

**WILL THE REAL MULTINATIONAL ELEPHANT IN THE ROOM PLEASE STAND UP? THE NEED FOR NATO ASSISTANCE IN EUROPE'S MIGRANT CRISIS**

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*This is not a mission of choice, but of necessity. The Allies neither invented nor desired it. Events themselves have forced this mission upon them. Nation-state failure and violent extremism may well be the defining threats of the first half of the 21st century. Only a vigorously coordinated international response can address them. This is our common challenge. As the foundation stone of transatlantic peace, NATO must be ready to meet it.<sup>1</sup>*

I. Introduction

In the wake of the Paris terror attacks of November 2015,<sup>2</sup> an interview took place with a representative manager of a government

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<sup>1</sup> North Atlantic Treaty Organization Public Diplomacy Division, *A Short History of NATO*, NATO, [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_publications/20120412\\_ShortHistory\\_en.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_publications/20120412_ShortHistory_en.pdf) (2012) [hereinafter *NATO Short History*].

<sup>2</sup> Eric Randolph & Simon Valmary, *Gunmen Kill More Than 120 in Wave of Attacks Across Paris*, YAHOO NEWS (Nov. 14, 2015), [http://news.yahoo.com/least-120-dead-paris-attacks-investigation-source-pta-013205822.html?soc\\_src=copy](http://news.yahoo.com/least-120-dead-paris-attacks-investigation-source-pta-013205822.html?soc_src=copy).

Gunmen killed more than 120 people in a wave of attacks across Paris, shouting "Allahu akbar" as they massacred scores of diners and concert-goers and launched suicide attacks outside the national stadium. Four black-clad gunmen wearing suicide vests and wielding

agency in a major European city. At one point, the manager leaned forward and stated, “of course it [is] not accepted, but the factual point is that all the terrorists are basically migrants. The question is when they migrated to the European Union.”<sup>3</sup> It was a brusque and simple assessment, bordering on xenophobia, and symptomatic of the complicated and divisive points at issue in the current migrant crisis affecting Europe.<sup>4</sup>

In recent years, Europe has been subject to thousands of migrants<sup>5</sup> from war-torn Syria and other troubled North African and Middle Eastern countries.<sup>6</sup> The migrants come by foot and by rail from Turkey, or by boat over the Mediterranean, seeking shelter and a better life.<sup>7</sup> According to some international organizations monitoring the crisis, upwards of 700,000 persons have come through European borders in 2015 alone.<sup>8</sup> Not all are claiming asylum, but estimates of those who are total at least 500,000.<sup>9</sup> Germany is leading the way, with asylum-seekers at over 200,000.<sup>10</sup> Migrants fleeing conflict in Syria appear to be the largest

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AK-47s stormed into the Bataclan venue in eastern Paris and fired calmly and methodically at hundreds of screaming concert-goers. At least 120 people were killed and 200 injured across six locations around the French capital, which is still reeling from jihadist attacks in January. Investigators said at least eight attackers were dead by the end of the violence—the bloodiest in Europe since the Madrid train bombings in 2004—with seven of them having blown themselves up.

*Id.*

<sup>3</sup> Matthew Kaminski, *All the Terrorists Are Migrants: Interview with Viktor Orban*, POLITICO (Nov. 23, 2015), <http://www.politico.eu/article/viktor-orban-interview-terrorists-migrants-eu-russia-putin-borders-schengen/>.

<sup>4</sup> *Id.*

<sup>5</sup> For this article, the term “migrant” is used to describe all persons traversing Europe’s borders for either asylum, employment, or other reasons for movement from another country of origin. The precise definition of a migrant is not well-settled in political and legal discussions. See Somini Sengupta, *Migrant or Refugee? There is a Difference with Legal Implications*, N.Y. TIMES (Aug. 27, 2015), [http://www.nytimes.com/2015/08/28/world/migrants-refugees-europe-syria.html?\\_r=1](http://www.nytimes.com/2015/08/28/world/migrants-refugees-europe-syria.html?_r=1).

<sup>6</sup> *Migrant Crisis: Migration to Europe Explained in Graphics*, BBC.COM (Oct. 27, 2015), <http://www.bbc.com/news/world-europe-34131911> [hereinafter *Migration in Graphics*].

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

portion.<sup>11</sup> Kosovo is second, followed by Afghanistan, Albania, and Iraq.<sup>12</sup>

As the investigation into the Paris attacks widened, the status of migrant treatment for those entering Europe was complicated when French authorities found questionable Syrian passports allegedly used by the attackers.<sup>13</sup> Links to people moving in and out of Belgium who allegedly aided the suspects added to criticisms of the European Union's<sup>14</sup> border security and its historically favorable migrant policies.<sup>15</sup>

The well-dressed man interviewed at the outset of this article, generalizing that "all the terrorists are basically migrants," is Viktor Orban; the government agency is Hungary, and he is the Prime Minister.<sup>16</sup> As of July 2015, Hungary has taken in the second-highest number of migrants in the EU, with nearly an estimated 100,000.<sup>17</sup> In proportion to its national population, Hungary surpasses Germany in terms of the number of migrants entering its borders. That has raised concerns of many conservative political elements in the country and as a result, Hungary is

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Ishaan Tharoor, *Were Syrian Refugees Involved in the Paris Attacks? What We Know and Don't Know?*, WASH. POST (Nov. 17, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/11/17/were-syrian-refugees-involved-in-the-paris-attacks-what-we-know-and-dont-know/>.

<sup>14</sup> *The EU In Brief*, EUROPA, [http://europa.eu/about-eu/basic-information/about/index\\_en.htm](http://europa.eu/about-eu/basic-information/about/index_en.htm) (last visited Mar. 6, 2017).

The [European Union (EU)] is a unique economic and political partnership between [twenty-eight] European countries that together cover much of the continent. The EU was created in the aftermath of the Second World War. The first steps were to foster economic cooperation: the idea being that countries who trade with one another become economically interdependent and so more likely to avoid conflict. The result was the European Economic Community (EEC), created in 1958, and initially increasing economic cooperation between six countries: Belgium, Germany, France, Italy, Luxembourg and the Netherlands. Since then, a huge single market has been created and continues to develop towards its full potential.

*Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Kaminski, *supra* note 3.

<sup>17</sup> *Migration in Graphics*, *supra* note 6.

leading a revolt against EU border and asylum policies.<sup>18</sup> Tensions within the EU on how to address the migrant crisis are at a fever pitch, with some commentators pondering that the EU may fracture over this very issue.<sup>19</sup> The attacks in Paris could not have come at a worse moment.

Just as previous large-scale terror attacks have had dramatic effects on the foreign and domestic policies of victimized states, so have the Paris attacks had a dramatic effect on established EU border security policies that promote the free movement of people.<sup>20</sup> The Paris attacks, in conjunction with the migrant crisis, threaten the multinational cooperation required for the EU to work effectively. A more recent threat to the EU's existence came in the form of a referendum in the United Kingdom (UK) that voted to withdraw from the EU.<sup>21</sup> Concerns over control of migrants entering the UK became a major political argument for supporters of leaving the EU.<sup>22</sup> Is there a way forward that can get the EU through the migrant crisis? A plan of action that preserves the EU's multinational source of strength via interstate cooperation?

The answer surfaced one month before the attacks in Paris, when Hungary announced it would allow EU or North Atlantic Treaty Organization (NATO) forces to help defend its borders as the migrant crisis intensified.<sup>23</sup> Hungary's call for assistance in particular to NATO holds the key to potentially improving Europe's migration crisis.

The North Atlantic Treaty Organization supports member nations, like Hungary, in civil, non-military, and military efforts, and is a real capability that has been preparing for just such an intervention since its founding.<sup>24</sup> If successful, NATO may help ease the migration crisis and strengthen European cooperation. For NATO to support Hungary and other members dealing with increasing migrant numbers is not a new or groundbreaking

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<sup>18</sup> Chris Morris, *Migrants Crisis: Hungary's Orban Lays Bare EU East-West Split*, BBC (Sept. 3, 2015), <http://www.bbc.com/news/blogs-eu-34144554>.

<sup>19</sup> *Id.*

<sup>20</sup> Kaminski, *supra* note 3.

<sup>21</sup> EU Referendum, *Eight Reasons Leave Won the UK's Referendum on the EU*, BBC (June 24, 2016), <http://www.bbc.com/news/uk-politics-eu-referendum-36574526>.

<sup>22</sup> *Id.*

<sup>23</sup> Pablo Gorondi, *Hungary Authorizes EU or NATO Forces to Help Defend its Borders amid Migrant Crisis*, USNEWS (Oct. 8, 2015), <http://www.usnews.com/news/world/articles/2015/10/08/hungary-oks-nato-eu-troops-to-help-guard-border>.

<sup>24</sup> Judy Dempsey, *NATO's Absence in the Refugee Crisis*, CARNEGIE EUROPE (Oct. 22, 2015), <http://carnegieeurope.eu/strategieurope/?fa=61710>.

operational concept.<sup>25</sup> NATO has a history of assisting in migrant disruptions caused by instability in the Balkans and has even provided support for natural disaster relief to the United States.<sup>26</sup>

Now is the time for NATO to assist in Europe's migration crisis. NATO could assist member states like Hungary, struggling with large numbers of migrants, through its robust system of support to civil authorities as well as through its security capabilities. NATO has historical precedent, logistical experience, command and control infrastructure, and organizational muscle that goes beyond military operations. NATO also has a powerful security incentive to get involved. Its success would bring the likes of Prime Minister Orban to the negotiating table with leaders that are more moderate in the EU, and encourage both sides to cooperate over border security and assistance to migrants. NATO's involvement potentially aids in securing a more balanced international response to the crisis, while also securing the very existence of the EU multinational system. Europe desperately depends on the security cooperation of its members that are in the grips of the migration crisis.

