



The EU–NATO Relationship

A Legal and Political Perspective

Martin Reichard

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MARTIN REICHARD

Austrian Mission to NATO (2005–2006)

ASHGATE

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THE EU–NATO RELATIONSHIP

For Peter Macalister-Smith

Preface

This book was, for the greatest part, written during my time as a research assistant at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany. Among the many people who have helped it on its way toward completion, the following must be counted in particular: Professor Hanspeter Neuhold, who has instilled me with crucial concepts, and to whose thinking on international security I owe a lot, as well as Professor August Reinisch, both from Vienna University. Their meticulous comments did much to improve the quality of presentation. My assigned research professor at the Max Planck Institute, Professor Ulrich Beyerlin, who gave me enough space to finish the main text on time, and much personal support. The great community of researchers at the Max Planck Institute, who – between many meetings, colloquia, mensa lunches and coffees – gave me many a valuable hint, a sense of common scientific spirit, and a mental home; in particular Pia Carazo, Leonie Guder, Holger Hestermeyer, András Jakab, Sebastian von Kielmansegg, Daniel Klein, Ludger Radermacher, Markus Rau, Dagmar Richter, Volker Röben, Christian Schaller, Gerd Schwendinger, Silja Vöneky and Kai Ziegler; also the friendly and professional library and other institute staff, in particular Petra Austen, Ursula Brummer, Wolfgang Schönig, Sara von Skerst, Petra Weiler and Jasmin Wendt, without whose continuous background labour none of this would have been possible. All my colleagues at the Austrian Foreign Ministry who, in the last stage, pushed me on towards the finishing line. Professor Torsten Stein from Saarbrücken, who also gave much support. Alison Kirk from Ashgate Publishing, for enduring many last-ditch changes amidst the jungle of the publishing process. But above all Peter Macalister-Smith, for his unswerving support and belief in this project, and to whom the book is dedicated.

Martin Reichard

List of Abbreviations

ACT	Allied Command Transformation
AFP	Agence France-Presse
AFSOUTH	NATO Allied Joint Force Command Naples
AJIL	American Journal of International Law
AnnIDI	Annuaire de l'Institut du Droit International
ANZUS	Australia-New Zealand-United States Treaty
AP	Associated Press
arg.	argumento (because of)
ARIEL	Austrian Review of International and European Law
Ariz. J. Int'l & Comp. L.	
	Arizona Journal of International and Comparative Law
ASEAN	Association of South East Asian Nations
ASIL	American Society of International Law
AU	African Union
Australian J. Int'l Aff.	
	Australian Journal of International Affairs
AVR	Archiv des Völkerrechts
AWACS	Airborne Warning and Control System (NATO)
B.C. Int'l & Comp. L. R.	
	Boston College International and Comparative Law Review
BFSP	British Foreign and State Papers
BBC	British Broadcasting Corporation
BiH	Bosnia and Herzegovina
BITS	Berlin Information-center for Transatlantic Security
BP	Berlin Plus agreement
Bull. E.C.	Bulletin of the European Communities
Bull. Quot.Europe	
	Bulletin Quotidien Europe
BVerfGE	Sammlung der Entscheidungen des Bundesverfassungsgerichts
BYIL	British Yearbook of International Law
C3I	Command & Control, Communications and Intelligence
Can.YIL	Canadian Yearbook of International Law
Case W. Res.J. Int'l L.	
	Case Western Reserve Journal of International Law
CDM	Capability Development Mechanism (EU)
CENTO	Central Treaty Organisation

CEPS	Centre for European Policy Studies
CER	Centre for European Reform
CFSP	Common Foreign and Security Policy
CFSP-HR	EU High Representative for the Common and Security Policy
CIG	Conférence Intergouvernementale (EU) [= IGC]
CINCHAN	Commander-in-Chief Channel (NATO)
CIS	Commonwealth of Independent States
CJTF	Combined Joint Task Force(s) (NATO)
Cm.	British Command Paper
Cmd.	British Command Paper
CME	EU exercise
CMLR	Common Market Law Review
CMX	NATO exercise
Col. J. Eur. L.	Columbia Journal of European Law
Col. J. Transnat'l L.	Columbia Journal of Transnational Law
Cong. Rec.	US Congressional Record
Contr.	Contribution
CONV	European Convention Document
Coop. & Confl.	Cooperation & Conflict
COPS	Comité politique et de sécurité (= PSC)
COREPER	Committee of Permanent Representatives (EU)
Cornell Int'l L.J.	Cornell International Law Journal
CP [No.]	European Union (formerly Western European Union) Institute for Security Studies (Paris), Chaillot Paper
CP 47	M. Rutten (compil.), <i>From St-Malo to Nice – European defence: core documents (2001)</i> , Chaillot Paper 47, Institute for Security Studies of WEU
CP 51	M. Rutten (compil.), <i>From Nice to Laeken – European defence: core documents, Volume II (2002)</i> , Chaillot Paper 51, Institute for Security Studies European Union
CP 57	J.-Y. Haine (compil.), <i>From Laeken to Copenhagen – European defence: core documents, Volume III (2003)</i> , Chaillot Paper 57, Institute for Security Studies European Union
CP 67	A. Missiroli (compil.), <i>From Copenhagen to Brussels – European defence: core documents, Volume IV (2003)</i> , Chaillot Paper 67, Institute for Security Studies European Union
CP 75	EU security and defence – Core documents 2004, Volume V, Chaillot Paper 75, Institute for Security Studies European Union
CSP	Contemporary Security Policy
CY	Cyprus
DCI	Defence Capabilities Initiative (NATO)
Dec.	Decision

