONSULTANCY 1, 3–4 (2018).

⁷⁸ Wales Summit Declaration, *supra* note 57 ¶¶ 72–73.

⁷⁹ *Id.* ¶ 72.

⁸⁰ *See id.*

⁸¹ The NATO Communications and Information Agency is entrusted with the protection of NATO’s networks. *See NATO Communications and Information Agency (NCI Agency)*, NORTH ATLANTIC TREATY ORGANIZATION (Apr. 7, 2016), https://www.nato.int/cps/en/natolive/topics_69332.htm.

⁸² NATO might assist an Ally victim of a cyber-attack by deploying the so-called “Rapid Reaction Teams” which consist of cyber defense experts specifically trained to mitigate harmful and adverse consequences of cyber-attacks. *See NATO Rapid Reaction Team to Fight Cyber Attack*, NORTH ATLANTIC TREATY ORGANIZATION (Mar. 13, 2012), https://www.nato.int/cps/en/natolive/news_85161.htm. The Rapid Reaction Teams tool might be seen as an example of “mutual aid.” *Id.*

resilience.⁸³ The Enhanced Policy was further updated at the Warsaw Summit 2016, where Allies recognized cyberspace as a domain of operations, reaffirmed the principles laid down in the Enhanced Cyber Policy, and adopted the so-called “Cyber Defense Pledge.”⁸⁴ Through the Cyber Defence Pledge, Allies committed to strengthen cyber defense of national networks and infrastructure in line with Article 3 of the Washington Treaty.⁸⁵ Among other things, they agreed to allot sufficient financial resources to develop national cyber defense capabilities, to foster cyber defense education, training and exercises, to improve understanding of cyber threats and to improve interaction among relevant national cyber defense stakeholders.⁸⁶

Finally, at the Brussels Summit in 2018, Allies committed to establish a new Cyberspace Operations Centre as part of NATO’s strengthened Command Structure and called for integration of cyber sovereign national capabilities into NATO-led operations and missions. Finally, Allies committed not only to deter and defend against cyber-attacks, but also to counter them.⁸⁷

II. ARTICLE 3 AND NATO’S COOPERATION WITH INDUSTRY, INTERNATIONAL ORGANISATIONS, AND PARTNER NATIONS

Article 3 provides also the basis for NATO’s cooperation with industry, international organizations, and partner nations. Over the years, NATO has strived to establish close and genuine cooperation with these entities. The following provides a summary of this cooperation as it reflects the response by NATO to strategic and geo-political changes that have occurred over time.

A. *Cooperation with Industry*

NATO’s cooperation with industry revolves primarily around the IT sphere, and in this regard, it crucially underpins NATO’s cyber resilience efforts. NATO engages with industry through procurement and non-procurement cooperation.⁸⁸ Through procurement, NATO acquires new cyber capabilities and services from industry, whereas through non-procurement cooperation NATO might engage

⁸³ Wales Summit Declaration, *supra* note 57.

⁸⁴ Press Release, NATO, Cyber Defence Pledge (July 8, 2016).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Brussels Summit Declaration, *supra* note 60.

⁸⁸ NATO, FRAMEWORK FOR NATO INDUSTRY ENGAGEMENT ¶ 8.1 (2013).

in discussions and exchanges of information with industry on capability requirements and needs, including matters related to interoperability standards.⁸⁹

Being aware that the majority of information systems are operated and maintained by the private sector, and knowing that it possesses the necessary knowledge and expertise on cyber defense, Allies at the Wales Summit in 2014 decided to give birth to the NATO Industry Cyber Partnership (NICP).⁹⁰ NICP provides a framework for engagement of NATO and industry/private sector in the field of cyber defense of NATO-owned networks. It enables sharing of information and expertise on cyber defense, developing best practices, improving understanding of cyber risks, and improving NATO's cyber defense education, training, exercises.⁹¹

B. Cooperation with International Organisations

With regard to NATO's cooperation with other international organizations, NATO places a great emphasis on cooperation with the EU, U.N., and Organization for Security and Co-operation in Europe (OSCE). NATO and its Allies indeed share common objectives and values with the mentioned organizations, such as preservation of international peace and security and respect for human rights, freedom, democracy, and stability.⁹² Therefore, it is not only legitimate, but also logical and imperative for NATO to engage in this sort of cooperation.