This article will first review the historical development of NATO's non-military support capabilities. Second, it will address the regulatory and legal authorities that are at issue in order for NATO to offer effective military and non-military assistance to the migrant crisis. Third, the article will examine what current capabilities NATO has to offer in terms of assistance. Fourth, it will analyze the complex NATO and EU strategic relationship that must work if any form of robust NATO assistance in Europe materializes. Finally, it will assess new developments announced in the global community concerning specific NATO action in support of the migrant crisis.

## II. Historical Development of NATO Military and Non-Military Support Roles in Non-Conflict

NATO is an extensive military and political alliance that currently consists of twenty-eight nations ranging from Europe to North America.<sup>27</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> The NATO member states are: Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia,

The alliance was born out of post-World War II cooperation between the United States and certain Western European nations seeking to prevent another global war in Europe, given the rise of Soviet communism.<sup>28</sup> As concerns continued to mount in the late 1940s, a small group of western nations, namely the United Kingdom, France, Belgium, Luxembourg, and the Netherlands, came together for talks on greater economic and military cooperation.<sup>29</sup> Ultimately, “it was determined that only a truly transatlantic security agreement could deter Soviet aggression while simultaneously preventing the revival of European militarism.”<sup>30</sup> With U.S. involvement, the North Atlantic Treaty was signed on April 4, 1949, and NATO was born.<sup>31</sup> The treaty is famous for its Article 5 collective defense clause for members, stating, “an armed attack against one or more of them . . . shall be considered an attack against them all and that following such an attack, each Ally would take such action as it deems necessary, including the use of armed force in response.”<sup>32</sup>

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Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom, and United States. See NATO, [http://www.nato.int/cps/en/natolive/nato\\_countries.htm](http://www.nato.int/cps/en/natolive/nato_countries.htm) (last visited Mar. 8, 2016).

<sup>28</sup> *NATO Short History*, *supra* note 1.

The aftermath of World War II saw much of Europe devastated in a way that is now difficult to envision. Approximately 36.5 million Europeans had died in the conflict, 19 million of them civilians. Refugee camps and rationing dominated daily life. In some areas, infant mortality rates were one in four. Millions of orphans wandered the burnt-out shells of former metropolises. In the German city of Hamburg alone, half a million people were homeless. In addition, Communists aided by the Soviet Union were threatening elected governments across Europe. In February 1948, the Communist Party of Czechoslovakia, with covert backing from the Soviet Union, overthrew the democratically elected government in that country. Then, in reaction to the democratic consolidation of West Germany, the Soviets blockaded Allied-controlled West Berlin in a bid to consolidate their hold on the German capital. The heroism of the Berlin Airlift provided future Allies with some solace, but privation remained a grave threat to freedom and stability.

*Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

A. The “Report of the Three Wise Men” Laying Groundwork for Future NATO Non-Military Support Roles

Since NATO’s inception, the organization has been laying the foundation for its ability to go beyond the scope of conventional military operations in Europe: “Significantly, Articles 2 and 3 of the Treaty had important purposes not immediately germane to the threat of attack. Article 3 laid the foundation for cooperation in military preparedness between the Allies, and Article 2 allowed them some leeway to engage in non-military cooperation.”<sup>33</sup> Article 2 of the NATO Treaty states:

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 . . . . They will seek to eliminate conflict in their international economic policies and will encourage economic collaboration between any or all of them.<sup>34</sup>

Even though Article 2 focused on economic collaboration, the foundation was set for building upon non-military cooperation in other policy areas. This collaborative spirit within NATO would only intensify in the coming years.

By 1956, with increasing anxiety over how smaller NATO members like Belgium or Luxembourg could cooperate with larger ones like the United States in international events, the need for greater collaborative efforts developed.<sup>35</sup> Then U.S. Secretary of State, John Foster Dulles,

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<sup>33</sup> *Id.*

<sup>34</sup> PUBLIC DIPLOMACY DIVISION, NATO HANDBOOK 371 (2006) [hereinafter NATO HANDBOOK].

<sup>35</sup> Lawrence S. Kaplan, *Report of the “Three Wise Men”: 50 years On*, NATO REVIEW (2006), <http://www.nato.int/docu/review/2006/issue1/english/history.html>.

The incentive for improving the conditions for consultation in the Alliance was long in the making. From its beginnings, the smaller Allies had felt that their voice was too seldom heard or heeded. Indeed, the Benelux countries had difficulty pressing France and the United Kingdom to make them more equal partners in the Brussels Pact of 1948. As negotiations for an Atlantic alliance proceeded in 1948, the United States’ positions prevailed in almost all the issues—from overcoming European reluctance to admit such “stepping-stone” nations as Norway and Portugal as charter members[—]to the

paved the way for a NATO committee of three representatives to look at areas beyond the scope of military operations ripe for NATO involvement that could strengthen the treaty alliance.<sup>36</sup> The committee consisted of three distinguished persons<sup>37</sup> from NATO member states, tasked to draft a

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establishment of a Standing Group composed of France, the United Kingdom and the United States, after the treaty was signed, to make the key decisions for the Military Committee. The Truman administration intervened in Korea without consulting any of its NATO Allies. That the Supreme Allied Commanders appointed after the Korean War were American, not European, was a logical consequence of [U.S.] dominance of the Alliance in the 1950s. Europe's dependence in those years on [U.S.] economic support and its military ability to inhibit Soviet aggression accounted for the smaller Allies' reluctant acceptance of a lesser role vis-a-vis the United States . . . . In 1956, the issue was the continuing exclusion of the smaller Allies from the decision-making process . . . . The other members of NATO were left on the sidelines.

*Id.*

<sup>36</sup> *Id.*

It was [U.S.] Secretary of State John Foster Dulles who opened the way for the Committee of Three in April[,] when he issued a number of statements indicating that the United States was anxious to expand NATO's functions in the non-military spheres. The Cold War was a major factor in his thinking. His proposed shift in NATO's emphases was motivated in large part by a need to meet the apparent change in Soviet strategy under Nikita Khrushchev away from military intimidation. Consultation on non-military areas could be an effective way of countering the growing Soviet economic and social offensives. The result was the North Atlantic Council's appointment of a committee "to examine actively further measures which might be taken at this time to advance effectively their common interests."

*Id.*

<sup>37</sup> *Id.*

Halvard Lange, Gaetano Martino, the chairman, and Lester B. Pearson all had histories of strong affiliation with NATO. Lange had arguably been the most influential figure in Scandinavia arguing for Norway and Denmark to join NATO in 1949, rather than participating in a Nordic alliance with Sweden. Pearson had signed the North Atlantic Treaty for Canada and headed the Canadian delegation to the United Nations from 1948 to 1957. He proposed the UN Emergency Force to control the Suez crisis, and won the Nobel Peace Prize in 1957. Together with Professor Martino, a leading advocate of European unity (and father of Italy's current defence minister, Antonio Martino), they were impressive representatives of the smaller nations.



report officially titled the *Report of the Committee on Non-Military Cooperation in NATO*, informally known as the “Report of the Three Wise Men.”<sup>38</sup> The report recommended “[m]ore robust consultation and scientific cooperation within the Alliance, and the report’s conclusions led, inter alia, to the establishment of the NATO Science Programme.”<sup>39</sup> More importantly, the report emphasized “the right and duty of member governments and of the Secretary General to bring to its attention matters which in their opinion may threaten the solidarity or effectiveness of the Alliance.”<sup>40</sup>

The Report of the Three Wise Men was groundbreaking for NATO, in that it formalized the idea that NATO members should always seek to consult with each other over important non-military matters.<sup>41</sup> To be sure, the report did not have any immediate impact on NATO policy and procedures in 1956.<sup>42</sup> However, the seeds for NATO non-military support roles were planted. As the Cold War progressed, and relations with Soviet Russia thawed, NATO’s involvement in non-military activity would grow.<sup>43</sup> Another major area of both non-military and military support important for NATO in succeeding years was its development of civil

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*Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *NATO Short History*, *supra* note 1.

<sup>40</sup> Kaplan, *supra* note 35.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

A Committee of Political Advisers was set up in 1957 in accordance with a recommendation from the Wise Men. But how seriously did the larger powers take account of advice from the smaller members? But it took a decade to be heard, and then not because there was sudden conversion on the part of the major powers. Rather, the changing environment of the Cold War in the 1960s helps to account for a different relationship among the Allies. Soviet failure to win its objectives in Berlin and Cuba in 1961 and 1962 induced many Europeans to believe that the Soviet Union had abandoned its provocative behaviour toward NATO and had adjusted to the role of a normal if adversarial neighbour. A new view of the Soviets permitted non-military issues to become more important in NATO circles and provided an opportunity for greater participation by the smaller nations in the decision-making process.

*Id.*

<sup>43</sup> *Id.*

support capabilities and emergency responses.<sup>44</sup> Analyzing the development of these initiatives reveals a history of NATO operational precedent that bolsters the need for NATO assistance in Europe's current migration crisis.

#### B. Post-Cold War Development of NATO Civil Support for Military Operations and Emergency Responses

For a brief moment at the end of the Cold War and the fall of the Berlin Wall, NATO's importance seemed to diminish.<sup>45</sup> However, the collapse of Soviet communism and subsequent ethnic and national strife in Eastern Europe intensified NATO's importance.<sup>46</sup> Prior to this time, NATO's active military involvement was minimal, except for military exercises.<sup>47</sup> The North Atlantic Treaty Organization's increased role involved reaching

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<sup>44</sup> Dr. Petra Ochmannova, *NATO: Evolution and Legal Framework for the Conduct of Operations*, NATO LEGAL GAZETTE 32-33 (July, 2014), [http://www.act.nato.int/images/stories/media/doclibrary/legal\\_gazette\\_34a.pdf](http://www.act.nato.int/images/stories/media/doclibrary/legal_gazette_34a.pdf).

<sup>45</sup> *NATO Short History*, *supra* note 1.

