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## Legal Issues of Multinational Military Units

### Tasks and Missions, Stationing Law, Command and Control

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Dieter Fleck

IN HIS LONG-STANDING LEGAL CAREER, Professor Leslie C. Green has always shown a very personal interest in new topics and developments, in particular with regard to European affairs. The following considerations on current legal issues surrounding multinational military units are, therefore, contributed to this volume, published in his honor. Multinational military units may lend a new quality to the European unification process by helping make it irreversible in the fields of security and defense. This process may contribute to the continuity and predictability of international relations. It will promote a common security and defense identity which in a very distinct way may increase the security of the nations involved. Although such trends are still unique, even in Europe today, they might well prove significant beyond the North Atlantic Alliance in the years to come.

Multinational military units can facilitate modernization despite dwindling resources. Due to force and budget reductions in certain participating countries, there have already been several cases of major formations no longer being sustainable on a national scale. Multinationality ensures the States concerned continue participating in military operations at corps level. What matters more, however, is a new chance to deepen cooperation within the Alliance and

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further develop mutual understanding of the daily interests and requirements of the Allies.

Multinational military units are characterized by military-to-military coordination between States. They are not entities with a corporate, political element of their own, nor do they enjoy an independent status distinct from the contributing States. Nevertheless, they tend to mark the beginning of a trend in the larger context of overall European security.

The present study begins by describing existing agreements concerning multinational military units. It then turns to the right of presence of military contingents in a foreign host State, provisions relating to the status of the military and civilian personnel involved, and issues of command and control. Finally, some conclusions will be drawn on the relevance of the concept of multinational military units for further activities within the Alliance and beyond.

### **Present Agreements on Multinational Units**

The concept of multinationality manifests itself especially clearly in the German Bundeswehr. For several decades, the German Air Force has increasingly developed multinational cooperation, a fact reflected in its daily training programs, doctrine, and Alliance integration. Much of the Air Force (fighter wings, surface-to-air missile units, and air combat operations centers) is already subordinate to NATO commanders in peacetime, receiving operation orders from the integrated NATO structure on the basis of NATO operation plans. The German Navy permanently contributes two destroyers or frigates, as well as a mine countermeasures unit, to NATO's Standing Naval Forces. The highest degree of multinationalization has been reached in the German Army. With only one exception (IV<sup>th</sup> Corps, with headquarters in Potsdam), all of its major formations are multinational today.

In the German case, three different models of multinational units have been developed simultaneously. First, two German/U.S. corps follow the so-called *lead nation model*, with the U.S. and Germany taking turns performing command functions and occupying key positions. The second, or *framework model*, is illustrated by the Allied Command Europe (ACE) Rapid Reaction Corps, in which the British Forces provide the framework, i.e., command, control, administration, and logistic support of the headquarters, and define procedures. By contrast, the framework is provided by the Bundeswehr for the Reaction Force Air Staff based in Kalkar. The Danish-German Corps LANDJUT was the first formation to be organized according to the third model, *deepening*

*integration.* The German-Netherlands Corps and the European Corps have provided an opportunity to further develop and deepen the integration model.

The German-Netherlands Corps, with its headquarters in Muenster, Westphalia, is the first example of a multinational unit with forces of each participating State stationed on the territory of the partner State. This Corps comprises German main defense forces (1st Armored Division/Military District Command II in Hanover) and the major part of the Netherlands Army, i.e., the 1st (NL) Division "7 December," the 41st Light Brigade which has been stationed in Seedorf (Lower Saxony) for decades. The binational Command Support Group (CSG), which includes more than 1,400 German military and civilian personnel, is stationed in Eibergen (Netherlands). In a joint declaration dated October 6, 1997, the respective Ministers of Defense designated the Corps Headquarters in Muenster as a Force Answerable to Western European Union (FAWEU). Moreover, the Convention on the German-Netherlands Corps, signed on October 6, 1997,<sup>1</sup> has been submitted to parliaments in Germany and in the Netherlands for approval. The Headquarters has been given legal authority to contract, hire civilian personnel, and pay claims, all from a multinational Corps budget and on behalf of the two participating States. Property acquired with common funds is to be considered as owned in common by the Federal Republic of Germany and the Kingdom of the Netherlands. Employment contracts of civilians hired to work at the Headquarters in Muenster are governed by German labor and social law.

The European Corps (Eurocorps), headquartered in Strasbourg, France, consists of personnel from five nations (Belgium, France, Germany, Luxembourg and Spain). It attained operational readiness on November 30, 1995. One of its core elements is the Franco-German Brigade, which has existed since 1988 and which, in part, is integrated down to the company level. Belgian and French military elements<sup>2</sup> of the Eurocorps are stationed in Germany; their status is determined by the NATO SOFA<sup>3</sup> and the Supplementary Agreement to the NATO SOFA with respect to foreign forces stationed in Germany.<sup>4</sup> A January 21, 1993 agreement with Supreme Allied Commander, Europe (SACEUR Agreement) defines the special terms of the employment of the Corps within the framework of the North Atlantic Alliance. By it, the Corps will serve as part of the main defense and reaction forces on the basis of operation plans prepared under the auspices of SACEUR. In any case, the participating nations will remain responsible for deciding on the employment of the Corps. The status of the headquarters in Strasbourg and of the formations operating jointly on the territories of each participating State are yet to be defined. To this end, a "Strasbourg Convention" is currently being negotiated to

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establish the legal personality of the headquarters and describe the mission of the Corps. This agreement will be subject to approval by the parliaments of the participating States.

