

Legal Syndicate

NATO Centres of Excellence Programme of Work Conference

March 2011

Opening:

Mr Tony Wedge, HQ SACT, thanked everyone for attending and welcomed them to the second COE Workshop breakout session. Mr Wedge opened the Syndicate by inviting all attendees to introduce themselves, and particular note was made of the participation by SHAPE Legal Advisor, Mr Tom Randall, and HQ SACT Staff Element Europe (SEE) Legal Advisor, Mr Lewis Bumgardner. The List of attendees is attached (Enclosure B).

The Syndicate proceeded in accordance with the proposed agenda (Enclosure A), and Mrs Mette Hartov, HQ SACT Legal Office, updated the Syndicate on the progress made since the last Syndicate regarding the development of Supplementary Agreements (SA) to the Paris Protocol. The Bi-SC works on drafting a template SA was introduced in details to the 2010 Syndicate; this work has now come to an end and it is the hope to see the template embedded as an attachment to Bi-SC DIR 15-3 (International Agreements) upon the next (and hopefully soon to come) revised version of the DIR. As for consultations on further SAs to be concluded this is currently a Bi-SC effort, coordinated between the two Supreme Headquarters, who both hold authority to conclude SAs.

Generally speaking, the SAs apply to COEs, once granted international status under the Paris Protocol by the NAC. Accordingly, HQ SACT is taking an active approach and is advancing in more consultations. With regard to current SAs, and where SAs are not activity specific, COEs holding international status should enjoy the complementary status where so provided. As an example FMOF Germany has issued a letter based on information received from SHAPE about all of the organizations covered by the Paris Protocol, and the COEs located in Germany and holding international status are on the list. This effective application was challenged by the COEs based in Germany, which felt estranged in what is being perceived as a lack of status. Subsequent discussions identified that the all Germany based COEs, along with other COEs that have no direct legal support, look to HQ SACT to better understand the legal intricacies, which are sometimes made more complex through bilateral agreements between the Framework Nation and some (but not all) Participating Nations.

Mr Tom Randall, SHAPE Legal Advisor, gave a commentary from an ACO perspective and drew parallels to the MOU organisations, which are established within SHAPE area of interests.

The syndicate was introduced to CLOVIS, an ACT experiment intended to provide information and knowledge management in the field of Legal. Mr Lewis Bumgardner, HQ SACT SEE Legal Advisor, is the coordinator of the experiment, and supported by CLOVIS knowledge managers Ms Stephanie Smith and Kaitlyn Garvey he outlined the ambitions of the experiment. CLOVIS will provide a legal knowledge sharing platform and will have knowledge managers use Web 2.0 tools and linkage to a legal database. This will eventually be available on both networks and initially available to all around

Sept 2011. It will house all legal documents relative to NATO and thus to COEs. COE lawyers are amongst the Beta group (test group) for CLOVIS and the experiment looks forward to benefit from the input from COE lawyers.

Day 2

To support discussions on the legal issues involved in hosting, participating and sending personnel to a NATO COE, each MOD Legal representative was invited to inform the Syndicate on the COE related legal issues in their nations. Mr Marc Luis, Senior Legal Counsel with the section for International Agreements, DEU Federal Ministry of Defence, took the podium first and presented an update from a DEU perspective, and raised the following points:

- DEU is engaged in the majority of COEs, and is currently hosting 3 COEs.
- None of the COEs hosted by DEU have assigned Legal Advisors to the COE staffs.
- A recent challenge within one of the COEs was to manage the developing relations with a commercial entity which was looking at establishing collaborative interaction with the COE. The matter advanced questions regarding who is authorised to conclude arrangements on behalf of the COE, the extent of associated liabilities, and the effects of non-disclosure agreements.

In response to Mr Luis' presentation, Mr Wedge advised COEs not to sign any "template" agreements without first consulting HQ SACT.

1LT Ildiko Bolkeny, MILMED COE, briefed the HUN MOD experience with COEs, providing the following observations: The MILMED COE, located in HUN, was accredited in 2009. Internally it was established as an internal, administrative entity since HUN in the initial set-up was unable to recognize its legal status. Subsequently, the MILMED COE was granted international status under the Paris Protocol, and HQ SACT and MOD HUN initiated SA consultations, which are still pending. A recent challenge is to establish a satellite branch, the Deployment Health Surveillance Capability (DHSC), to be stood up in DEU. Currently, the Participating Nations are finalising the MOU changes to allow this to happen.

The USA experience was described by Mr Gunter Filipucci, USEUCOM, and focused on US legislation which demands certain criteria to be met, and thus requires corresponding language to be respected. This pertains to the execution of budgets and earmarking of US funds for "NATO" work or to support the running of the COE. The application and need for bilateral supplementary agreements to the NATO SOFA to adequately address the status of US personnel was also highlighted.