<sup>46</sup> *Id.*

At first, Allies hesitated to intervene in what was perceived as a Yugoslav civil war. Later the conflict came to be seen as a war of aggression and ethnic cleansing, and the Alliance decided to act. Initially, NATO offered its full support to United Nations efforts to end war crimes, including direct military action in the form of a naval embargo. . . . Finally, the Alliance carried out a nine-day air campaign in September 1995 that played a major role in ending the conflict. In December of that year, NATO deployed a UN-mandated, multinational force of 60,000 soldiers to help implement the Dayton Peace Agreement and to create the conditions for a self-sustaining peace.

*Id.*

<sup>47</sup> Ochmannova, *supra* note 44, at 32-33.

As reflected clearly in the strategic documents written during the Cold War, the Alliance's aim was deterrence because neither the NATO nations nor the Soviet Union could accept the massive assured destruction that a major military conflict would produce. Thus, from 1949 to 1991, NATO conducted many exercises[,] but zero military operations. Ironically, it was the collapse of the threat posed by the Soviet Union—the North Atlantic Alliance's *raison d'être*—that propelled NATO into a new era of existence.

*Id.* (emphasis added).

out to former Soviet bloc nations to work in areas of peacekeeping, economics, and political stability, all of which required the establishment of NATO systems that were non-military in scope.<sup>48</sup>

Protecting and assisting civilian populations remained an area of concern for NATO during and after the Cold War.<sup>49</sup> With regard to assisting the civilian populace, much of NATO's non-military role involved disaster assistance.<sup>50</sup> By 1958, NATO established formalized,

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<sup>48</sup> *Id.*

New capabilities to prevent conflicts have been introduced and NATO is actively responding to current security threats. In other words, in addition to NATO's ongoing commitment to the collective defence of its member states, the Alliance actually conducts a wide range of operations . . . this new operational remit of the Alliance was further expanded. For the first time NATO committed itself to active engagement outside the territory of its member countries with the aim of responding to new security threats such as terrorism, ethnic conflicts, and human rights abuses. In order to effectively respond to international crises, whether political, military, or humanitarian in nature, the concept of crisis management was further elaborated with the introduction of a new concept for conducting crisis response operations.

*Id.*

<sup>49</sup> Euro-Atlantic Disaster Response Coordination Centre, *NATO's Role in Disaster Assistance*, NATO (Nov. 2001), <http://www.nato.int/eadrcc/mcda-e.pdf>.

Since the creation of the Alliance in 1949, NATO has always placed great emphasis on protection of the population. Faced with potential threat of war which might involve nuclear weapons, the Alliance began to develop various measures in the field of civil protection. Accordingly, in 1951, NATO established the Civil Defence Committee to oversee efforts to provide for the protection of our populations. It soon became apparent that the capabilities to protect our populations against the effects of war could also be used to protect them against the effects of disasters.

*Id.* at 5.

<sup>50</sup> *Id.* at 5-6.

As early as 1953, following disastrous North Sea floods, NATO had an agreed disaster assistance scheme. By 1958, the North Atlantic Council had established procedures for NATO coordination of assistance between member countries in case of disasters. Subsequently modified, these procedures remained in effect until May 1995, when they were replaced by revised procedures, which also became applicable to Partner countries. Recognizing the importance

coordinated efforts for disaster assistance between member states.<sup>51</sup> These coordination procedures remained in place until 1995, with modifications.<sup>52</sup> In 1997, NATO created the Euro-Atlantic Disaster Response Coordination Centre (EADRCC) to collaborate with the United Nations (UN) for international disaster relief.<sup>53</sup>

Disaster relief to displaced persons became a major focal point for NATO in the Kosovo Refugee Crisis in the 1990s.<sup>54</sup> On June 5, 1998,

[T]he EADRCC received a request from [United Nations High Commissioner for Refugees] to assist it by moving urgently needed relief items to Albania in response to the initial influx of refugees from Kosovo . . . the EADRCC arranged for 16 flights to airlift 165 tons of relief items . . . using Hercules C-130s offered by both Belgium and Norway.<sup>55</sup>

As the situation in Kosovo continued to deteriorate, NATO expanded its relief efforts to stabilize the situation.<sup>56</sup>

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of enhanced international cooperation in the field of disaster relief, on 17th December 1997, the Euro-Atlantic Partnership Council (EAPC) in Ministerial Session endorsed a proposal to create, as a support and complement to the United Nations, a Euro-Atlantic Disaster Response Capability, and tasked the Senior Civil Emergency Planning Committee (SCEPC) with Cooperation Partners to prepare a more detailed report for the May 1998 EAPC Ministerial. The resultant EAPC Policy on "Enhanced Practical Cooperation in International Disaster Relief" was agreed by EAPC Foreign Ministers on 29 . . . May 1998.

*Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 25.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 26.

With the beginning of the NATO Air Campaign on 24 . . . March 1999 and the Serbian programme of forced expulsions of hundreds of thousands of ethnic Albanians, the EADRCC functions intensified and broadened along four major areas of activity: Humanitarian focal point for all EAPC nations; Assistance Requests and offers; Support for UNHCR; and Relationship with NATO bodies, Supreme Headquarters Allied Powers Europe (SHAPE) and other organizations.

Disaster relief was not the only area that increased NATO's involvement with civilian populations. The *NATO Handbook*<sup>57</sup> also stressed the importance of civil, emergency planning in NATO and its capability to provide support to civil authorities of its members by stating, "[c]ivil emergency planning has long been one of the mainstream activities of NATO. Its main roles are to provide civil support for military operations and support for national authorities in civil emergencies, particularly in the protection of civilian populations."<sup>58</sup>

NATO's disaster assistance capabilities that parallel its development of civil support capabilities may be effective tools in responding to the current migrant crisis. As one NATO information guide explains:

Planning and conducting modern military operations as well as responses to disasters or humanitarian crises is a complex process. Military planners and commanders often call on expertise and capabilities from the civilian sector when mounting an operation. Close cooperation and interoperability between military and civilian actors is vital, and NATO plays an important role in facilitating such cooperation.<sup>59</sup>

The North Atlantic Treaty Organization further emphasizes that it has numerous capabilities that can assist civil and military authorities in times of crisis.

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*Id.*

<sup>57</sup> NATO HANDBOOK, *supra* note 34, at 4.

The NATO Handbook is published by the NATO's Public Diplomacy Division under the authority of the Secretary General as a reference book on the Alliance and on Alliance policies. The formulations used reflect as closely as possible the consensus among the member nations[,] which is the basis for all Alliance decisions. However, the Handbook is not a formally agreed NATO document and therefore may not represent the official opinions or positions of individual governments on every issue discussed.

*Id.*

<sup>58</sup> *Id.* at 297.

<sup>59</sup> NATO Public Diplomacy Division, *Civil Support for Military Operations and Emergency Responses*, NATO BACKGROUNDER 1 (Jan. 2008), [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_publications/20120116\\_cep2008-e.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_publications/20120116_cep2008-e.pdf) [hereinafter *NATO Civil Support Operations*].

[The] NATO has a range of civilian instruments and capabilities at its disposal to support the military authorities as necessary. These include specialized committees, networks of expertise, an operational centre and international staff elements. The Alliance's civilian and military assets complement one another and can be dovetailed to achieve a desired goal.<sup>60</sup>

The current migrant crisis is affecting multiple NATO members who are primed for NATO to apply their capabilities to render assistance. Like most military and political organizations must, in order for NATO to swing in to action, some form of regulatory authorization is required. It is therefore necessary to look at the NATO's regulatory and legal framework.

### III. The Regulatory and Legal Authority at Issue for NATO Assistance in Europe's Migrant Crisis

A more expansive approach to issues affecting NATO, outside the scope of collective self-defense, would fall under a category known as Non-Article 5 Crisis Response Operations (NA5CRO). The Non-Article 5 operational framework is an immense part of NATO's mission. Since 1990, almost all NATO operations have been unrelated to collective self-defense.<sup>61</sup> A list of examples illustrating what these Non-Article 5 operations look like are as follows:

The conduct of combat and counterinsurgency operations such as in Afghanistan through the [International Security Assistance Force] ISAF mission, disaster relief and humanitarian assistance provided to [the United States] after Hurricane Katrina or to Pakistan after the earthquake and massive flooding, the security mission to secure the delivery of humanitarian relief supplies to Somalia (Operation Allied Provider), or maritime interdiction operations, embargoes, and no-fly zones seen in the case of Libya.<sup>62</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> Ochmannova, *supra* note 44, at 33.

<sup>62</sup> *Id.* at 34.

These are diverse operations with various mission requirements, reflecting the ability for NATO to respond with assistance of a more civil or non-military scope, if necessary.

The NATO published an Allied Joint Publication on NA5CRO (AJP-3.4(A)) for regulatory guidance.<sup>63</sup> The regulatory context for NATO's NA5CRO mission in AJP-3.4(A) is quite clear:

The need for the North Atlantic Treaty Organization . . . to be capable of responding to a crisis beyond the concept of "collective defence" under Article 5 of the North Atlantic Treaty was first identified in the 1991 Strategic Concept and reiterated thereafter at the 1999 Washington Summit. The Washington Summit recognized that future NATO involvement in non-Article 5 crisis response operations . . . is needed to ensure both the flexibility and ability to execute evolving missions not described under Article 5, including those contributing to effective conflict prevention. The Alliance's military mission of NA5CRO is focused on contributing to effective crises management when there appears to be no direct threat to NATO nations or territories that otherwise would clearly fall under Article 5 "collective defence."<sup>64</sup>

Non-Article 5 Crisis Response Operations are defined in AJP-3.4(A) as:

[M]ultifunctional operations, falling outside the scope of Article 5, which contribute to conflict prevention and resolution or serve humanitarian purposes, and crisis management in the pursuit of declared Alliance objectives. One principal difference between Article 5 operations and NA5CRO is that there is no formal obligation for NATO nations to take part in a NA5CRO.<sup>65</sup>

The range of operations considered under a Non-Article 5 concept is extensive, ranging from support operations primarily associated with civil

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<sup>63</sup> NATO STANDARDIZATION AGENCY, AJP-3.4(A), ALLIED JOINT DOCTRINE FOR NON-ARTICLE 5 CRISIS RESPONSE OPERATIONS (15 Oct. 2010) [hereinafter AJP-3.4(A)].