For other multinational Units, stationing issues are of less significance. The LANDJUT Corps had been based in the area of Jutland/Schleswig-Holstein since 1962, with the existing NATO headquarters of the Allied Land Forces Schleswig-Holstein and Jutland (HQ LANDJUT) in Rendsburg being used for command and control. HQ LANDJUT was supported by one headquarters company and one Danish and one German signal battalion. It exercises operational command over German and Danish units which remain national units deployed in their home countries, but which cooperate closely during exercises. HQ LANDJUT was disbanded in Spring 1999 following introduction of the new NATO command structure. However, close Danish-German army co-operation will continue together with a new ally, Poland, in the Multinational Corps Northeast. This formation was activated in September 1999, after Poland's accession to the North Atlantic Treaty. To this end, the Ministers of Defense of Denmark, Germany and Poland signed a Declaration of Intent and an agreement on initial preparations for the establishment of the trinational headquarters in Szczecin in March 1998. The Danish Division and the 14<sup>th</sup> (GE) Mechanized Infantry Division (Neubrandenburg) will continue to cooperate as they did in the LANDJUT Corps and be reinforced by the 12<sup>th</sup> (PL) Division as a new and equal partner. Permanent deployment in foreign countries will be restricted to the Danish and German elements of the Corps Headquarters based in Szczecin. As requested by the Parties involved, Danish-German-Polish negotiations on the Corps have been conducted under German chairmanship. The experience gained in Muenster and Strasbourg could thus be utilized for the new trilateral corps. On September 5, 1998, the Corps Convention<sup>5</sup> was signed in Szczecin following parliamentary approval in Denmark, Germany, and Poland. It entered into force in October 1999.

Possible tasks and missions of multinational units were considered in Germany against the backdrop of the constitutional discussion on Bundeswehr participation in out-of-area operations, which led to the Federal Constitutional Court's decision of 1994.<sup>6</sup> It is obvious that the armed forces are not only possible tools of collective defense in accordance with Article 5 of the North Atlantic Treaty and Article V of the Western European Union (WEU) Treaty, but must also be designated for multinational crisis management tasks under the auspices of the United Nations, NATO, or WEU or on the basis of regional agreements in accordance with Chapter VIII of the UN Charter. In addition, they serve to plan, prepare and execute humanitarian aid activities and rescue

operations, including disaster relief. It is in this context that the appropriate authorities of each participating State have to decide on missions within the scope of their national constitutions and in accordance with the provisions of the Charter of the United Nations.

The Eurocorps is fully available for each of the three basic mission types. In peacetime, only main defense forces are assigned to the German-Netherlands Corps on the German side. This, however, does not preclude crisis reaction forces of the Bundeswehr from being assigned also to the Corps for specific missions. The fact that the Corps Headquarters has been designated FAWEU underlines the interest that both sides have in the capability to jointly accomplish this part of the spectrum of tasks as well. Similar arrangements are being considered for the Multinational Corps Northeast, even though the 14<sup>th</sup> (GE) Mechanized Infantry Division forms part of the German Army's main defense forces.

Other multinational units in Europe (to which the Bundeswehr does not contribute) also demonstrate the attractiveness of the integration model far beyond the German borders. For many years, the United Kingdom/Netherlands Amphibious Force has developed close and effective cooperation in accordance with NATO plans and national commitments. The European Rapid Operational Force (EUROFOR), with its headquarters in Verona, Italy, comprises personnel from France, Italy, Portugal, and Spain, although an agreement on the formation remains to be concluded. The same Parties also created a non-standing naval force, EUROMARFOR, which has no permanent headquarters of its own. EUROFOR and EUROMARFOR are designed to operate in missions laid down in the Petersberg Declaration of the Ministerial Meeting of the Western European Union of 19 June 1992,<sup>7</sup> namely humanitarian missions or evacuation of nationals, peacekeeping missions, and combat force missions for crisis management, including peace-enforcement missions. They will support the European Security and Defence Identity (ESDI) and are open for participation by other European forces. Under UN auspices, the Standby High Readiness Brigade (SHIRBRIG) has been established with headquarters in Birkerød, Denmark. Multinational Land Forces (MLF) in brigade strength are planned by Italy, Hungary, and Slovenia, with Italy taking a lead. The Central European Nations Cooperation in Peace Support (CENCOOP) is being developed by five partner States (Austria, Hungary, Romania, Slovak Republic, and Slovenia) and two observers (Czech Republic and Switzerland). A Letter of Intent was signed by the five participating ministers of defence on March 19, 1998. The tasks and mission of CENCOOP are to improve peacekeeping capabilities and achieve a higher profile through regional cooperation based on

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complexity, multifunctionality, non-traditional tasks, multinationality within contingents, interoperability, interlocking components, as well as role specialization, readiness, mobility, rapid and flexible reaction and mission tailoring according to the mandate. Finally, the Baltic Battalion (BALTBATT) and the Baltic Naval Squadron (BALTRON) have proven their usefulness for many different operations, while a Hungarian-Romanian Battery and other multinational military units are planned to assume specific tasks in the near future.