Denv.J.Int'l L. & Pol'y	Denver Journal of International Law and Policy
DG	Directorate-General (European Commission)
Doc.	Document
DÖV	Die Öffentliche Verwaltung
DPA	Deutsche Presse Agentur
DRC	Democratic Republic of Congo
DSACEUR	Deputy Supreme Allied Commander Europe
EAPC	Euro-Atlantic Partnership Council
ECAP	European Capabilities Action Plan (EU)
ECJ	European Court of Justice
ECOWAS	Economic Community of West African States
ECR	European Court Reports (ECJ)
ECSC	European Coal and Steel Community
EDC	European Defence Community
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EFAR	European Foreign Affairs Review
EFJ	European Federation of Journalists
EI	Europainstitut, Wirtschaftsuniversität Wien
EJIL	European Journal of International Law
ELR	European Law Review
EMU	European Monetary Union
ENA	Ecole Nationale d'Administration
EP	European Parliament
EPC	European Policy Centre
EPIL I	R. Bernhardt (ed.), Encyclopedia of Public International Law, Volume I (A – D) (1992)
EPIL II	R. Bernhardt (ed.), Encyclopedia of Public International Law, Volume II (E – I) (1995)
EPIL III	R. Bernhardt (ed.), Encyclopedia of Public International Law, Volume III (J – P) (1997)
EPIL IV	R. Bernhardt (ed.), Encyclopedia of Public International Law, Volume IV (Q – Z) (2000)
ERRF	EU Rapid Reaction Force
ESDI	European Security and Defence Identity
ESDP	European Security and Defence Policy
ESDU	European Security and Defence Union
ESR	ISIS European Security Review
ESS	European Security Strategy
et seq.	and following
EU	European Union
EUCI	EU Classified Information
EUFOR	EU Force in BiH

EU-ISS	Institute for Security Studies European Union
EUMC	EU Military Committee
EUMM	EU Monitoring Mission in Former Yugoslavia
EUMS	EU Military Staff
EUPM	EU Police Mission in BiH
EuZ	Zeitschrift für Europarecht (Zurich)
FDCH	US Federal Documents Clearing House
Fed. Law Gaz.	Austrian Federal Law Gazette
FM	Foreign Minister
Fordham Int'l L.J.	Fordham International Law Journal
GA	UN General Assembly
Ga. J. Int'l & Comp.L.	Georgia Journal of International and Comparative Law
GAERC	General Affairs and External Relations Council (EU)
GAOR	UN General Assembly Official Records
GDR	German Democratic Republic
GR	Greece
GSC	General Secretariat of the Council of the European Union
GYIL	German Yearbook of International Law
HHG	Helsinki Headline Goal (EU)
HJIL	Heidelberg Journal of International Law
Houston J. Int. L.	Houston Journal of International Law
HQ	Headquarters
ICC	International Criminal Court
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICTY	International Criminal Tribunal for the former Yugoslavia
IFDT	Information für die Truppe (German Bundeswehr)
IFIR	Innsbruck Forum on International Relations
IFOR	Implementation Force (BiH)
IGC	Intergovernmental Conference (EU)
IISS	International Institute for Security Studies (London)
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labour Organization
ILR	International Law Reports
ILSA J Int'l & Comp. L.	ILSA (International Law Students Association) Journal of International and Comparative Law
Iran-USCTR	Iran-US Claims Tribunal Report
ISAF	International Security and Assistance Force (Afghanistan)