<sup>64</sup> *Id.* at 1-1.

<sup>65</sup> *Id.* at 1-3.

agencies, to tasks in support of disaster relief and humanitarian operations, etc.<sup>66</sup>

One critical area that AJP-3.4(A) contemplates that is essential to NATO assistance in the migrant crisis is its guidance and support of civil authorities. The regulation defines such support as:

All those military activities that provide temporary support, within means and capabilities, to civil communities or authorities, when permitted by law, and which are normally undertaken when unusual circumstances or an emergency overtakes the capabilities of the civil authorities. Categories of support include military assistance to civil authorities and support to humanitarian assistance operations.<sup>67</sup>

The last two categories of identified support are precisely where the regulatory framework for NATO could be most effective in providing direct assistance to the migrant crisis. First, military assistance to civil authorities considers, “implementation of a civil plan in response to a crisis may depend on the military to provide a stable and secure environment for its implementation. Support might include . . . supporting public administration in coordinating a humanitarian operation, or providing security for individuals, population, or installations.”<sup>68</sup> Second, and even more relevant for assisting in the migrant crisis, is the category of humanitarian assistance support for NATO Non-Article 5 operations:

[Humanitarian Assistance] consists of activities and task to relieve or reduce human suffering. [Humanitarian Assistance] may occur in response to earthquake, flood, famine, or manmade disasters . . . . They may also be necessary as a consequence of war or the flight from political, religious, or ethnic persecution . . . . [Humanitarian Assistance] is limited in scope and duration and is designed to supplement or complement the efforts of the [Host Nation] civil authorities or agencies

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<sup>66</sup> *Id.* at 1-4.

<sup>67</sup> *Id.* at 3-8 to 3-9.

<sup>68</sup> *Id.* at 3-9.



that may have the primary responsibility for providing that assistance.<sup>69</sup>

Humanitarian Assistance can be broken down into subsections to include assistance for internally displaced persons and refugees.<sup>70</sup> The areas covered in the above-cited subsections of AJP-3.4(A) are applicable for assistance to Europe's current migration crisis.

The legal basis for NATO to undertake Non-Article 5 operations is diverse and open-ended. The following is a list of legal authorizations that would govern in a particular instance:

1) [A] United Nation Security Council Resolution (UNSCR) to undertake actions (e.g. the cases of ISAF or Libya); 2) the request of a State for NATO support (e.g. the request from Greece in 2004 for [Airborne Warning and Control System] coverage during the Athens Olympic Games or Pakistan's request to NATO for disaster relief following the 2005 earthquake and the 2010 flooding); or 3) regional mandates from international organisations based on principles of the UN Charter. Irrespective of the underlying authority for NATO action—a UNSCR (United Nations Security Council Resolution), sovereign consent, or the regional mandates—the necessary predicate for legally valid North Atlantic Alliance operations is approval by the NAC (North Atlantic Council) which is achieved through the consensus of its member states.<sup>71</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 3-12 to 3-13.

<sup>71</sup> *Id.* at 35-36.

Consequently, there is no difference, in terms of NATO procedure, as to whether the NAC issues a decision under an Article 5 operation or an NA5CRO. In both cases member nations are exercising their sovereign authority to bind themselves to obligations made through their acts and decisions. The only distinction is the level of support required by the Washington Treaty from the NATO nations. For collective defence action taken under Article 5 of the Washington Treaty, NATO nations have a binding obligation to support the NATO state under armed attack, although this support could be political, moral, or financial rather than military in nature. For NA5CRO which is factually founded upon Articles 2, 3 and/or 4 of the Washington

A state request for NATO support would be applicable to the current situation in Europe. Assume there was a Hungarian request for assistance with enhanced border security and migrant processing to minimize criminal traffic or extremist infiltration. The North Atlantic Treaty Organization could select from a variety of operational schemes, such as humanitarian assistance support, or support to civil authorities or a mix of forms of support, in order to assist Hungary and other members in the crisis.

Further assume Hungary's request is considered and consensus within the North Atlantic Council (NAC) occurs;<sup>72</sup> a mandate to outline specific objectives to assist in the crisis results:

As every operation has a different strategic goal, it requires different assets and can prescribe different levels of involvement from each NATO nation. Therefore, within NATO, it is the approved NAC mandate that provides the purpose and scope of each operation. This mandate is subsequently implemented by: 1) NATO and partner nations who decide to participate and contribute to the specific NATO operation; and 2) the Supreme Allied Commander Europe (SACEUR), through the NATO command and force structure. With respect to the NATO nations, all are required to implement the NATO

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Treaty, there is neither a legal nor a formal obligation for nations to provide support.

*Id.*

<sup>72</sup> NATO HANDBOOK, *supra* note 34, at 34.

The North Atlantic Council (NAC) has effective political authority and powers of decision, and consists of permanent representatives of all member countries meeting together at least once a week. The Council also meets at higher levels involving foreign ministers, defence ministers or heads of state and government, but it has the same authority and powers of decision-making, and its decisions have the same status and validity, at whatever level it meets. The Council has an important public profile and issues declarations and communiqués explaining the Alliance's policies and decisions to the general public and to governments of countries which are not members of NATO.

*Id.*

mandate via their respective national procedures in order to ensure the lawful use of their national military assets.<sup>73</sup>

Implementation involves NATO members contributing at every aspect of the development of an operational plan.<sup>74</sup> This is where NATO assistance in the migration crisis could focus on the wide-ranging avenues of approach to managing heavy migration flows and ease security fears for its members in Europe.

#### IV. Current NATO Capabilities for Use in Support to Europe's Migrant Crisis

##### A. Crisis Management Capabilities in Support to Civil Authorities

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<sup>73</sup> Ochmannova, *supra* note 44, at 36.

<sup>74</sup> *Id.* at 37.

For SACEUR [Supreme Allied Commander Europe], the NAC approval is a green light. Based on such approval, SACEUR may direct his staff to develop a mission operational plan (OPLAN) that contains detailed information on the mission objectives and how they should be reached. NATO nations have many opportunities, during the OPLAN development and approval process, to comment on the OPLAN draft. When SACEUR determines that the OPLAN contains his best military recommendations for mission accomplishment, it is finalised and forwarded through the Military Committee for approval by the NAC. Only after the NAC approves the OPLAN may the specific NATO/NATO-led operation actually commence. This process for initiation of NATO operations through the OPLAN development displays the high degree of interconnectivity between NATO (as an international organisation) and its member states. Decisions related to the conduct of operations are not taken by any NATO body or military headquarter independently. The twenty-eight NATO nations sitting collectively in the NAC, partner nations participating in NATO operations, and the NATO military command structure directed by SACEUR constantly interact. Thus, NATO obtains proactive participation of its member states during all phases of the conduct of its operations. Each step in the decision-making process involves the nations' considerations and approval. As a result, they are wholly involved in this process and can either reaffirm their initial intent to execute an operation or halt the planning process at any step, thereby changing NATO's course of action.

*Id.*

The North Atlantic Treaty Organization can provide clear and precise goals that reflect the EU's concerns for improving the handling of the migration crisis based on its organized command structure and direct link to the senior military and political leadership of its members.<sup>75</sup> NATO's support to crises is extensive, to say the least.<sup>76</sup> For instance, one of NATO's main organizational elements for crisis management capability is in its support to civil authorities via the Crisis Response System (NCRS):

The overarching NATO Crisis Response System (NCRS) is a process within which a number of elements are geared to addressing different aspects of NATO's response to crises in a complementary manner. These include: the NATO Crisis Management Process (NCMP), the NATO Intelligence and Warning System (NIWS), NATO's Operational Planning Process and NATO Civil Emergency Planning Crisis Management Arrangements,

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<sup>75</sup> *Id.* at 38.

Given the explained establishment and functioning of NATO, NATO nations are clearly involved at every stage of the decision-making process as they exercise their full sovereignty and control over their level of involvement within the Alliance. Although it is usually emphasised that "the legal hierarchy between international organisations and their member states is interestingly unclear," such a premise does not apply to the close degree of interaction between the Alliance and its member states in their conduct of operations.

*Id.*

<sup>76</sup> *Crisis Management*, TOPICS (Jan. 29, 2015), [http://www.nato.int/cps/en/natolive/topics\\_49192.htm](http://www.nato.int/cps/en/natolive/topics_49192.htm).

[The] NATO has different mechanisms in place to deal with crises. The principal political decision-making body is the . . . (NAC), which exchanges intelligence, information and other data, compares different perceptions and approaches, harmonises its views and takes decisions by consensus, as do all NATO committees. In the field of crisis management, the Council is supported by the Operations Policy Committee, the Political Committee, the Military Committee and the Civil Emergency Planning Committee. Additionally, NATO communication systems, including a "Situation Centre" (SITCEN), receive, exchange and disseminate political, economic and military intelligence and information around the clock, every single day of the year.

