



Study Guide

Forum: *North Atlantic Council*

1. Introduction to the Topic:

The North Atlantic Council, as provisioned in the North Atlantic Treaty, Article 9, is the main political decision making body of the North Atlantic Treaty Organization (NATO). During BRIMUN 2007, ambassadors to NATO will debate one or two designated topics and will have to react to a large-scale geopolitical crisis, orchestrated by BRIMUN's own Crisis Team. In their work, ambassadors will struggle to find a way to balance national interests, legal considerations and external forces to arrive at unanimous, decisive resolutions in the face of a complex and multifaceted crisis, possibly involving both UN-mandated missions and a state of collective self-defense for the alliance. In close interaction with the United Nations Security Council and the Arab League, both of which are also simulated at the conference, delegates will have to employ the best of their diplomatic skills and vigorously negotiate a solution that both preserve their national interests and that maintains international security.

The following, somewhat excessive legal and formal considerations necessary for the simulation of the North Atlantic Council should not scare anyone away. Once a few basic distinctions are internalized, some familiarity with the legal frameworks of international security will easily allow NATO Ambassadors to fully engage in international politics *realist style*, to competently make decisions on war and peace and to make BRIMUN 2007 an equally thrilling and rewarding experience.

The Mandate of NATO

Contrary to many other forums simulated at MUN conferences, the North Atlantic Council has a rather narrowly defined mandate. The Washington Treaty has established the Council as a forum for (informal) political consultations concerning the security of member states (Article 4). NATO has in the recent past since 1990

substantially revised its own role and mandate, including a broader concept for regional collective security (such as the Partnership for Peace program) and several UN-mandated *out-of-area* deployments. NATO ambassadors at BRIMUN are invited to make their own contributions to a redefinition of the organization in the post-cold-war era. Delegates are encouraged to work together with colleagues from their national delegations to further a fruitful cooperation of NATO with other institutions of international security, such as the United Nations Security Council. It will be the duty and privilege of all NATO ambassadors to implement the organizations mission statement as set forth in the preamble of the North Atlantic Treaty:

The Parties to this Treaty reaffirm their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all governments.

They are determined to safeguard the freedom, common heritage, and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law. They seek to promote stability and well-being in the North Atlantic area.

They are resolved to unite their efforts for collective defense and for the preservation of peace and security. They therefore agree to this North Atlantic Treaty : (...)

These qualifications notwithstanding it should be evident from all the proceedings of the Council that NATO does *not* have a general political mandate and that it may not – as for example the Security Council may – investigate any matter of international security. In its formal and legal acts, the North Atlantic Council is confined to the following institutional frameworks:

- a) Internal measures concerning
 - i. “the further development of peaceful and friendly international relations by strengthening” the free institutions of member states according to Article 2 (Article 2).
 - ii. the maintenance and development “of their individual and collective capacity to resist armed attack” (Article 3)
- b) Collective self-defense
 - i. Consultations according to Article 4 “whenever (...) the territorial integrity, political independence or security of any of the Parties is threatened” (Article 4).
 - ii. Invocation of Article 5 (state of collective self-defense) in the case of “an armed attack against one or more of” the Parties “in exercise of the right of individual or collective self-defense by Article 51 of the Charter of the

United Nations” (Article 5).

- c) Collective security: UN-mandated deployment according to Chapter 7 of the UN Charter (not explicitly provisioned in the Washington Treaty)
- d) International assistance, based on the consent of all nation states affected (not explicitly provisioned in the Washington Treaty)

Notably, a review of the Treaty, as provisioned in Article 12 and invitations for membership (Article 10) are not in the mandate of the North Atlantic Council but require independent, concurrent legal acts of all member states. The North Atlantic Council, when meeting at the highest level (Heads of State or Heads of Government) may be used as a forum to discuss these matters but will legally not be the forum in which these decisions are made.