NATO's cooperation with the EU is especially important taking into account that the majority of NATO member states are also EU member states. While NATO-EU cooperation officially started in 2001, the cooperation gained real momentum in 2016 and 2018 by the adoption of the Joint Declaration⁹³ and the second Joint Declaration, respectively.⁹⁴ In the two declarations, NATO and EU pledged to strengthen cooperation in the following areas: countering hybrid threats, operational cooperation at sea and on migration, cyber security and

⁸⁹ *Id.* ¶ 8.1

⁹⁰ See Wales Summit Declaration, *supra* note 57.

⁹¹ *NATO Cyber Defence-Factsheet*, NORTH ATLANTIC TREATY ORG. (Feb. 2018), https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2018_02/20180213_1802-factsheet-cyber-defence-en.pdf.

⁹² It is indeed important to emphasize that the Washington Treaty aims for preservation of peace and security worldwide, not only within the North Atlantic area. See North Atlantic Treaty, *supra* note 2.

⁹³ Press Release, European Commission, Joint Declaration by the President of the European Council, the President of the European Commission, and the Secretary General of the North Atlantic Treaty Organization (July 8, 2016).

⁹⁴ Press Release, European Counsel, Joint Declaration on EU-NATO Cooperation (July 10, 2018).

defense, defense capabilities, defense industry and research, exercises and supporting Eastern and Southern partners' capacity-building efforts.⁹⁵ NATO-EU cooperation is carried out in accordance with the principles of transparency, openness, inclusiveness and reciprocity, and in full respect of the decision-making autonomy and procedures of both organizations without prejudice to the specific character of the security and defense policy of any member state.⁹⁶

In recent years EU has shown intention to develop an integrated defense policy and a potential EU army. NATO has welcomed the initiative by expressing the expectation that this will further enhance the resilience of European Allies and will contribute to fairer burden-sharing within the Alliance. At the same time, NATO has been urging EU to act complementarily to NATO activities and to avoid duplication of efforts.⁹⁷

Long before NATO set up cooperation with the EU, NATO already had in place an effective cooperation with the U.N. Since the early 1990s, NATO and the U.N. have been consistently enhancing and developing cooperation. Especially, the field of operations has been at the heart of NATO-U.N. cooperation. NATO-led operations in the Western Balkans, Afghanistan and Libya implemented binding U.N. Security Council resolutions.⁹⁸ Also the NATO training mission in Iraq in 2014 was set up partly pursuant to a U.N. Security Council resolution.⁹⁹ In addition to peace-support and peacekeeping operations, NATO-U.N. cooperation covers a wide variety of fields, such as crisis assessment and management, civil-military cooperation, training and education, corruption in the defense sector, mine action, mitigation of the threat posed by improvised explosive devices, civilian capabilities, promotion of the role of women in peace and security, protection of civilians, including children in armed conflict, sexual and gender-based violence, arms control and non-proliferation and the fight against terrorism.¹⁰⁰

⁹⁵ See Joint Declaration by the President of the European Council, the President of the European Commission, and the Secretary General of the North Atlantic Treaty Organization, *supra* note 93; Joint Declaration on EU-NATO Cooperation, *supra* note 94.

⁹⁶ *Id.*

⁹⁷ Jens Stoltenberg, Secretary General, NATO, Doorstep Statement prior to the European Union Foreign Affairs Council Meeting (Nov. 20, 2018) (on file with NATO).

⁹⁸ *Relations with the United Nations*, NORTH ATLANTIC TREATY ORG. (Nov. 29, 2018), https://www.nato.int/cps/en/natohq/topics_50321.htm.

⁹⁹ S.C. Res. 1546 (June 8, 2004).

¹⁰⁰ *Relations with the United Nations*, *supra* note 98; see also *Updated Joint Declaration on UN-NATO*, NATO (Oct. 31, 2018), https://www.nato.int/cps/en/natohq/official_texts_160004.htm.