*Id.*

which together underpin NATO's crisis management role and its ability to respond to crises.<sup>77</sup>

These systems can be coordinated with NATO member or non-NATO governments most affected by the large influx of migrants, should a way forward be achieved at the North Atlantic Council level. The list of capabilities is very extensive and worth consideration in addressing the migrant crisis.<sup>78</sup>

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

NATO is one of few international organisations that have the experience as well as the tools to conduct crisis management operations. The NCRS is effectively a guide to aid decision-making within the field of crisis management. Its role is to coordinate efforts between the national representatives at NATO Headquarters, capitals and the strategic commands. It does this by providing the Alliance with a comprehensive set of options and measures to prepare for, manage and respond to crises. It complements other processes such as operations planning, civil emergency planning and others, which exist within the Organization to address crises. It was first approved in 2005 and is revised annually. One of the core components of the NCRS is the NCMP. The NCMP breaks down a crisis situation into six different phases, providing a structure against which military and non-military crisis response planning processes should be designed. It is flexible and adaptable to different crisis situations. NATO periodically exercises procedures through scheduled crisis management exercises (CMX) in which the Headquarters (civilian and military) and capitals, including partners and other bodies who may be involved in a real-life crisis participate. Standardization: countries need to share a common set of standards, especially among military forces, to carry out multinational operations. By helping to achieve interoperability—the ability of diverse systems and organisations to work together—among NATO's forces, as well as with those of its partners, standardization allows for more efficient use of resources. It therefore greatly increases the effectiveness of the Alliance's defence capabilities. Through its standardization bodies, NATO develops and implements concepts, doctrines and procedures to achieve and maintain the required levels of compatibility, interchangeability or commonality needed to achieve interoperability. For instance, in the field, standard procedures allow for the transfer of supplies between ships at sea and interoperable material such as fuel connections at airfields. It enables the many NATO and partner countries to work together, preventing duplication and promoting better use of economic resources. Logistics: this is the bridge between the deployed forces and the industrial base that produces the material and weapons that forces need to accomplish their mission. It comprises the identification of requirements as well as both the building up of stocks and capabilities,

The North Atlantic Treaty Organization also possesses an organizational structure that contemplates providing civilian expertise,<sup>79</sup> support for stabilization and reconstruction,<sup>80</sup> among other things. North

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and the sustainment of weapons and forces. As such, the scope of logistics is huge. Among the core functions conducted by NATO are: supply, maintenance, movement and transportation, petroleum support, infrastructure and medical support. The Alliance's overarching function is to coordinate national efforts and encourage the highest degree possible of multinational responses to operational needs, therefore reducing the number of individual supply chains. While NATO has this responsibility, each state is responsible for ensuring that - individually or through cooperative arrangements- their own forces receive the required logistic resources.

*Id.*

<sup>79</sup> *NATO Civil Support Operations*, *supra* note 59, at 2.

Civil capabilities can be used by military authorities at all times for advice on technical matters during peacetime (preparedness), the planning stages of an operation and the execution phase. For example, transport experts analyze civilian or commercial air and sea lift capabilities and provide results to military planners, thereby helping the military to identify more cost-effective and readily available strategic transport solutions for military operations. Civil emergency planners support military authorities by assisting them in implementing civilian advice and effectively using civilian resources for operations. Civil experts can accompany military teams on-site to provide on-the-spot evaluations and analysis. In addition, during major international events, such as the NATO Summit in Riga in November 2006 or the Olympic Games in Greece in 2004, civil experts have supported the military in providing protection against possible attacks using chemical, biological, radiological or nuclear agents.

*Id.*

<sup>80</sup> *Id.*

Civilian expertise may increasingly be required in the future to advise the military in the context of support for stabilization and reconstruction efforts, in coordination with the host nation. This could include advice on issues such as rebuilding local industry, relaunching agricultural production, reconstructing health and civil communications infrastructure. Close civil-military coordination between actors in the field is an important element of current NATO operations. The Provincial Reconstruction Teams established across Afghanistan are a good example. These small teams of civilian and military personnel work in the provinces to extend the authority of the central Afghan government as well as to help local authorities provide security and assist with reconstruction work.

*Id.*

Atlantic Treaty Organization civil support capabilities have an even deeper framework that addresses civil emergency, humanitarian, and disaster relief.<sup>81</sup> This framework involves Planning Boards and Committees,<sup>82</sup> Network of Civil Experts,<sup>83</sup> and a Civil Capabilities Catalogue.<sup>84</sup>

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<sup>81</sup> *Id.* at 3.

[The] NATO's civil emergency planning activities are conducted under the overall guidance of the Senior Civil Emergency Planning Committee (SCEPC). Activities cover specific areas in which civil support may be required by NATO's Military Authorities for both collective defence operations (covered under Article 5 of NATO's founding treaty) and "non-Article 5" or crisis-response operations, which encompass military operations as well as disaster and humanitarian relief. This support is provided as necessary through a range of civilian capabilities and instruments.

*Id.*

<sup>82</sup> *Id.* at 4.

Under the authority of the Senior Civil Emergency Planning Committee, the Planning Boards and Committees are the means by which civil support to military operations is actually carried out. They cover specific areas of expertise such as transport, communications, civil protection, industrial planning and supply, medical matters, food and agriculture. At the request of military planners, the Planning Boards and Committees can carry out studies on specific areas to support military operations. For example, the Planning Board for Inland Surface Transport conducted a study on rail networks in Afghanistan.

*Id.*

<sup>83</sup> *Id.*

A group of 350 civil experts located across the Euro-Atlantic area are selected based on specific areas of support frequently required by the military. They cover civil aspects relevant to NATO planning and operations including crisis management, consequence management and critical infrastructure. Provided by nations, experts are drawn from government and industry. They serve for three years, participate in training and respond to requests for assistance in accordance with specific procedures known as the Civil Emergency Planning Crisis Management Arrangements. The Planning Boards and Committees are responsible for maintaining and updating this network of experts.

*Id.*

<sup>84</sup> *Id.*

The Civil Capabilities Catalogue is a list of [thirteen] areas comprising civilian assets and expertise which provide a "reachback" capability

## B. Potential NATO Humanitarian Assistance Support and Coordination Capability in the Migrant Crisis

Additional NATO regulations continue to expand its ability to assist in non-combat situations with military support similar to the current problems involving Europe's migrant crisis. Take, for example, the Allied Joint Publication on Humanitarian Assistance (AJP-3.4.3).<sup>85</sup> Whether or not humanitarian assistance is NATO's best approach for involvement, reviewing AJP-3.4.3 illustrates how NATO can play a vital role in the crisis. The publication describes:

The overarching guidelines and fundamentals to assist Allied joint force commanders (JFCs) and their staffs to plan and provide support to humanitarian assistance (HA). While AJP-3.4.3 is intended for use by operational-level Allied joint force and subordinate component commands, the doctrine is instructive to, and provides a useful framework for, operations conducted by a coalition of NATO, NATO partners, non-NATO nations, and to enhance interaction with other organizations.<sup>86</sup>

The AJP-3.4.3 references growing cooperation with the EU for humanitarian missions.<sup>87</sup> The measures involved in humanitarian assistance run the gamut of civil support operations to disaster relief that we have explored earlier in this discussion, specifically, support to

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for the NATO Military Authorities. This capability can be used during crisis-response operations, from the force commander located in the area of operations up through the entire military chain of command to the highest strategic levels. By using the "reachback" capability, any military level with a request for information or advice on a civilian matter can address this need for civilian expertise through a fast and simple process. The expert might be at NATO Headquarters, in a national ministry or a commercial business. This capability is used in real-world situations, such as in Afghanistan, and is frequently tested during exercises. It can be accessed through a variety of communications networks such as telephone and video link.

*Id.*

<sup>85</sup> NATO STANDARDIZATION AGENCY, AJP-3.4.3, ALLIED JOINT DOCTRINE FOR THE MILITARY CONTRIBUTION TO HUMANITARIAN ASSISTANCE (8 Oct. 2016) [hereinafter AJP-3.4.3].

<sup>86</sup> *Id.* at IX.

<sup>87</sup> *Id.*



dislocated civilians.<sup>88</sup> North Atlantic Treaty Organization's doctrinal position on humanitarian assistance contemplates an ever-changing operational environment<sup>89</sup> that relies on partnership with NATO members

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<sup>88</sup> *Id.* at 2-1.

Humanitarian Assistance is conducted in response to natural and man-made disasters causing widespread human suffering. Humanitarian Assistance activities conducted by NATO-led forces are limited in scope and duration and are conducted in a supporting role to larger multinational efforts. Humanitarian Assistance is conducted at the request of the [Host Nation] or the agency leading the humanitarian efforts; it may be either in the context of an ongoing operation, or as an independent task. Normally, military forces work to create the conditions in which these other agencies can operate more freely and effectively, bearing in mind the desire to maintain distinction between military and humanitarian actors. North Atlantic Treaty Organization military activities may support short-term tasks such as relief supply management and delivery or providing emergency medical care. However, support could be expanded to other activities (e.g. debris cleaning) aimed to support the relief of the stricken [Host Nation]. The North Atlantic Treaty Organization has military assets (aircraft, helicopters, ships, ground vehicles) necessary to transport food and shelter provided by humanitarian organisations to those in need in isolated locations. Military engineers also are able to build bridges to places that would otherwise be impossible to reach. Furthermore, military activities could also take the form of advice and selected training, assessments, and providing manpower and equipment. Other missions might include command and control, logistics, medical, engineering, communications, and the planning required to initiate and sustain [Humanitarian Assistance]. Specific types of military support to Humanitarian Assistance include DR (Disaster Relief), support to dislocated civilians, technical assistance and support, chemical, biological, radiological, and nuclear (CBRN) consequence management (CM), and security.

*Id.*

<sup>89</sup> *Id.* at 1-6.

The operational environment (OE) impacts the conduct of [Humanitarian Assistance]; important elements to consider include the nature of the crisis, the prevailing security environment, and the system of international relief at work. Humanitarian emergencies may occur suddenly or develop over a period of time. Speed of onset has important consequences for action that can be taken. Preparedness and early warning measures are much less developed for sudden onset disasters. Slow onset emergencies include those resulting from crop failure due to drought, the spread of an agricultural pest or disease, or a gradually deteriorating political situation leading to conflict. Rapid onset emergencies are usually the result of sudden, natural events such

and non-NATO partners.<sup>90</sup> The North Atlantic Treaty Organization potentially provides the EU with a highly focused and streamlined approach to executing operations in support of managing the migration crisis.

The key takeaway from the historical development of NATO civil support and humanitarian operations, beyond Article 5, is that NATO has the organizational skills to assist in securing the unstable regions where most of the migrants are coming from, and also secure where they are going in Europe. How best to categorize where the migrant crisis should fall under NATO legal and regulatory authority should not detract from the overall benefits of NATO assisting in the crisis. The NATO assistance

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as wind storms, hurricanes, typhoons, floods, tsunamis, wild fires, landslides, avalanches, earthquakes and volcanic eruptions. They also may be caused by accidental or human-caused catastrophes such as civil conflict, acts of terrorism, sabotage, or industrial accidents.