Topics

Crisis simulation

It follows from the above that the work of the North Atlantic Council becomes most interesting from a political point of view in a situation of geopolitical crisis (b, c, d). Most of the debate time of the Council will hence be devoted to reacting to the large-scale crisis that will unfold during the conference. BRIMUN’s own Crisis Team will provide delegates with country-specific briefings and situational cues concerning the hypothetical events. The crisis will unfold in intensive interaction between the delegates in the United Nations Security Council, the Arab League and the North Atlantic Council, all of which are simulated at BRIMUN. The crisis may include a possible peacekeeping or peacemaking mission (c, d) and/or an armed attack against a Party to the North Atlantic Treaty (b).

BRIMUN has a uniquely rich tradition in epic crisis simulations. The team is determined to scale yet new heights of realism, interaction and political suspense in its 2007 session.

Review and further development of the NATO Response Force and/or Special Forces

Most of the topics on the internal agenda of NATO are of a very technical nature (such as standardization) and require in-depth expertise that would stretch the scope of a simulation. One of the few politically relevant topics is the review and further development of the NATO Response Force and/or Special Forces.

The Council simulation will most likely start with a debate on this topic in which many of the controversies concerning NATO's future role are reflected. The debate will serve as an inspirational and instructive introduction to the crisis.

Legal Background

Much of the debate on the abovementioned topics as well as the crisis simulation will be concerned with the competing and complementing institutionalizations of collective security and collective self-defense.

The following is intended to provide an introduction into the aspects of International Law that will be most important for the simulation of the North Atlantic Council.

De jure, the international arena is anarchic: Lastly, International Law depends on cooperation and reciprocity between sovereign nation states, subordination and coercive power play only a minor role. From a *legal* and *conceptual* point of view, little has changed since the inception of the modern nation state with the Peace of Westphalia in 1648. This is not to say that International Law cannot be more than an institutional reflection of the realist view of international relations. In fact the legal history of the last century has shown that - within this framework - nation states are increasingly willing to enter contractual relationships that restrict their sovereignty. Even before World War I, many states had ratified treaties concerning the law *in war* (*jus in bellum*), such as the Hague Convention (1899, 1907). The Kellogg-Briand Pact (1928) may be considered as the first attempt to create a law *of war* (*jus ad bellum*), for the first time in the history of international relations renouncing "war as an instrument of national policy" – something that, prior to World War I was seen as the legitimate right of every nation state. In short, Westphalian anarchy can be regulated by International Law, but only on the basis of coordination and reciprocity, much like in contractual or private law within nation states: actors are bound only by what they agree to. International treaties, such as North Atlantic Treaty or the Charter of the United Nations, founding documents of their international organizations, are the institutional reflections of this process of coordination. Unlike in the national setting, these contracts are not only *acts of law*, but also the main *source of international law*. Also the not-codified international customary law (such as the diplomatic code) is based on the concepts of coordination and reciprocity. Any practice can only develop into customary law when it is effectively implemented and when there is a general notion of consent by all parties affected. The increasing process of codification of

these customary norms into international treaties (such as the UN Convention on the Law of the Sea) again shows that International Law works mostly on the basis of coordination.

The Nuremberg Trials in 1945 were the first instance in which the international community has enforced a norm of subordination law (*jus cogens*), a norm that was not previously agreed upon by all affected parties but that from then on was held to be binding for all nation states¹. Since the foundation of the United Nations earlier that year this body of *general International Law* that stands above international treaties and customary law, has seen small but significant developments. In principal effective only after 1990, when the bifurcation of the Cold War ceased to paralyze the main decision making body, the United Nations Security Council, norms widely accepted as *jus cogens* now include:

- A general renunciation of “the threat or use of force against the territorial integrity or political independence of any (!) state, or in any other manner inconsistent with the Purposes of the United Nations.” (Article 2 (4)).
- A general right to “individual or collective self-defence if an armed attack occurs against a Member of the United Nations (!)” (Article 51).
- Crimes against humanity (reflected in the small body of International Criminal Law)
- Piracy
- Slavery

The mode of these norms, subordination as opposed to the mainstream coordination continues to be the exception in International Law.

Collective security

The Charter of the United Nations includes an entire arsenal of measures to maintain international security. Coercive, military actions as provisioned in Chapter 7 of the Charter only constitute the last step that the Security Council can take.