### Agreements Concerning the Right of Presence

The permanent or temporary presence of foreign forces (*ius ad praesentiam*) is subject to approval by the receiving State in accordance with its national laws and practice. In Germany, the right to permanently station allied forces is based on a State treaty, the 1954 Convention on the Presence of Foreign Forces.<sup>8</sup> This right is not restricted to tasks to be accomplished in the context of collective defense pursuant to Article 5 of the North Atlantic Treaty. Instead, the purpose of stationing is defined in more general terms in the Preamble to the 1954 Convention: “*In view of the present international situation and the need to ensure the defense of the free world*”. In the past, this was related to defensive action as provided for in Article 5 of the North Atlantic Treaty (commitment to provide assistance “*if an armed attack against one or more of the Parties in Europe or North America occurs*”) and in Article V of the Brussels Treaty on the Western European Union—(“*If any of the High Contracting Parties should be the object of an armed attack in Europe*”). However, activities of allied armed forces in the context of crisis management and humanitarian assistance, as they form part of the common objectives of multinational units today, are not precluded by the text of the 1954 Convention. In this regard, note that the Convention was explicitly confirmed by an Exchange of Notes dated 25 September 1990,<sup>9</sup> and that the preambular reference to “*the present international situation and the need to ensure the defense of the free world*” was not altered in 1990. Thus, it is subject to continuous political evaluation. In German State practice, such activities have always required special consent of the Federal Government.

Similar conventional provisions apply to the German forces stationed in the Netherlands as part of the German-Netherlands Corps. The new 1997 treaty on the stationing of German armed forces in the Netherlands,<sup>10</sup> which updates a previous German-Netherlands agreement of 1963 and which takes the 1954 Convention into account, covers all possible purposes of stationing, although set purposes are subject to mutual agreement between the two governments.



As far as additional allied armed forces temporarily stationed in Germany within the framework of multinational units for the purpose of combined exercises, the legal situation is rather complex. While there is no doubt that even temporary presence requires special consent of the Federal Government, the question of whether and to what extent such consent has to be based on parliamentary approval has been a matter of discussion. Some experts demanded such approval without clearly defining the scope of the Government's executive powers, which are of special importance with regard to forces of a foreign power on German territory. The German Visiting Forces Act of 1995<sup>11</sup> ended this debate by requiring the conclusion of agreements with sending States. Such agreements may be put into force in Germany by executive order under the Visiting Forces Act; specific parliamentary approval is not required. Note that formal agreements are required on the entry into and temporary stay in the Federal Republic of Germany of foreign armed forces "*for the purpose of exercises, transit by land or training of units*". Below this threshold, manifold forms of military cooperation are possible and are, indeed, daily routine today, but they do not require the conclusion of formal agreements.

German unification necessitated specific provisions concerning the stationing of foreign troops, for the territorial application of the 1954 Convention is restricted to Western Germany. Specifically, according to Article 11 (in conjunction with Chapter 1 Section I of Annex I) of the Treaty on German Unity,<sup>12</sup> neither the 1954 Convention or the NATO SOFA and Supplementary Agreement apply to Berlin or the former German Democratic Republic. In order to permit allied forces that are permanently stationed in Germany<sup>13</sup> to temporarily visit the Eastern part of the country, it was agreed in a 25 September 1990 Exchange of Notes<sup>14</sup> that any official activity requires consent of the Federal Government in compliance with the provisions of Article 5 paragraph 3 of the Two-plus-Four Treaty.<sup>15</sup>

An agreement regarding temporary visits by other allied forces was concluded by an Exchange of Notes on April 29, 1998.<sup>16</sup> It creates a legal situation with the six permanent sending States comparable to the above-mentioned Exchange of Notes of September 25, 1990. New NATO member States may also be invited to accede to it. It will be submitted for approval to the newly elected 14<sup>th</sup> German Bundestag. Approval by the other participating States is being pursued according to their national requirements.

Before long, bilateral agreements will be concluded with the Polish and Czech governments covering reciprocal arrangements for the mutual presence of forces of the Bundeswehr and Polish and Czech forces in each of the participating States. They can be put into force in Germany by statutory order in

accordance with the Visiting Forces Act<sup>17</sup> and the Act concerning the Partnership for Peace (PfP) SOFA.<sup>18</sup> Similar visiting forces agreements are proposed for all new partners to the Alliance.

### The Status of Personnel

The status (*ius in praesentia*) of military and civilian personnel of multinational units is complex because the provisions of international law apply to the status of foreigners, but not to nationals of the host State. Although the NATO SOFA of 1951 extends to all NATO members, and to the new partners of the Alliance through the PfP SOFA of 1995, it mainly contains rather general regulations. Indeed, the preamble of the NATO SOFA contemplates the possibility of separate arrangements between the Parties concerned “*in so far as such conditions are not laid down by the present Agreement.*” In many cases there is a need to supplement the NATO SOFA provisions; varying interests have led to quite different arrangements during the five decades of close cooperation within the Alliance.