*Id.*

<sup>90</sup> *Id.* at 1-8.

The lack of common structures, policies, and procedures necessary for effective interaction, and a lack of mutual understanding in how the NATO-led force and other organizations plan and conduct operations, may complicate efforts at achieving unity of purpose. Traditional command and control relationships will not apply between the joint force and the civilian and governmental organizations operating within the joint operations area (JOA). The challenge is to determine how NATO-led forces can best be utilized through coordination networks. Difficulties may arise when many civil and military authorities, foreign governments, the [United Nations] and other [International Organizations], as well as [Non-Governmental Organizations] conduct assistance activities within the same operational area prior to, during, and after departure of NATO-led forces. Thus, the [Joint Force Commander] should consider how consultation and liaison can foster common understanding and unity of purpose. This may require additional attention be paid to the interaction between agencies and organizations at all levels both within and external to the JOA. Consequently, the JFC must consider the communication and liaison linkages necessary to facilitate this coordination. The goals and operating procedures of all concerned may not be compatible; however, thorough collaboration and planning with concerned entities can contribute to successful operations in this complex and challenging environment. Achieving unity of effort will require constant coordination, flexibility, and assessment both in the planning and execution of operations.

*Id.*

could relieve pressure from an EU effort that has resulted in internal disagreement.<sup>91</sup> Bear in mind, the road toward NATO involvement in Europe's migrant crisis is not an easy one, particularly in light of the need for consensus among its member states. Of course, this further complicates NATO's relationship to internal EU policies. The NATO-EU relationship is a complicated and nuanced one.<sup>92</sup> Understanding this unique relationship and importance in dealing with the migrant crisis warrants a closer look.

#### V. The EU-NATO Strategic Working Relationship for a Coordinated Response to the Migrant Crisis

Institutional literature on NATO describes:

Both NATO and the European Union (EU) have, since their inception, contributed to maintaining and strengthening security and stability in western Europe. NATO has pursued this aim in its capacity as a strong and defensive political and military alliance and, since the end of the Cold War, has extended security in the wider Euro-Atlantic area both by enlarging its membership and by developing other partnerships. The European Union has created enhanced stability by promoting progressive economic and political integration, initially among western European countries and subsequently also by welcoming new member countries. As a result of the respective organisations' enlargement processes, an increasing number of European countries have become part of the mainstream of European political and economic development, and many are members of both organisations.<sup>93</sup>

The NATO and EU cooperation is a relatively recent phenomenon. Prior to the 1990s, each developed separate security regimes with NATO, having more prominence with collective self-defense initiatives to contain the rise of Soviet dominance in Eastern Europe.<sup>94</sup>

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<sup>91</sup> Morris, *supra* note 18.

<sup>92</sup> NATO HANDBOOK, *supra* note 34, at 243.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 244.

The *NATO Handbook* explained:

In the early 1990s, it became apparent that European countries needed to assume greater responsibility for their common security and defence. A rebalancing of the relationship between Europe and North America was essential for two reasons: first, to redistribute the economic burden of providing for Europe's continuing security, and second, to reflect the gradual emergence within European institutions of a stronger, more integrated European political identity, and the conviction of many EU members that Europe must develop the capacity to act militarily in appropriate circumstances where NATO is not engaged militarily.<sup>95</sup>

Seeing the need for better cooperation and consultation on security matters with a more robust EU security force inspired a more formal NATO-EU bilateral declaration in the European Security and Defence Policy (ESDP) in 1999.<sup>96</sup> The strategic relationship between NATO and the EU was further cemented and clarified in the Berlin Plus Arrangements of 2003.<sup>97</sup> Some of the main elements of Berlin Plus included:

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Despite shared objectives and common interests in many spheres, the parallel development of NATO and the European Union throughout the Cold War period was characterised by a clear separation of roles and responsibilities, and the absence of formal or informal institutional contacts between them. While a structural basis for a specifically European security and defence role existed in the form of the Western European Union, created in 1948, for practical purposes western European security was preserved exclusively by NATO. For its part, the Western European Union undertook a number of specific tasks, primarily in relation to post-war arms control arrangements in [W]estern Europe. However, its role was limited and its membership was not identical to that of the European Union.

*Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 247.

<sup>97</sup> *Id.* at 248.

The Berlin Plus arrangements are based on the recognition that member countries of both organisations only have one set of forces and limited defence resources on which they can draw. Under these circumstances, and to avoid an unnecessary duplication of resources, it was agreed that operations led by the European Union would be able

[T]he further adaptation of NATO's defense planning system to incorporate more comprehensively the availability of forces for EU-led operations; procedures for the release, monitoring, return and recall of NATO assets and capabilities; and NATO-EU consultation arrangements in the context of an EU-led crisis management operation making use of NATO assets and capabilities.<sup>98</sup>

These elements listed in Berlin Plus are crucial in NATO and the EU providing a coordinated response to the migration crisis. The above reference to EU-led crisis management operations making use of NATO assets and capabilities is noteworthy. Such coordinated action could be useful in ongoing security missions undertaken by the EU dealing with migrants.

#### A. Potential NATO-EU Coordinated Response to the Migrant Crisis at Sea?

Take the recent EU naval operations to minimize human trafficking and rescue refugees from the Mediterranean as an example.<sup>99</sup> More and more migrants have drowned in poorly-equipped vessels operated by human traffickers, gaining negative international attention for the EU as casualties continued to mount.<sup>100</sup> On May 18, 2015, the EU's executive authority approved a naval mission (EUNAVFOR) in the Mediterranean with an objective to disrupt the "business model" of human smuggling and

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to benefit from NATO assets and capabilities. In effect, these arrangements enable NATO to support EU-led operations in which the Alliance as a whole is not engaged. They have facilitated the transfer of responsibility from NATO to the European Union of military operations in the former Yugoslav Republic of Macedonia and in Bosnia and Herzegovina. Agreed in March 2003, these arrangements are referred to as Berlin Plus because they build on decisions taken in Berlin in 1996 in the context of NATOWEU cooperation.

*Id.*

<sup>98</sup> *Id.* at 249.

<sup>99</sup> European Union External Action Service, *Mission Description*, EUROP'N UN. EXT. ACT'N, [http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/mission-description/index\\_en.htm](http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/mission-description/index_en.htm) (last visited Mar. 20, 2017).

<sup>100</sup> James Mackenzie & Robin Emmott, *Migrants' Bodies Brought Ashore as EU Proposes Doubling Rescue Effort*, REUTERS (Apr. 20, 2015), <http://www.reuters.com/article/us-europe-migrants-idUSKBN0NA07020150420>.

trafficking networks and contribute to the prevention of loss of life at sea.<sup>101</sup> The EU naval operation was authorized for a duration of twelve months and consisted of three phases:

The first phase focuses on surveillance and assessment of human smuggling and trafficking networks in the Southern Central Mediterranean. The second stage of the operation provides for the search and, if necessary, diversion of suspicious vessels. The third phase would allow the disposal of vessels and related assets, preferably before use, and to apprehend traffickers and smugglers.<sup>102</sup>

NATO could step up its security assistance in the crisis, like in the above mentioned second and third phases of the EU operation which would be a great opportunity for coordination with the EU on migrants in the Mediterranean in conjunction with NATO's current sea operations.<sup>103</sup> Criticism of the EU naval operations short-term vision may also aid in NATO lending more robust assistance to the EU operation.<sup>104</sup>

In July 2015, researchers from the Netherlands Institute of International Relations published a report assessing the challenges facing the current security systems for both the EU and NATO, and reported better ways for them to respond to them.<sup>105</sup> The report also notes the criticism of the EUNAVFOR's short-term limitations.

Due to mounting crises, wars, demographic pressure, dismal economic prospects and oppression in the . . . (Middle East and North Africa) region, the EU will continue to function as a magnet for refugees. Commissioner Frans Timmermans expressed this eloquently: "As long as there are wars and hardships in our neighbourhood, people will continue to risk their lives in search of European shores. There is no simple solution

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<sup>101</sup> European Union External Action Service, *supra* note 99.

<sup>102</sup> *Id.*

<sup>103</sup> *Operations and Missions: Past and Present*, TOPICS (Dec. 21, 2016), [http://www.nato.int/cps/en/natohq/topics\\_52060.htm](http://www.nato.int/cps/en/natohq/topics_52060.htm).

<sup>104</sup> See generally Giovanni Faleg & Steven Blockmans, *EU Naval Force EUNAVFOR MED Sets Sail in Troubled Waters*, CEPS COMMENTARY (June 26, 2015), [https://www.ceps.eu/system/files/CEPS%20Commentary%20EUNAVFOR%20G%20Fal%20S%20Blockmans\\_0.pdf](https://www.ceps.eu/system/files/CEPS%20Commentary%20EUNAVFOR%20G%20Fal%20S%20Blockmans_0.pdf).

<sup>105</sup> MARGRIET DRENT ET AL., *NEW THREATS, NEW EU AND NATO RESPONSES* (2015).

to this complex problem, but it is clear that there is no national solution. There is only a European solution.”<sup>106</sup>

The Netherlands Institute Report goes further to explain the problem, stating:

However, only initiating push back operations and disrupting the “business models” of the traffickers, as Operation EUNAVFOR Med is designed to do, will not solve the migration flows from the South to the EU. A true comprehensive approach of tackling root causes, improving regional refugee facilities, enhancing border management in transit countries and a common EU asylum policy is the only sustainable answer to this problem.<sup>107</sup>

A comprehensive approach by the EU is the answer to the problem, and it will certainly require greater initiative by EU member states. The Netherlands Institute report provides some excellent advice for the EU on how best to proceed.<sup>108</sup> However, a comprehensive approach that aims to succeed requires a more robust response on the part of EU member states in *conjunction* with NATO. With its reach across the Atlantic to the United States, NATO could lend increased logistical support to a crisis that is affecting most, if not all, member states. Later phases of the EUNAVFOR mission in the Mediterranean will require UN Security Council approval to dispose of vessels and apprehend traffickers and smugglers in territorial waters outside of EU control.<sup>109</sup> NATO’s state

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<sup>106</sup> *Id.* at 47.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

[A] common EU asylum policy is needed: the competence for immigration law and the asylum system still lies strictly with the individual member states and while the Commission tries to take the initiative in the matter, national political interests to keep the toxic immigration issue at bay are still dominant. Solidarity among the member states by allowing a fair ‘intra-EU relocation system’ of refugees among the [twenty-eight] member states is still a distant prospect and only a voluntary distribution plan could be agreed by the Heads of States and Government in their June meeting.