Last but not least, NATO cherishes cooperation with the OSCE. This cooperation includes but is not limited to combating transnational threats, including terrorism and cyber threats, border management and security, disarmament, small arms and light weapons, confidence and security-building measures, regional issues and exchange of experience on the respective Mediterranean dimensions.¹⁰¹ Cooperation between OSCE and NATO took place also on the ground. The OSCE Mission in Kosovo and NATO-led Kosovo Force (KFOR) established close ties in Kosovo.¹⁰² Finally, the OSCE's Election Support Teams during the Afghan Presidential and Parliamentary Elections benefited from the security assistance by NATO-led International Security Assistance Force.¹⁰³

C. *Cooperation with Partner Nations*

The reference to the objectives of the Treaty in Article 3 also provides the basis for NATO's cooperation with partner nations.¹⁰⁴ Through cooperation with partner nations NATO contributes to security and stability outside the Alliance, which in turn has positive effects on the security and stability of the Alliance and on Allies themselves—projecting stability doctrine.

In order to contribute to peace and stability outside the Alliance, throughout the years NATO has established different partnerships with third nations and developed different partnership programmes, such as: Partnership for Peace Programme, Mediterranean Dialogue, Istanbul Cooperation Initiative and the Euro-Atlantic Partnership Council.¹⁰⁵ Partnerships benefit both NATO and partner nations. They enable close consultations between NATO and partner nations on regional security matters, and they shape common crisis-prevention approaches. Partner countries engage in and contribute to NATO-led operations. Also, partner nations gain access to NATO education courses, trainings, and exercises. NATO can also assist partner countries in the process of developing

¹⁰¹ See *What we Do*, OSCE, <https://www.osce.org/what-we-do>.

¹⁰² *NATO*, OSCE, <https://www.osce.org/partnerships/111485>.

¹⁰³ *Id.*

¹⁰⁴ See North Atlantic Treaty, *supra* note 2, art. 3.

¹⁰⁵ See *Partnership for Peace Programme*, NORTH ATLANTIC TREATY ORG. (Jun. 7, 2017), https://www.nato.int/cps/en/natohq/topics_50349.htm; *NATO Mediterranean Dialogue*, NORTH ATLANTIC TREATY ORGANIZATION (Feb. 13, 2015), https://www.nato.int/cps/en/natohq/topics_60021.htm?selectedLocale=en; *Istanbul Cooperation Initiative (ICI)*, NORTH ATLANTIC TREATY ORG. (Nov. 18, 2011), https://www.nato.int/cps/en/natohq/topics_58787.htm?selectedLocale=en; *Euro-Atlantic Partnership Council*, NORTH ATLANTIC TREATY ORG. (Jun. 9, 2017), https://www.nato.int/cps/en/natohq/topics_49276.htm.

their capability, as well as their defense and security institutions.¹⁰⁶ In addition, partnerships might better prepare interested partner nations to join the Alliance. Cooperation is carried out in accordance with the principles of mutual benefit, reciprocity and respect. At the Brussels Summit 2018, Allies recognized that “Partners have made and continue to make substantial contributions to Alliance operations, missions, and practical cooperation activities. [Allies reaffirmed their] commitment to expand political dialogue and practical cooperation with any nation that shares the Alliance’s values and interest in international peace and security....”¹⁰⁷

CONCLUSION

Articles 2 and 3 of the Washington Treaty clearly demonstrate that NATO is much more than the famous article 5 that provides for collective self-defense against armed attack. While Article 5 of the Washington Treaty has been invoked only once in the entire history of the Alliance, Article 2 and 3 of the Washington Treaty on the other hand provide the basis for regular, and even daily activities of NATO and its Allies, including political and scientific collaboration, missions, exercises and strengthening of cyber defense capabilities.

Article 2 of the Washington Treaty, while initially designed to be more of a political and declaratory nature, gained more substance with the report of the “Three Wise Men,” which laid down the basis for non-military cooperation among Allies in the political, economic, scientific and technological fields.

As for Article 3 of the Washington Treaty, it can be considered one of the most important articles of the Washington Treaty, if not the most important one. It is complementarily to Article 5 of the Washington Treaty by urging each Ally to develop its national resilience and contribute to the resilience of the Alliance as a whole against an armed attack. One of the crucial points that the commentary makes clear is that developing resilience goes beyond military capacity, to include also civil readiness, cyber defense, economic strength and morale.

¹⁰⁶ Brussels Summit Declaration, *supra* note 60.

¹⁰⁷ *Id.*