Article IV of the PfP SOFA provides for the possibility of supplementing *or otherwise modifying* it in accordance with international law. For such modification, the rules codified in Article 41 of the Vienna Convention on the Law of Treaties<sup>19</sup> are relevant. By application of that article, Parties to the PfP SOFA may modify it only as between themselves alone and subject to the following conditions: the modification in question must not be prohibited by the PfP SOFA; it must not affect the enjoyment by the other Parties of their rights under the PfP SOFA or the performance of their obligations; it must not relate to a provision, derogation of which is incompatible with the effective execution of the object and purpose of the PfP SOFA as a whole; and the Parties in question shall notify the other Parties of their intention to conclude the agreement and of the modification to the PfP SOFA for which it provides. Thus, the scope of possible modifications is clearly limited. Experience gathered so far in the implementation of the PfP program establishes that modifications of PfP SOFA rules are neither intended nor required under existing supplementing agreements. There is, indeed, a widely shared interest in avoiding modifications altogether.

Cooperation within multinational units may contribute to increased interest in the reciprocity of such separate arrangements. In this context, the Netherlands deserve special credit because, in 1997, they were the first Ally to conclude a Supplementary Agreement with the Federal Republic of Germany,<sup>20</sup> which defines the rights and duties of Bundeswehr personnel stationed in the

Netherlands in provisions which are fully congruent with the Supplementary Agreement regarding the status of forces permanently stationed in Germany.<sup>21</sup> Special tribute is also to be paid to the Czech and Polish negotiators who demanded full reciprocity from the beginning of the negotiations on agreements in accordance with the German Visiting Forces Act. In doing so, they effectively contributed to uniform standards, for as a national law, the German Visiting Forces Act had to be limited to the status of foreign forces in Germany.

In addition to the provisions relating to the status of forces of a sending State, special rules have to be established on the status of multinational headquarters. An exception was the LANDJUT Corps, because it was commanded by an existing NATO headquarters, the status of which ensued from the Paris Protocol of 1952<sup>22</sup> and the 1967 Agreement regarding NATO headquarters in Germany.<sup>23</sup> By contrast, the Danish-German-Polish Convention of 5 September 1998 on the Multinational Corps Northeast<sup>24</sup> provided for specific States rules due to the fact their application of the Paris Protocol, either *mutatis mutandis* or under its Article 14, was excluded for political and legal reasons. By Article 14, the whole or any part of the Paris Protocol may be applied, by decision of the North Atlantic Council, to any international military headquarters or organization established pursuant to the North Atlantic Treaty. The Headquarters of the Multinational Corps Northeast in Szczecin, however, is not part of the NATO command structure. Reference to the Paris Protocol on NATO Headquarters could have resulted in a misunderstanding in this respect which would not have been without political implications. As confirmed in Part IV of the NATO-Russia Founding Act,<sup>25</sup> in the current and foreseeable security environment, the Alliance will carry out its collective defense and other missions by ensuring the necessary interoperability, integration, and capability for reinforcement rather than by additional stationing of permanent substantial combat forces. Even if provisions of the Paris Protocol had been used, major adaptations would have been necessary considering the fact that the Multinational Corps Northeast is subordinated only to the three ministers of defense; therefore, the rights and responsibilities of NATO as defined in the Paris Protocol are inapplicable. Consequently, the Multinational Corps Northeast derives no juridical personality from the North Atlantic Treaty Organization as defined in Article 10 of the Paris Protocol. Its authority is vested exclusively by the three participating States. Property of the Headquarters of the Multinational Corps Northeast is that of the States and only participating States may be committed in legal proceedings. Finally, the North Atlantic Council will not be involved in the settlement of possible disputes, which will remain the

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exclusive responsibility of the Parties under the Convention. These adaptations go far beyond what is normally considered as an application *mutatis mutandis*.<sup>26</sup> Hence, no precedent was established by the Paris Protocol. As far as relevant, however, experience and common practice deriving from the application of certain Paris Protocol provisions may be useful for interpretation purposes.

Unlike NATO headquarters that do not act on behalf of specific States but on behalf of the North Atlantic Treaty Organization, the headquarters of multinational units generally do not require a legal personality of their own, for participating States remain the subjects of all rights and duties. The States own all real property and equipment, either individually or jointly. The fact that military and civilian personnel remain under national command does not, however, preclude combined headquarters from concluding certain support services contracts payable from the joint budget. Doing so requires an agreement on contractual competence because the contracts are concluded on behalf of the participating States.

Article 8 of the Convention on the German-Netherlands Corps provides for this solution. According to the German constitution, the authority to conclude contracts and perform other administrative functions is exercised by agencies of the defense administration, not the armed forces.<sup>27</sup> A strict separation of the armed forces and the defense administration may, however, cause friction in multinational units, especially if the partners provide for differing distribution of responsibilities, as might be the case if budget commissioner functions are performed by a division of the Corps headquarters headed by a foreign officer.