*Id.*

<sup>109</sup> Faleg & Blockmans, *supra* note 104, at 3.

executive level membership could be a great help at the UN for supporting an EU mission phase that may have extraterritorial political and diplomatic implications. Robust coordination between NATO and the EU on land, in the migrant crisis, is another critical area for opportunity to improve.

#### B. Potential NATO-EU Coordinated Response to the Migration Crisis on Land?

The EU's border management control authority commonly known as FRONTEX, from the French language—*Frontières Extérieures*—for external borders, plays a major role in recent efforts to address the migrant crisis on land and sea.<sup>110</sup> The FRONTEX agency has a wide variety of platforms in use to help with European borders affected in the crisis.

Frontex relies on member states to provide most of its capacities, it is to be expected that border management related capacities are going to be in high demand. Surveillance equipment, such as remotely piloted air systems (RPAS) and satellite observation are particularly vital as they enable enhanced surveillance coverage of long stretches of land and sea borders. Frontex is already working on the 'Eurosur' surveillance system to improve both its own and member states' situational awareness and reaction capability in order to prevent irregular migration and cross-border crime at the external land and maritime borders.<sup>111</sup>

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<sup>110</sup> Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders, EUR-LEX, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133216>.

<sup>111</sup> DRENT ET AL., *supra* note 105, at 48.

The Frontex operations and the [Common Security and Defence Policy] naval operation in the Mediterranean demand specific capacities, such as offshore patrol vessels, patrol boats, search and rescue equipment, helicopters, airplanes, and debriefing and screening teams. Triton has a regional base in Sicily from which Frontex will coordinate the operation and work closely with liaison officers from Europol, Eurojust and EASO (European Asylum Support Office) in support of the Italian authorities. Close coordination between EUNAVFOR Med and Frontex is required for the operational activities. But one could also envisage that sharing naval and air assets would be the most efficient way to make optimal use of the available resources.



The capabilities provided for FRONTEX could be augmented with NATO military capabilities for surveillance, coupled with crisis management efforts. These efforts could assist in managing the care and containment of large numbers of migrants pouring into smaller NATO and EU countries, like Hungary.

The Netherlands Institute Report<sup>112</sup> captures the metaphysical dynamic at play in the migrant crisis affecting EU border management explaining, “Border management is almost literally at the interface between internal and external security and the politically salient issue of mass migration is currently pushing the increased coordination of policies and instruments from various EU institutions forward.”<sup>113</sup> Examples of policies and instruments of EU institutions were detailed in the report.<sup>114</sup> This intersection of internal and external security is yelling at the top of its lungs for NATO involvement to fill in the space created by the unique circumstances forced upon the EU by the migrant crisis.

### C. General Assessment of NATO-EU Coordination

By no means would NATO assistance to the EU be smooth and flawless. There are variety of challenges NATO involvement would face with an enhanced relationship with the EU. North Atlantic Treaty Organization internal political divisions—like Turkey versus Greece over Cyprus—and NATO’s concern for Russian expansion in Eastern Europe,

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*Id.* at 48.

<sup>112</sup> DRENT ET AL., *supra* note 105.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

Work is ongoing to allow the greater involvement of EU Agencies in the [Freedom, Security, and Justice] sector, in particular Europol and Frontex, in [Common Security and Defence Policy] missions. A proposal was made by the Commission for a new regulation on Europol to consolidate the enhanced contribution to [Common Security and Defence Policy]. Similar arrangements are being prepared for Frontex. Legal texts have entered into force between the EU Satellite Centre (SATCEN) and Frontex, enabling the establishment of operational cooperation. Intra-institutional, intra-agency and inter-organisational cooperation and coordination will remain the keywords in tackling the complex security issues on the EU’s southern periphery.

*Id.*

are prime examples.<sup>115</sup> However, the crux of the argument is that the space between created by the crisis, no matter how small or tough for NATO to fit in is meaningful enough to explore. North Atlantic Treaty Organization involvement brings all the major players in the migrant crisis together, free from EU political rivalries, to focus on specific security and assistance measures, on an equal footing, that may improve negotiations or at least clarify a better way forward.

A comprehensive approach envisioned by the authors of the Netherlands Institute Report does not specifically call on NATO involvement in the crisis.<sup>116</sup> However, the report is instructive as to how NATO could become involved in the EU's migration problem when the report examines the need for improvement in the overall NATO-EU relationship.

In its external policies the EU can cover a wide set of instruments in areas like trade, development aid, the energy sector, financial assistance and the strengthening

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<sup>115</sup> *Id.* at 50-51.

Berlin Plus procedures are complicated and the decision-making process, involving two organisations, is very slow. Operating within the NATO command chain makes it more difficult to develop and implement the comprehensive approach with EU civil actors. But the most important blockade is of a purely political nature. The second and last 2004 'take-over' operation in [Bosnia and Herzegovina] could be agreed by both organisations because Cyprus (EU member since 1 May 2004), under pressure from Greece, swallowed the bitter pill of being excluded from the formal EU-NATO coordination arrangements. This was demanded by Turkey for its consent to the Berlin Plus package, based on the non-recognition policy of Ankara with regard to the status of (Greek-Cypriot led) Cyprus. The exclusion of Cyprus from formal EU-NATO meetings led to politically embarrassing situations, even at the ministerial level. At the Informal Meeting of EU Defence Ministers in Noordwijk during the Dutch EU Presidency in September 2004, the Cypriot Defence Minister was asked to leave the room for the agenda point on the upcoming take-over of the NATO [Stabilisation Force] operation by the EU. Naturally, this created a political incident with the Cypriot defence minister loudly protesting. Besides, the practical effect was zero, as one of the members of the Cypriot delegation followed the discussion in a listening-room, which had no entrance checks on nationality. As a result of Berlin Plus, all formal meetings of the NAC and the PSC in Brussels take place without the participation of Cyprus.

*Id.*

<sup>116</sup> DRENT ET AL., *supra* note 105.

of good governance and the rule of law. In a situation of confrontation many of these areas can be used differently, for example by imposing financial and economic sanctions, by cutting aid or by changing energy import dependency. NATO can only use the military instrument, either in article 5 or in non-article 5 situations. Although step-by-step border security is bringing the use of military capacities to the EU's frontiers, the Common Security and Defence Policy limits the use of EU military operations to 'crisis management', in areas external to the EU. Clearly, there is *potential overlap between the EU and NATO's non-article 5 tasks*.<sup>117</sup>

The Netherlands Report reference to the overlap of NATO's non-article 5 tasks is the space that NATO can fill in Europe's handling of the migrant crisis.<sup>118</sup> The tasks that NATO is prepared to fulfill, discussed earlier in Section III, can potentially fill security gaps for better border control and processing of migrants for EU and NATO members struggling with large migrant populations.

Again, NATO assistance will not be easy. It will require consensus and a detailed agreed-upon plan of action. Migrant assistance will also have to overcome NATO's apparent reluctance to assist displaced persons or refugees, as explained by AJP 3.4(A)'s discussion of Non Article 5 operations. "Although these operations may receive some support from NATO forces, the Alliance will seldom, if ever, conduct these operations."<sup>119</sup> The allied publication goes on to explain that such activities are primarily for the host nation, international and nongovernmental organizations to deal with.<sup>120</sup> Perhaps major security concerns regarding who exactly is seeking entry into Europe, due to the recent Paris attacks, will overcome this apparent reluctance. An assessment of NATO's role in recent developments may also present an opportunity for more enhanced assistance.

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<sup>117</sup> *Id.* at 49 (emphasis added).

<sup>118</sup> DRENT ET AL., *supra* note 105.

<sup>119</sup> AJP-3.4(A), *supra* note 63, at 3-12 to -13.

<sup>120</sup> *Id.*

## VI. New Developments Regarding NATO Assistance in the Migrant Crisis

“With time all things are revealed,” is a saying attributed to the famed French renaissance writer, Francois Rabelais.<sup>121</sup> Monsieur Rabelais sums up exactly why a new-developments section is required for this article. Much of the research for this article was gathered in late fall and early winter of 2015. At that time, the migration crisis taxing Europe continued to result in a variety of mixed and controversial responses from some EU and NATO member states.<sup>122</sup> The pressing need for NATO to assist in some capacity remained the obvious inspiration for this research paper. The migration crisis continues to intensify in Europe, and on February 10, 2016, an announcement from the NATO Secretary General was made—NATO assistance in the crisis was pending discussion by defense ministers on the North Atlantic Council (NAC).<sup>123</sup>

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<sup>121</sup> *Francois Rabelais Quotes*, ART QUOTES, [http://www.art-quotes.com/auth\\_search.php?authid=3290#.Vs6StP5f1Ms](http://www.art-quotes.com/auth_search.php?authid=3290#.Vs6StP5f1Ms) (last visited Mar. 20, 2017).

<sup>122</sup> See generally Ass'd Press, *The Latest: Slovenia Puts Restrictions on Migrants*, YAHOO (Jan. 21, 2016), <http://news.yahoo.com/latest-macedonia-opens-border-migrants-102122288.html>; Nicolas Garriga & Karl Ritter, *Sweden, Denmark Introduce Border Checks to Stem Migrant Flow*, YAHOO (Jan. 4, 2016), <http://news.yahoo.com/sweden-introduces-border-checks-stem-migrant-flow-101629361.html>; Ass'd Press, *Austria Turns Away 3,000 Migrants in 20 Days*, YAHOO (Jan. 13, 2016), <http://news.yahoo.com/latest-rights-monitor-hungary-asylum-seekers-risk-103353888.html>.