Article 1 of the Charter names three incidents in which the Organisation may “take effective collective measures” “to maintain international peace and security” (Article 1):

- Threat to Peace
- Act of Aggression
- Breach of Peace

¹ This refers to the indictments concerning “crimes against peace”, “wars of aggression” and “crimes against humanity”.

Article 12 of the Charter grants the Security Council the “primary responsibility for the maintenance of international peace and security” (Article 24: 1), including the above-mentioned as well as the pacific settlement of disputes as provisioned in Chapter VI. The Security Council, according to Article 39 decides whether any of the three above is given. Once and only if the Council reaches a positive decision on the conditions of Article 39, can the Council proceed to measures, including military coercion, as provisioned in Chapter VII, Article 40-42.

Once the Security Council has “entered” Chapter VII, it may, “should (it) consider that (non-military) measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security.” (Article 42). Article 43 requires member states to negotiate agreements for military assistance with the Security Council so as to put parts of their armed forces under the command of the Council, should it require those forces to maintain or restore international peace and security. The Security Council is assisted by the Military Staff Committee “on all questions relating to the Security Council’s military requirements for the maintenance of international peace and security” as laid down in Article 47 (Article 47: 1). To date, no member state has successfully negotiated an agreement with the Security Council. When the Security Council wishes to issue measures according to Article 43, it can only mandate member states – or as provisioned by Article 48: 2 international agencies, such as NATO – to implement those military measures on behalf of but not under the Supreme Command of the Security Council. Mandates according to Chapter VII, or Article 43, more specifically are also often referred to as *Peacemaking Missions* or *robust mandates*.

The measures under Chapter VII of the Charter must not be confused with *UN Peacekeeping* or “*blue-helmet*” *Missions* for which member states have frequently placed parts of their armed forces under UN Operational Command. *Peacekeeping Missions* are *not* measures under Chapter VII but under Chapter VI (The Pacific Settlement of Disputes): they require the consent of all affected member states (they are *not* coercive measures) and participation of member states – or alliances of member states - in these missions is *voluntary*. A current example for a Peacekeeping Mission is UNIFIL. Peacekeeping Missions can also be UN-mandated but need not be under UN Operational Command, as is for example the case with KFOR which is under NATO command.

NATO can participate in both UN Peacekeeping (Chapter VI) or Peacemaking Missions (Chapter VII) and has repeatedly done so with regard to Peacekeeping (KFOR). The Security Council has only very few times mandated military

interventions under Chapter VII, most notably including the first Gulf War (1990/1991). NATO, as a regional organization, has so far never been mandated for Peacemaking Missions. The NATO attacks on Afghanistan in 2001 were never explicitly mandated by the Security Council; instead, NATO arguably used its right for collective self-defense in the aftermath of the September 11 attacks.

Collective self-defense

Article 51 of the United Nations Charter grants all member states the right for individual or collective self-defense. It is important to note that this right is “inherent” and immediate, not dependent on any legal act of the Security Council “until the Security Council has taken measures necessary to maintain international peace and security” (UN Charter Article 51). The Charter further requires member states to immediately report on the measures of self-defense to the Security Council. It lies in the logic of collective self-defense that the aggressor necessarily is external to the organization.

The North Atlantic Treaty Organization is one such international organization for *collective self-defense*. The North Atlantic Treaty is *based* on the right recognized by the UN for collective self-defense in Article 51.

The definition of legitimate self-defense has been historically contested, especially in recent years, when non-state actors and pre-emptive or preventive measures have caused controversies.

To date, the most widely accepted legal definition of self-defense the *Caroline Clause*, referring to the arbitral tribunal case United States v. United Kingdom in 1837: self-defense is justified only in the case “in which the necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation” and only when measures are not “unreasonable or excessive”.

Article 5 of the North Atlantic Treaty obliges all member states to “assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.” (Article 5). It is important to note that the invocation of the case of collective self-defense is not dependent on any declaratory act of the alliance. When the state of self-defense was first invoked on September 11th, 2001, it was followed by a confirmatory statement of the North Atlantic Council. Also, it is noteworthy that the Treaty includes only a very abstract pledge for military allegiance. The means of this allegiance are not specified. Also – contrary to public belief – the Treaty does not provision a direct chain of command from NATO to its member states armed forces. Legally, the supreme command over

the armed forces of member states remains with the respective Heads of State or Heads of Government, notwithstanding the necessity for legislative consent to military engagements in some countries (such as Germany).