It is of particular importance for the Eurocorps that development of a WEU Status of Forces Agreement has been included in the effort to produce a NATO/WEU framework document. The necessity and urgency of such an agreement on the status of troops and personnel placed under WEU command remains unsettled. Among others, the following factors bear on this issue: deepening relations between the WEU and NATO, with priority being given to the implementation of the pertinent resolutions passed during summit conferences and ministerial meetings; increased integration of Associated Partners, specifically in military cooperation within the WEU; and the common aim to strengthen the WEU's capabilities, particularly with regard to the role and efficiency of the WEU's military bodies. To foster uniformity during combined operations, the status of the troops and personnel placed under WEU command should largely be patterned on the provisions of the NATO SOFA. Moreover, the compatibility of new solutions with European Union (EU) law

must be ensured. This applies specifically to EU law dealing with the exemption of foreign armed forces and their members from taxes and other duties.<sup>28</sup>

### Command and Control

Given legal constraints as well as policy concerns which for most of the participating States would exclude transfer of full command to an officer of allied forces, it is essential to clearly define command and control issues for multinational units.

Within NATO, rules and procedures for integrated assignment are well established.<sup>29</sup> They denote the relationship between a soldier assigned to a NATO headquarters or agency and the person heading that headquarters or agency. Generally speaking, this relationship involves all matters concerning the soldier, with the exception of personal (in particular disciplinary) matters and personnel service support (which in principle remains a national responsibility).

The established terms of command relationship between NATO commanders and the national units apply both in peacetime and in wartime. NATO commanders exercise authority pursuant to the Resolution Implementing Section IV of the Final Act of the London Conference of 23 October 1954.<sup>30</sup> This authority is amplified in the Terms of Reference of the Major NATO Commanders and further agreements. In these documents, the different levels of command and control—Tactical Control (TACON),<sup>31</sup> Tactical Command (TACOM),<sup>32</sup> Operational Control (OPCON)<sup>33</sup> up to Operational Command (OPCOM)<sup>34</sup>—are well established. As specified for each particular case, they may be exercised either permanently or on an *ad hoc* basis. Although extensive Coordinating Authority<sup>35</sup> is vested in the NATO commander, Full Command,<sup>36</sup> remains under national authority. It follows that the term “command,” as used internationally, implies a lesser degree of authority than in a purely national sense. No NATO commander has full command over the forces assigned to him. Instead, nations, when assigning forces to NATO, delegate only operational command or operational control. In multinational operations, each participating nation will normally be represented by a national commander responsible for ensuring that full command can be exercised and that respective national law and policies are observed. Given this situation, an appropriate means for facilitating close cooperation at the international level are common rules of engagement; they are critical for effective command and control of an operation.

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Likewise, the relationship between a national unit and the competent NATO commander has to be considered. An elaborate system of NATO Earmarked Forces,<sup>37</sup> NATO Assigned Forces<sup>38</sup> and NATO Command Forces<sup>39</sup> allows for reasonable planning security. It should, however, also be borne in mind that any Transfer of Authority (ToA) remains subject to national decision in accordance with national procedures of the country concerned. Additionally, national forces so earmarked, assigned, or even placed under operational command or control may be withdrawn by national decision.

Of particular import for Germany is the question of the scope of command which the Federal Minister of Defense has over German military personnel in accordance with Article 65a of the German Constitution.<sup>40</sup> Despite the article, German subordinates may be ordered by their national superiors to obey the instructions of a foreign directing authority. Disobedience of the foreign superior's instructions would be a disciplinary offence against the duty to serve loyally.<sup>41</sup> The practical consequence of this legal construction is that German soldiers have to fully comply with directives issued by an allied commander as if these directives were military orders *strictu sensu*. Non-compliance may be sanctioned by the competent national commander under the Military Disciplinary Code.<sup>42</sup> However, penal sanctions are not allowed because, pursuant to the Military Penal Code,<sup>43</sup> disobedience requires a military order *strictu sensu*.

In the case of the guard duties in the German-Netherlands Corps, these considerations led to an express provision in the Corps Convention stating that binationally used facilities may be guarded by binational guards, if sending State guard personnel are vested with the same authority as guard personnel of the receiving State. For the execution of their duties, binational guards are exclusively subordinated to the competent superior guard authorities of the receiving State.<sup>44</sup> The German national guard provisions have been amended accordingly to include allied soldiers in German military guards.<sup>45</sup> For binational guard duties outside the territory of the Contracting Parties, specific arrangements will be necessary.

Unless otherwise provided, the command relationship between NATO commanders and national units also applies to the relationship between commanders of multinational units and their national contingents. In the case of the German-Netherlands Corps, a first step towards deepening command and control integration was the agreement on Integrated Directing and Control Authority under Article 6 of the Corps Convention.<sup>46</sup> As understood by the Contracting Parties, the Commander of the Corps' authority with regard to the execution of tasks given to the Corps goes beyond Operational Command. Pursuant to Article 7 paragraph 4 of the detailed Corps Agreement,<sup>47</sup> Integrated

Directing and Control Authority enables the Corps Commander to take full responsibility for the implementation of all Corps directives. Accordingly, he may issue and prioritize directives to the binational and national elements of the Corps when necessary, with the exception of national territorial tasks. The commander may delegate this authority to the extent required to subordinate commanders. Unanimity of all Parties is essential for this solution; a majority decision will not suffice. Moreover, it must be ensured that national contingents (and single soldiers) are recallable at any time through national orders. National rights and private duties, specifically with regard to disciplinary matters and complaints, are still exempt. Further steps towards full command and control will, thus, remain subject to continued consideration.