Mr. Wedge presented the MOUs and changes over the years. The following points were raised:

- MOUs changed over the years as a result of best practices and the will of the nations;
- MOUs also changed to give the SC and the Director more freedom to accomplish their tasks.

LTC Allan Dennis, MILENG COE asked if there been any thought of changing the functional MOU? Mr. Wedge replied that the nations so far have only been interested in changing the operational MOUs. LTC Dennis continued, pointing out that COEs have become an increasingly important tool for NATO but wondering if the functional relationship established with HQ SACT is effective and sufficient and if it is addressed at the appropriate level. Mr. Wedge responded that the Functional MOU is concluded between HQ SACT and the Participation Nations; TNB is the designated office work working COE issues, but equally relies on staff coordination and interaction with SCs, respectively. The specific difficulties portrayed by the CSW COE in terms of identifying its status and the status of its personnel was addressed in a subsequent discussion, which lead HQ SACT Legal to identify a need for the COEs to further communicate when COE staffs experience difficulties. Being sympathetic to the issues raised specifically by the CSW COE, Legal also stated inasmuch as calls for support will facilitated, there is no single or uniform answer to how situations should be resolved or support delivered.

Mr. Wedge put the question to the Syndicate if MOUs be posted on a protected (unclassified) website? The group agreed on the purposefulness of posting the documents on a protected area of TRANSNET, and Mr. Wedge will proceed with this idea in order to obtain the necessary agreement.

Each COE representative was requested to give a short update on their legal challenges and legal achievements as seen from their perspective. LTC Ramon Candil opened the discussion by presenting the CIED COE experience and suggested that the more important benefit to the C-IED comes from the intelligence exchange and information sharing first hand. Specifically, the CIED COE could be entitled to manage the NATO CIED portal, which will provide cross functionality, timely information for those involved in solving the CIED problem.

Mr Berthold Malms , CSW COE, observed in terms of challenges that the Joining of new participants could be improved by shortening the staffing process. Travel funding is a challenge - sponsoring nations travel at the expense of other nations and national per diem may at the same time be restricted. Thus, travel days should be stated in the operational MOU (subsequent discussion confirmed that the Job description is the most appropriate place). Finally, if a customer is not NATO, how does ownership of products get determined (it was agreed that Intellectual Property Rights need to be addressed in the MOU's)

Capt Anne-Marji Strikwerda, CIMIC COE, summaries the legal challenges and tasks defined for the COE and identified in particular and upcoming Rule of Law Project. Moreover, the practicalities of offering and managing internships have presented a challenge to the CIMIC COE Legal office. Regarding achievements the CIMIC COE contributions to reviewing AJP-9 was highlighted along with contributions to on-going courses.

LTC Allan Dennis, MILENG COE, raised a number of encounters faced by the COE: MOU implementation post challenge issues; travel budget and national restrictions on per diem are found to hamper the effectiveness of the COE; the processing of amendments and notes of joining should be more efficient; the COE lack of legal expertise and thus lack understanding on its status and responsibilities as an IMO. Regarding challenges these were mainly related to the adaptation of personnel (isolation, funding, housing, schooling, language barrier) and the differences in personal privileges due to the more supplementary agreements concluded between Germany and sending

States. LTC Dennis identified in response to the challenges the need for a local/HNLO

Mr. Zdenek Hybl, JCBRN Defence COE, presented his achievements to include on-going MOUs & TA negotiation, support of other COE's and of the NRF. In terms of the challenges Mr. Hybl observed that there is still no SA concluded between CZE and HQ SACT; the standing up of new elements and cells called for legal support; additionally, the WMD terrorism & civil military cooperation issues (role of legal Advisors) pose a challenge to the JCBRN Defence COE Legal Office.

COL Aurel Coman followed with a presentation on the HUMINT COE experience.

Mrs. Tizana Cartechini, M&S COE, observed that Government budget cuts have led to the number of SNs, which in turn may affect the M&S COE possibilities to be activated under the Paris Protocol and thus obtain international status. Subsequent discussions suggested that a COE may go forward with the accreditation and activation process with only two Nations, and in the specific case emphasising the willingness of USA to join after accreditation. Another challenge to the M&S COE is if the SHAPE-Italy SA can be extended to the COE irrespective of HQ SACT not being a party to the SA.

1LT Ildiko Bolkeny gave an interesting presentation on the MILMED COE experience. The following points were raised in terms of the challenges: Status issues has been a constant endeavour, and was not resolved when the MILMED COE was accredited and activated by NAC. Rather, an SA is expected to provide a lasting solution. Until the SA is signed temporary solution is still needed. Temporary solutions include:

- “status certificate” issued by the HUN Minister of Defence
- domestic law concerning the status of int'l organizations hosted by HUN

Moreover, the MILMED COE has a Bilateral agreement between HUN Mod and COE establishing the Host Nation Support to be provided by the Ministry of Defence for the COE in accordance with as determined in Annex E of the OPS MOU.