On an administrative and organizational level, however, NATO has to a great degree integrated military command, establishing the Supreme Allied Commander in Europe (SACEUR) as the alliances' *de-facto* commander-in-chief. SACEUR, however holds only *Operational Command*, which implies the responsibility to assign tasks to national commanders-in-chief. A direct, legally binding chain of command between SACEUR and members of national armed forces does however not exist. The legal relationship under *Operational Command* is of an interstate nature; it binds the actions of member states, but not of military personnel in those states. This mode of command is best understood as intensive, operational military *coordination*.

Military integration has also been furthered by interstate agreements, concerning the Rapid Response Forces and the common use of theatre nuclear weapons (ICBMs) (the details of many of which are not publicly known). In these latter cases, a direct chain of command, or a NATO *Full Command*, legally binding directly on national armed forces does exist.

Aside from these formal criteria, NATO ambassadors will have to consider the political obligation for military allegiance in case of attack that arguably provides the much stronger basis than formal-legal integration.

Ambassadors also have to consider the national constitutional requirements for military engagement and should familiarize themselves with the respective political and legal controversies of their countries. In this respect especially instances of *Full Command* may be deeply problematic for some member states, both constitutionally and politically.

Crimes against humanity, violations of human rights

Article 2 of the UN Charter states that "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state (...) but this principle shall not prejudice the application of enforcement measures under Chapter VII." (Article 2: 7). On the other hands, politicians and scholars have claimed that a basic code of human rights has developed into *jus cogens* and is to be considered as legally binding for all states on planet Earth. The Universal Declaration of Human Rights (1948) – albeit *not* legally binding - and the Nuremberg Trials may be regarded as early institutional reflections of this change. To date, the Security Council has however never issued military

intervention under Chapter VII because of human rights violations. The Charter, in fact, includes no explicit responsibility of the Security Council concerning human rights violations. The closest the Security Council probably ever came to a *Peacemaking Mission* on Human Rights was its no-fly zone over central Bosnia and Herzegovina in 1994. NATO, at that time mandated to control the no-fly zone shot down four Bosnian Serb aircraft violating the Security Council's ruling on 28 February that year, making it the first ever military action of the alliance in over 50 years of its existence.

The legality of military interventions on the basis of "internal" human rights violations remains deeply problematic. The Security Council and the UN Charter so far have failed to provide an institutional framework for regulating such interventions.

While formally basing the 1999 air raids against Serbia as a measure to maintain regional security, NATO officials and Heads of Member States and Governments have argued that the alliance's aggression was legitimized by Serbia's excessive human rights abuses and a hypothesized genocide against Kosovars. Then Secretary General of the United Nations, Kofi Annan, acknowledged that "there are times when the use of force may be legitimate in the pursuit of peace" but criticized that the NATO actions were not mandated by the UN (PBS: Kofi Annan). The People's Republic of China and the Russian Federation had previously threatened to veto any decisive Security Council resolutions mandating military intervention. In any case, it remains unclear how the framework of the Charter could have accommodated a robust mandate since the ethnic cleansings in the Kosovo were formally speaking a matter of *domestic jurisdiction* of the Republic of Serbia.

The North Atlantic Council

The North Atlantic Council is the main decision making organ of the North Atlantic Treaty Organization. All nation states Party to the Treaty have a seat on the Council (1 vote each). The NAC works under unanimity. It meets at various levels, all of which have the same powers: the Permanent Representative Level, member state's Ministers of State, Defense or Heads of State or Government. At BRIMUN 2007, the lowest level (PermReps) will be simulated. Permanent Representatives are senior civil servants that hold the diplomatic title of an ambassador, with all linked privileges. NATO meetings are chaired by the Secretary General of NATO and its Deputy.

The North Atlantic Council at BRIMUN 2007

During BRIMUN 2007, the North Atlantic Council will be simulated according to the Rules of Procedure of the conference. Procedural votes will be decided as is provisioned in the RoPs. Substantive decisions require a unanimous vote. The substantial differences to other committees at BRIMUN notwithstanding, the North Atlantic Council will devote a majority of its time to formal debate.