A reevaluation of the relevant German legal doctrine<sup>48</sup> has led to an influential academic opinion that, without prejudice to the power of command of the Minister of Defense under Article 65a of the Basic Law, foreign commanders in multinational military units may be included in the chain of command under German military law as long as unanimity exists between all ministers of defense concerned. This opinion is based on the understanding that directives issued at the multinational level in fact represent national directives tied up in joint responsibility. Hence, so long as directives issued by a multinational ministerial committee to the commander of a multinational unit are executed by the latter with respect to the national contingents, these directives represent national directives to the respective national contingent. There are, however, contrary opinions which question the compatibility between the political and military interest in full power of command of the integrated commander and existing German legal requirements.<sup>49</sup> To date, no legislative solution to this controversy has been reached.

Outside the Alliance, NATO terms and definitions do not apply unless specifically agreed. Nevertheless, the legal issues discussed here in the context of multinational military units resurface when national contingents of various States are tasked to cooperate in joint missions. Clear provisions should, therefore, be negotiated and enacted well in advance of such operations.

For peacekeeping operations under United Nations command and control, standardized rules should be possible. Unfortunately, existing UN practice appears to be less than precise in this respect. A general provision was prepared in the 1991 Model Agreement on troop contribution.<sup>50</sup> Yet, the term "command" is not clearly defined in this document. Interpretations of the term "full authority over the deployment, organization, conduct and direction," which, according to this Model Agreement, shall be exercised exclusively by the Secretary-General, may also differ. So far, the Model Agreement has not been

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widely used in UN peacekeeping. For the mission in the former Yugoslavia, it was essential to secure NATO's support under the Dayton Accords. Thus, clear terms of command and control could be used and implemented as discussed above.

As illustrated in this study, multinational military units are of unique significance for application of the *ius ad praesentiam* as well as the status of forces (*ius in praesentia*) regime and its further development. In specific cases, the establishment of such units has revealed the need for certain adjustments to promote the principle of reciprocity.

Command and control issues within multinational units and the relationship between foreign, "multinational" commanders and national authorities of the participating States need further consideration. New forms of integrated command and control relations may be required in the process of deepening integration. The degree to which NATO terms of command and control could be used as guidance, or even be made applicable to operations outside the Alliance, merits further investigation.

Proposals to harmonize national military laws in support of daily cooperation in multinational units raise questions regarding possible deviations from existing national laws. Such questions cannot be properly answered in general terms, but instead require specific solutions responsive to the respective context. Changes in national legislation may only be executed step by step and as part of an overall process of development.

Increased integration should not be regarded as an end in itself. It remains equally important to ensure the exchangeability of personnel between various units with regard to their participation in multinational units. This sets certain bounds to military integration between the participating States which must be taken into account in the interest of a common solution.

The question remains open as to what extent the concept of multinational units, which is unique in Europe today, will gain importance beyond present Alliance cooperation. Most current UN peacekeeping operations have long been multinational in nature. It is sometimes surprising to see that certain general rules which have become routine for NATO cooperation, in particular with respect to command and control, are still absent during UN operations. The practice of *ad hoc* arrangements may still be preferable to allow for flexibility in a specific mission, but clarity, consistency and, last but not least, the principle of equality between troop contributing States require a long-term solution based on accepted general terms and procedures.



In all aspects of multinational military units, the need for a continuous review is obvious. It is highlighted by the review process agreed to in the treaties, as well as by the common interest of all negotiating partners in using well-tried procedures and developing tailor-made solutions.

### Notes

1. Convention of 6 October 1997 between the Government of the Federal Republic of Germany and the Government of the Kingdom of the Netherlands on the General Conditions for the 1 (German-Netherlands) Corps and Corps-related units and establishments (Bundesgesetzblatt - BGBl - 1998 II 2438).

2. 17th (B) Brigade, based in Spich, which forms part of the 1st (B) Division; 1st (F) Armored Division, 42nd Signal Regiment and French element of the Franco-German Brigade.

3. Agreement Between the Parties of the North Atlantic Treaty Regarding the Status of their Forces (NATO SOFA) of 19 June 1951 (199 UNTS 67; 4 UST 1792; TIAS 2846).

4. Agreement to Supplement the Agreement between the Parties of the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces Stationed in the Federal Republic of Germany (Supplementary Agreement to NATO SOFA) of 3 August 1959, amended by the Agreements of 21 October 1971 and 18 March 1993 (481 UNTS 262; BGBl 1961 II 1218, 73 II 1022, 94 II 2594).

5. Convention of 5 September 1998 between the Government of the Kingdom of Denmark, the Government of the Federal Republic of Germany, and the Government of the Republic of Poland on the Multinational Corps Northeast.