CDR Helmut Zimmermann, CJOS COE, experience pointed out that the disbanding of JFCOM has raised questions with regard to future embedding of the CJOS COE, to include the future physical location of CJOS COE and subsequent impact on the MOUs and concept of the CJOS COE. CJOS COE will use this opportunity to make other changes to the MOUs (at the will of the Sponsoring nations) to include more freedom of movement for the Steering Committee and the Director.

The topic of the way ahead for the next meeting was briefly discussed as 1.5 days was not enough time to complete the agenda. It was decided that the meeting should be at least 2.5 days long and be based in Europe to alleviate travel problems for the majority of attendees. It was further agreed that TNB and HQ SACT legal would make a proposals for the location and possible co-location with an existing NATO legal meeting. A final decision on the location and date of the next meeting would be made by consensus.

Major points from the meeting were:

- More COEs (without legal staff) requested that HQ SACT acts more as a champion for COEs

and provide more support / Guidance.

- COE and MOD lawyers should have somewhere to turn when they need advice.
- There is no “One-size-fits-all” solution as national laws differ.
- There are similarities between COEs and other MOU organisations that should be explored.
- Recognition of the IMO status and SA’s were not common to all nations.
- The meetings are very useful for sharing problems and solutions.

The meeting was closed with the agenda incomplete.

2011 COE Workshop Legal Breakout session agenda

When	What/Who
DAY ONE	COE Workshop, Legal Syndicate, Tuesday 1 March 2011
1200-1330	Lunch
1330-1400	Opening - Mr. Tony Wedge, HQ SACT Welcome and Presentation of participants
1400-1500	Update on initiatives from SHAPE Legal and Mrs Mette Hartov, HQ SACT <ul style="list-style-type: none"> • Template Supplementary Agreement • Information exchange and activities in 2011 • SHAPE and MOU organisations – legal lessons identified
1500-1530	Coffee Break
1530-1630	Discussion Continued
DAY TWO	COE Workshop, Legal Syndicate, Wednesday 2 March 2011
0900-1130	Panel 1: COE Challenges and Triumphs <ul style="list-style-type: none"> • Each COE representative is requested to give a 10 minute update on their top 3 legal challenges and their top 3 legal achievements from the COE perspective. These could be related to the MOUs, Status or indeed the COE mission. • Q&A will follow each update.
1130-1200	How COE MOUs have changed over the years – Wedge (Brief) + Discussion Should MOUs be posted on a protected Website? - Discussion
1200-1300	Lunch
1300-1430	Panel 2: The legal issues involved in hosting, participating and sending personnel to a NATO COE <ul style="list-style-type: none"> • Each MOD Legal representative is asked to give a 10 minute update on the COE related legal issues in their nations. Q&A to follow.
1430-1500	Coffee Break
1500-1600	Panel 3: COEs and Partnerships <ul style="list-style-type: none"> ○ Agreements with entities internal and external to NATO ○ Partner involvement in COEs General discussion
1600-1630	Out-brief preparation
1630-1645	Closing remarks by HQ SACT, Mr. Tony Wedge

2011 COE Workshop Legal Attendees

NAME	COMMAND	POSITION
LTC Thomas Becker	JEWCS	Deputy Director NATO JEWCS
Mrs Tiziana Cartechini	M&S COE	Legal Advisor
Mr Zdenek Hybl	JCBRN Defence COE	Legal Advisor
Mrs Mette Hartov	HQ SACT	Legal
Mr Tom Randall	SHAPE	Legal Advisor
1LT Ildiko Bolkeny	MILMED COE	Legal Advisor
Capt. Anne-Marji Strikwerda	CIMIC COE	Legal Advisor
CDR Helmut Zimmermann	CJOS COE	Plans and Policy Section Head
CDR Themistocles Papadimitriou	Greece	NLR
LTC Allan Dennis	MILENG	Deputy Director/COS
Mr Gunter Filipucci	EUCOM	International Law Division Chief
COL Mihai Aurel Coman	HUMINT COE	Legal Advisor
Mr Lewis Bumgardner	HQ SACT Staff Element Europe	Legal Advisor
Mr Berthold Malms	CSW COE	Financial Control BH
Capt. Lutz Panknier	CSW COE	Executive Director
LTC Ramón S. Candil	C-IED COE	Legal Advisor
Mr Marc Luis	DEU MOD	Section International Agreements
Mr Tony Wedge	HQ SACT	Chairman
Ms Toi Coleman	HQ SACT	Secretary