<sup>123</sup> NATO HANDBOOK, *supra* note 34, at 34.

All member countries of NATO have an equal right to express their views round the Council table. Decisions are the expression of the collective will of member governments arrived at by common consent. All member governments are party to the policies formulated in the Council or under its authority and share in the consensus on which decisions are based . . . . Twice a year, and sometimes more frequently, it meets at ministerial level, either in formal or informal session, when each country is represented by its minister of foreign affairs. Meetings of the Council also take place in defence ministers' sessions. Summit meetings attended by heads of state or government are held whenever particularly important issues have to be addressed or at seminal moments in the evolution of Allied security policy.

*Id.*

A. The Facts Regarding NATO's Proposed Response to the Migration Crisis

During the press briefing on February 10, 2016, the day before the ministers of defense were to meet at the NAC, the NATO Secretary General announced:

This evening, we will meet with the European Union, as well as our partners Australia, Finland, Georgia, Jordan, and Sweden. We will discuss how we can address together the challenges in our neighbourhood, to the south and to the east. During the course of this ministerial, we will also discuss how NATO can support Allies in responding to the refugee and migrant crisis we see in Europe and close to Europe in the Middle East, Syria and Turkey. We will do so based on an initiative by Turkey.<sup>124</sup>

During the question and answer portion of the briefing, the Secretary General went further, explaining:

We all understand the concern and we all see the human tragedy and all the challenges which are connected to the migrant and the refugee crisis, which we have seen for many years in the Middle East but which has now become a great challenge for Europe. So, of course, when Allied Turkey and also other Allies raise the question of what NATO can do to help them to manage this refugee and migrant crisis, of course we will look very seriously into the request and discuss how we can follow-up and what NATO can do.<sup>125</sup>

The following day, after the North Atlantic Council ministerial meeting took place, a detailed plan of action from the Secretary General was announced.

We have just addressed how our Alliance is responding to a changed security environment. Europe is facing the greatest refugee and migrant crisis since the end of the

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<sup>124</sup> *Doorstep* by NATO Secretary General Jens Stoltenberg, NATO (Feb. 10, 2016), [http://www.nato.int/cps/en/natohq/opinions\\_127825.htm](http://www.nato.int/cps/en/natohq/opinions_127825.htm).

<sup>125</sup> *Id.*

Second World War. Driven by conflict and instability on our southern borders, as well as the criminal networks that traffic in human suffering. We have just agreed that NATO will provide support to assist with the refugee and migrant crisis. This is based on a joint request by Germany, Greece and Turkey. The goal is to participate in the international efforts to stem illegal trafficking and illegal migration in the Aegean. NATO's Standing Maritime Group 2, is currently deployed in the region under German command. It will be tasked to conduct reconnaissance, monitoring and surveillance of the illegal crossings in the Aegean Sea in cooperation with relevant authorities. And to establish a direct link with the European Union's border management agency Frontex.<sup>126</sup>

#### B. Is NATO's Current Response Plan for the Crisis Sufficient?

The plan of action announced from NATO requires coordinated efforts with the EU, as previously discussed in Section V. These efforts could forge deeper cooperation between NATO and the EU in the crisis. NATO's Secretary General goes on to explain:

As part of the agreement, Greek and Turkish armed forces will not operate in each other's territorial waters or air space. Our top military commander SACEUR [Supreme Allied Commander Europe] is now directing the Standing NATO Maritime Group to move into the Aegean without delay. And to start maritime surveillance activities. Our military authorities will work out all the other details as soon as possible. And Allies will be looking to reinforce this mission. This is not about stopping or pushing back refugee boats. NATO will contribute critical information and surveillance to help counter human trafficking and criminal networks. We will do so in cooperation with national coastguards, and working closely with the European Union. We have also decided to intensify

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<sup>126</sup> *Press Conference by NATO Secretary General Jens Stoltenberg Following the Meeting of the North Atlantic Council at the Level of Defence Ministers*, NATO (Feb. 11, 2016), [http://www.nato.int/cps/en/natohq/opinions\\_127972.htm](http://www.nato.int/cps/en/natohq/opinions_127972.htm).

intelligence, surveillance and reconnaissance at the Turkish-Syrian border.<sup>127</sup>

The announcement reveals the contemplation of the complex issues already discussed in Section X of this article related to the need to overcome political differences among NATO and EU members. Notice the Greek and Turkish designated areas of operation, used to avoid confrontation and preserve consensus in NATO to assist in the crisis. North Atlantic Treaty Organization's security focus in the Aegean Sea and sharing information with the EU's FRONTEX may start to address the security concerns expressed by the Hungarian Prime Minister after the Paris Attacks, discussed earlier. NATO's announcements are positive steps in the right direction, aimed to assist in the migrant crisis. However, as of 2017, with the migrant crisis still plaguing Europe, is this all that is required from NATO?<sup>128</sup> Is it enough?

One NATO observer back in October 2015, made a compelling case for NATO involvement in the crisis.

Today, Germany, Austria, and, especially, Greece and the Western Balkan countries are trying to cope with huge flows of refugees as tens of thousands of people, young and old, flee the war in Syria and try to make their way to Europe. Greece as well as Macedonia, Serbia, Croatia, and Slovenia are stretched beyond their limits in trying to provide basic security and shelter for the refugees. On October 20, Slovenia announced it would deploy the military to help patrol the country's borders. Ljubljana recognized it had to deal with a civil emergency. And that is what this part of Europe is facing: a civil emergency that requires an emergency response. That is what NATO should be providing. But ever since the beginning of the refugee crisis many months ago, NATO has remained on the sidelines, almost indifferent to a problem that has the potential to undermine the stability of some of the countries in southern Europe.<sup>129</sup>

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<sup>127</sup> *Id.*

<sup>128</sup> Eliza Mackintosh, *No More Excuses On Resettling Refugees*, *European Commission Warns*, CNN (Mar. 2, 2017), <http://www.cnn.com/2017/03/02/europe/european-countries-not-meeting-refugee-resettling-obligations/>.

<sup>129</sup> Dempsey, *supra* note 24, at 1.

The situation on the borders of Europe, and within many NATO and EU member states, is critical regarding the care, control, and management of large migrant populations. The same contributor also pointed out NATO's lack of initiative.

Some could argue that these kinds of civilian crises have nothing to do with NATO. That is not the case. The alliance has a Civil Emergency Planning Committee whose goal is unambiguous: "Civil Emergency Planning provides NATO with essential civilian expertise and capabilities in the fields of terrorism preparedness . . . humanitarian and disaster response and protecting critical infrastructure." NATO also has a Euro-Atlantic Disaster Response Coordination Center based at the alliance's headquarters in Brussels. The center is supposed to work closely with the UN Office for the Coordination of Humanitarian Affairs and other international organizations. So far, this center has not been catapulted into action. And the alliance has a Civil Emergency Planning Rapid Reaction Team that is meant to evaluate civil needs and capabilities to support a NATO operation or an emergency situation, which is what the Western Balkans are now facing. No evidence of that being activated either.<sup>130</sup>

Despite the security action proposed by NATO for land and sea operations with the EU, a civil, emergency support-role for NATO should swing to action in order to shore-up complete and effective assistance to the crisis in Europe. The civil emergency planning capabilities, humanitarian assistance, and even disaster relief discussed in earlier sections of this article, should complement recent security measures announced by NATO. This is, arguably, the only way the migrant crisis improves effectively, with cooperation from NATO and the EU. A final point to consider regarding how NATO can delve deeper in assistance goes back to its record of accomplishment for civil and military support.

It [is] not as if NATO didn't have some experience in supporting civil emergencies. In August 2005[,] after Hurricane Katrina, NATO transported 189 tons of relief and emergency supplies to the United States. In the same

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<sup>130</sup> *Id.*



year, after a request from Pakistan to assist after the huge earthquake in the Kashmir region, NATO airlifted 3500 tons of supplies and sent engineers, medical units, and specialized equipment. The alliance helped Pakistan again in 2010[,] to cope with the floods of that year.<sup>131</sup>

Once again, the specter of much-needed civil support capabilities and humanitarian assistance coordination from NATO looms over the treaty organization. This should not deter a robust response from it. NATO has the power to alleviate the strain on EU countries struggling with large migrant numbers.

## VII. Conclusion

The EU currently remains divided over how best to respond to the migration crisis.<sup>132</sup> A coordinated multinational response is required, not only from the EU, but also from NATO. The North Atlantic Treaty Organization has an historic record of coordinated responses to all manner of civil emergencies and non-military crises.<sup>133</sup> The recent announcement that NATO will provide some security assistance to its members affected by the crisis is not enough. NATO must dig deeper in its set of operational tools and apply more of its capabilities. It has a civil support construct with a vast array of civil emergency planning and support to military authorities in its arsenal.<sup>134</sup> The humanitarian-assistance support framework is another major effort available for use in support of the crisis.<sup>135</sup>

The NATO has the capability to formulate a more robust plan of action because of its inherent structure, which requires consensus from heads of state, diplomatic chiefs, and defense leaders from all of its members on the North Atlantic Council.<sup>136</sup> Europe can unite with North American partners in NATO and respond to the challenges posed by the migration crisis. The

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<sup>131</sup> *Id.*

<sup>132</sup> *EU's Migration System Close to Complete Breakdown*, EURONEWS (Feb. 25, 2016), <http://www.euronews.com/2016/02/25/eu-s-migration-system-close-to-complete-breakdown/>.

<sup>133</sup> *NATO Short History*, *supra* note 1.

<sup>134</sup> Ochmannova, *supra* note 44, at 32-33.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 36.

time is now for the NATO elephant in Europe's living room to take a stand—with the full weight of its operational strength.