6. International Military Operations (German Participation) Case, Federal Republic of Germany, Federal Constitutional Court (BVerfG) of 12 July 1994, Case Nos. 2 BvE 3/92, 5/93, 7/93 and 8/93 in: INTERNATIONAL LAW REPORTS, Vol. 106, Cambridge, 1997, pp. 319–352. These decisions were given occasion to by the Bundeswehr's participation in operations in the Adriatic Sea, in the air space over Bosnia-Herzegovina, and in Somalia.

7. Bulletin No. 68 (23 June 1992), pp. 649 ff.

8. Convention on the Presence of Foreign Forces in the Federal Republic of Germany of 23 October 1954 (3 UNTS 334; BGBl 1955 II 253).

9. Exchange of Notes between the Governments of the Federal Republic of Germany, the Kingdom of Belgium, Canada, the French Republic, the Kingdom of the Netherlands, the United Kingdom and the United States concerning the status of their forces during temporary stays in Berlin, Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia, of 25 September 1990, as amended on 12 September 1994 (Exchange of Notes with six permanent sending States, BGBl 1990 II 3716).

10. Vertrag zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande über die Stationierung von Truppen der Bundesrepublik Deutschland im Königreich der Niederlande vom 6. Oktober 1997 (BT-Drucksache 13/10117, pp. 56–57).

11. Gesetz über die Rechtsstellung ausländischer Streitkräfte bei vorübergehenden Aufhalten in der Bundesrepublik Deutschland (Streitkräfteaufenthaltsgesetz) vom 20. Juli 1995 (BGBl 1995 II 554).

12. Vertrag zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands - Einigungsvertrag - (BGBl 1990 II 889).

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13. Forces of Belgium, Canada (which were, however, largely withdrawn from Germany in 1994), France, Netherlands, United Kingdom, and United States.

14. *Supra* note 9.

15. Treaty on the Final Settlement with respect to Germany of 12 September 1990 (BGBl 1990 II 1317).

16. Exchange of Notes between the Governments of the Federal Republic of Germany, the Kingdom of Denmark, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Norway, the Portuguese Republic, the Kingdom of Spain, and the Republic of Turkey concerning the status of their forces during temporary stays in the Federal Republic of Germany, of 29 April 1998 (Exchange of Notes concerning temporary stays in Germany).

17. *Supra* note 11.

18. Gesetz zu dem Übereinkommen vom 19. Juni 1995 zwischen den Vertragsstaaten des Nordatlantikvertrags und den anderen an der Partnerschaft für den Frieden teilnehmenden Staaten über die Rechtsstellung ihrer Truppen sowie dem Zusatzprotokoll (Gesetz zum PfP-Truppenstatut) vom 9. Juli 1998 (BGBl 1998 II 1338).

19. Vienna Convention on the Law of Treaties of 23 May 1969 (UNTS 1155, 331).

20. Zusatzabkommen zu dem Abkommen vom 19. Juni 1951 zwischen den Parteien des Nordatlantikvertrags über die Rechtsstellung ihrer Truppen hinsichtlich der im Königreich der Niederlande stationierten deutschen Truppen vom 6. Oktober 1997 (BGBl 1998 II 2407).

21. *Supra* note 4.

22. Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (Paris Protocol) of 28 August 1952 (340 UNTS 200).

23. Agreement between the Federal Republic of Germany and the Supreme Headquarters Allied Powers Europe on the special conditions applicable to the establishment and operation of International Military Headquarters in the Federal Republic of Germany (Supplementing Agreement to the Paris Protocol) of 13 March 1967 (BGBl 1969 II 2009).

24. *Supra* note 5.

25. Founding Act on Mutual Relations, Cooperation and Security Between the North Atlantic Treaty Organization and the Russian Federation, signed in Paris on 27 May 1997.

26. Cf. the definition of *mutatis mutandis* taken from BLACK'S LAW DICTIONARY: "With the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices and the like."

27. Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany) of 23 May 1949 as amended. Article 87b, paragraph 1, reads: "(1) The administration of the Federal Defense Forces shall be conducted as a Federal administration with its own administrative substructure. Its function shall be to administer matters pertaining to personnel and to the immediate supply of the material requirements of the Armed Forces. Tasks connected with benefits to invalids or construction work shall not be assigned to the administration of the Federal Defense Forces except by Federal legislation which shall require the consent of the Bundesrat. Such consent shall also be required for any legislative provisions empowering the administration of the Federal Defense Forces to interfere with rights of third Parties: this shall, however, not apply in the case of laws concerning personnel."

28. Article 93 (ex-article 99) of the EC Treaty and Article 15.10 of the Sixth Directive of the European Union regarding the Value Added Tax.

29. Cf. MC 57/3 Overall Organization of the Integrated NATO Forces.

30. C-M (54)85(Final), 25 October 1954, Department of State Publication 5659, p. 32.

31. Tactical Control (TACON) is the detailed and, usually, local direction and control of movements or manoeuvres necessary to accomplish missions or tasks assigned.

32. Tactical Command (TACOM) is the authority delegated to a commander to assign tasks to forces under his command for the accomplishment of the mission assigned by higher authority.