Decisions of the North Atlantic Council do not normally take the form of resolutions as they are passed in forums of the United Nations. It is expected that – contrary to other forums at MUNs – much of the work of the North Atlantic Council will not be geared towards drafting and passing resolutions. Rather, NATO Ambassadors may wish to use the Council as a forum for formal and informal consultations enabling concerted communication and cooperation with the Arab League and the United Nations Security Council.

As argued in the above, the North Atlantic Council does not have a general political mandate. Resolutions on the floor must hence reflect the provisions of the North Atlantic Treaty and be in compliance with the NATO's nature as an alliance for collective self-defense and/or regional security. Specifically, this implies that:

- Preambles to resolutions, if deemed necessary at all, should be carefully drafted with regard to the North Atlantic Treaty and its preamble
- Resolutions can *only* address (compare with list above):
 - o internal measures
 - o collective self-defense by
 - formalizing consultations concerning the security or political independence of any of the Parties
 - declaring the invocation of a state of collective self-defense and issue related measures
 - o collective security / UN mandated missions
 - as *Peacekeeping Missions* under Chapter VI of the Charter of the United Nations as mandated by the United Nations Security Council and based on the consent of all affected parties
 - as *Peacemaking Missions* under Chapter VII of the Charter of the United Nations as mandated by the United Nations Security Council
 - o humanitarian intervention

- based on a *jus cogens* understanding of Human Rights
 - possibly including a mandate by the United Nations Security Council
 - addressing domestic constitutional restrictions and political constraints of member states
- NATO will not address the United Nations Security Council in any resolution other than in the case of collective self-defense. It may, however ask its member states to address the Security Council
 - Addressees of NATO resolutions include: NATO member states, aggressors of the alliance, countries affiliated through the Partnership through Peace program and SACEUR
 - NATO itself may be an addressee of a Security Council resolution, including the UN-mandated military actions

Preparation and Further Reading

Familiarity with the respective legal frameworks, such as the North Atlantic Treaty and the United Nations Charter (especially Article 5 and Chapter 7) will help to increase the quality of discussion. Successful participation in the debate does, all legal terminology aside, of course not require a degree or university background in international law. Specifically a preparation on the following issues will be key to a fruitful debate:

- Familiarity with the *out-of-area* controversy and respective domestic constitutional and political implications of one's member state
- Familiarity with the controversy on human rights interventions and respective domestic constitutional and political implications of one's member state
- National perspectives on current geopolitical issues facing the North Atlantic zone
- Familiarity with domestic Rules of Engagement and constitutional requirements for military actions (such as a legislative decision)
- Rough familiarity with the military assets, specifically those that are of relevance for NATO and/or NATO Rapid Response Force deployments.

This Study Guide is intended as a starting point for your preparation and to give you the "big picture" at a glance. Further information can be found, amongst others at:

- North Atlantic Treaty Organization, www.nato.org
includes:
 - o A very handy NATO handbook
 - o The North Atlantic Treaty
 - o Several articles on current issues and the future development of NATO
- United Nations, www.un.org
includes:
 - o The Charter of the United Nations
 - o Archive of resolutions of the Security Council. Specifically interesting could be the resolutions on the first and second Gulf War as well as resolution 3314 from 1973 which includes a definition of aggression by the Security Council
- Wikipedia, The Free Encyclopedia, www.en.wikipedia.org
includes a comprehensive Portal on NATO and the United Nations and related issues.
- A more thoroughly academic discussion of the future role of NATO can be found at;
Howard, M. (1999). An Unhappy Successful Marriage – Security Means Knowing What to Expect. In: Council on Foreign Relations, *Foreign Affairs* (165-172).

The items on this list are to be understood as suggestions only. Aside from a thorough familiarity with the formal aspects of NATO little substantive preparation is necessary, since most of the time will be devoted to the crisis, details of which will not be disclosed in advance.

It would be an asset for Ambassadors to briefly prepare the discussion on NATO's Rapid Response Force in advance and to draft some possible clauses to get us started.