33. Operational Control (OPCON) is the authority delegated to a commander to direct forces assigned so that the commander may accomplish specific missions or tasks which are usually limited by function, time or location, to deploy units concerned and to retain or assign tactical control of those units. It does not include authority to assign separate employment of components of the units concerned. Neither does it, of itself, include administrative or logistic control.

34. Operational Command (OPCOM) is the authority granted to a commander to assign missions or tasks to subordinate commanders, to deploy units, to reassign forces, and to retain or delegate operational control and/or tactical control. OPCOM does not of itself include responsibility for administration or logistics.

35. Coordinating Authority is the authority granted to a commander or individual assigned responsibility for coordinating specific functions or activities involving forces of two or more countries or commands, or two or more services or two or more forces of the same service. It includes the authority to require consultation between the agencies involved or their representatives, but does not have the authority to compel agreement. In case of disagreement between the agencies involved, the commander should attempt to obtain essential agreement by discussion. In the event he is unable to obtain essential agreement, he shall refer the matter to the appropriate authority.

36. Full Command is the military authority and responsibility of a superior officer to issue orders to subordinates and covers every aspect of military operations and administration. It exists only within national services.

37. NATO Earmarked Forces are forces which nations agree to place under the operational command or operational control of a NATO commander at some future time.

38. NATO Assigned Forces are forces which nations agree to place under the operational command or operational control of a NATO commander at a specified stage, state or measure prescribed in the NATO Alert System or in special agreements.

39. NATO Command Forces are forces which nations have placed under the operational command or operational control of a NATO commander (e.g., NATO Airborne Early Warning and Control Force - NAEW - a NATO Force under the operational command of all three Major NATO Commanders, for whom SACEUR acts as Executive Agent).

40. Article 65a reads: "Power of command in respect of the Armed Forces shall be vested in the Federal Minister of Defense."

41. Duties under § 7 of the Soldatengesetz (Soldiers Act), § 54 of the Bundesbeamtengesetz (Federal Act on Civil Servants).

42. Wehrdisziplinarordnung (Military Disciplinary Code) in der Fassung vom 4. September 1972 (BGBl 1972 I 1665) with later amendments.

43. §§ 19, 20 Wehrstrafgesetz (Military Penal Code) in der Fassung vom 24. Mai 1974 (BGBl 1974 I 1213) with later amendments.

44. *Supra* note 1, Article 10.

45. Article 2 of the law of 11 September 1998 (BGBl 1998 II 2405), by which the Corps Convention (*supra* note 1) and the Supplementary Agreement for German Forces in the Netherlands (*supra* note 20) were enacted.

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46. *Supra* note 1. Article 6 reads:

Integrated Directing and Control Authority (1) The Commander of the Corps shall be vested with integrated directing and control authority with regard to the execution of the tasks given to the Corps. This authority includes the right to give instructions to soldiers and civilian members of the Corps under his integrated command. It encompasses planning, preparation and execution of the Corps' tasks and missions, including training exercises as well as logistic competencies. (2) National rights and obligations of personnel, in particular with regard to disciplinary matters and complaints, do not fall within the scope of the integrated directing and control authority. (3) Details shall be agreed between the Contracting Parties. (4) The responsibilities and powers of the competent NATO/WEU Commander shall remain unaffected.

47. Agreement between the Government of the Federal Republic of Germany and the Government of the Kingdom of the Netherlands on the Organization and the Activities of the 1 (German-Netherlands) Corps and the Air Operations Coordination Center of 6 October 1997 (BT-Drucksache 13/10117, p. 79).

48. Ferdinand Kirchhof, *Deutsche Verfassungsvorgaben zur Befehlsgewalt und Wehrverwaltung in multinationalen Verbänden*, in: NEUE ZEITSCHRIFT FÜR WEHRRECHT 4, 1998, pp. 152–163.

49. Joachim Wieland, *Die Beteiligung der Bundeswehr an gemischtnationalen Einheiten. Rechtsfragen offener Staatlichkeit auf militärischem Gebiet*, in: Grawert/Schlink/Wahl/Wieland (eds.), OFFENE STAATLICHKEIT. FESTSCHRIFT FÜR ERNST-WOLFGANG BÖCKENFÖRDE ZUM 65. Geburtstag, Berlin 1995, pp. 219–236.

50. Model Agreement between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peace-Keeping Operations UN-Documents: A/46/185 (23 May 1991). Part V (Authority) reads as follows:

(7) During the period of their assignment [to the United Nations peace-keeping operation], the personnel made available [by the Participating State] shall remain in their national service but shall be under the command of the United Nations, vested in the Secretary-General, under the authority of the Security Council. Accordingly, the Secretary-General of the United Nations shall have full authority over the deployment, organization, conduct and direction [of the United Nations peace-keeping operation], including the personnel made available [by the Participating State]. In the field, such authority shall be exercised by the Head of Mission, who shall be responsible to the Secretary-General. The Head of Mission shall regulate the further delegation of authority. (8) The Head of Mission shall have general responsibility for the good order and discipline [of the United Nations peace-keeping operation]. Responsibility for disciplinary action with respect to military personnel made available [by the Participating State] shall rest with the officer designated by the Government [of the Participating State] for that purpose.