ISIS	International Security Information Service, Europe
J. Int'l Legal Stud.	Journal of International Legal Studies
J'l of Int. Crim. Just.	Journal of International Criminal Justice
JA	EU Joint Action
Jb.d.eur.Int.	Jahrbuch der europäischen Integration
JCMS	Journal of Common Market Studies
JCSL	Journal of Conflict and Security Law
JHA	Justice and Home Affairs (EU)
KFOR	NATO Kosovo Force
LJIL	Leiden Journal of International Law
LNTS	League of Nations Treaty Series
Macedonia	The former Yugoslav Republic of Macedonia (FYROM)
MBT	WEU Modified Brussels Treaty
MC	Military Committee
MEP	Member of the European Parliament
Mich.J.Int'l L.	Michigan Journal of International Law
MN	Margin Note
MoD	Minister/Ministry of Defence
MoU	Memorandum of Understanding
MS	Military Staff
N.Z.	New Zealand
NAC	North Atlantic Council
NACC	North Atlantic Cooperation Council
NAT	North Atlantic Treaty
NATO	North Atlantic Treaty Organisation
NATO-IS	NATO International Staff
NBA	Non-Binding Agreement
NGO	Non-Governmental Organisation
NILR	Netherlands International Law Review
NJIL	Nordic Journal of International Law
NJW	Neue Juristische Wochenschrift
NRF	NATO Response Force
NSO	National Security Office (NATO)
NYIL	Netherlands Yearbook of International Law
NZWR	Neue Zeitschrift für Wehrrecht
OAS	Organisation of American States
OBS	Observatory of European Foreign Policy (Barcelona)
OHQ	Operation HQ
OJ	Official Journal of the European Communities/ European Union
ÖJIP	Österreichisches Jahrbuch für Internationale Politik
OP [No.]	European Union (formerly Western European Union) Institute

	for Security Studies (Paris), Occasional Paper
OPLAN	Operation Plan
ORF	Österreichischer Rundfunk
OSCE	Organization for Security and Co-operation in Europe
ÖsterrZÖR	Österreichische Zeitschrift für öffentliches Recht
ÖZP	Österreichische Zeitschrift für Politikwissenschaft
PCC	Prague Capabilities Commitment (NATO)
PCIJ	Permanent Court of International Justice
PfP	NATO Partnership for Peace
PJHQ	Permanent Joint HQ
PM	Prime Minister
PPEWU	EU Policy Planning and Early Warning Unit
PSC	Political and Security Committee
PSI	Proliferation Security Initiative
PSQ	Political Science Quarterly
RDI	Rivista di diritto internazionale
REDI	Revista Española de Derecho Internacional
RELEX	External Relations (European Commission)
Rep.	Report
Res.	Resolution
Rev.T.Dr.Eur.	Revue trimestrielle de droit européen
RGDIP	Revue générale de droit international public
RMA	Revolution in Military Affairs
Rom.J.Int.Aff.	Romanian Journal of International Affairs
RTO	NATO Research and Technical Organisation
SACEUR	Supreme Allied Commander Europe (NATO)
SACLANT	Supreme Allied Commander Atlantic (NATO)
SEA	Single European Act
SEATO	South East Asian Treaty Organisation
SFOR	NATO Stabilisation Force (BiH)
SG	Secretary-General
SHAPE	Supreme Allied Headquarters Europe
SI	security of information
SIA	Security-of-Information Agreement
SIPRI	Stockholm International Peace Research Institute
SOFA	Status-of-Forces Agreement
St. Louis U. Publ. L. Rev.	St. Louis University Public Law Review
Stan.J. Int'l L.	Stanford Journal of International Law
STANAVFORMED	NATO Standing Naval Force Mediterranean
Suffolk Transnat. L. Rev.	Suffolk Transnational Law Review
SWP	Stiftung Wissenschaft und Politik (Berlin)

TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TEU(AT)	Treaty on European Union (Amsterdam version)
TEU(MT)	Treaty on European Union (Maastricht version)
TEU(NT)	Treaty on European Union (Nice version)
TK	Turkey
U.C. Davis J. Int'l L. & Pol'y	University of California Davis Journal of International Law and Policy
U.Miami Int.Comp.L.Rev.	University of Miami International and Comparative Law Review
U.Pitt.L.Rev.	University of Pittsburgh Law Review
US	United States
UEN	Europe of Nations Group (European Parliament)
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNC	Charter of the United Nations
UNCIO	Documents of the United Nations Conference on International Organisation
UNPROFOR	United Nations Protection Force (BiH)
UNOSOM	United Nations Operation in Somalia
UNSC	UN Security Council
UNTS	United Nations Treaty Series
UNTSO	United Nations Truce Supervision Organization
USMC	US Marine Corps
USSR	Union of Soviet Socialist Republics
Valp. U. L. Rev.	Valparaiso University Law Review
VCLT	Vienna Convention on the Law of Treaties
VCLTIO	Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations
VDST	Verein Deutscher Studenten
w.f.r.	with further references
WEU	Western European Union
WG	Working Group
WMD	Weapons of Mass Destruction
WTO	World Trade Organisation
YBEL	Yearbook of European Law
YBILC	Yearbook of the International Law Commission
ZEI	Zentrum für Europäische Integrationsforschung
ZEuS	Zeitschrift für europarechtliche Studien

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Introduction

THE EU–NATO RELATIONSHIP AS A POLITICAL TOPIC

This is a book about the EU–NATO relationship. This relationship is relatively new, as each of the two organisations for a long time occupied a very different area of activity, so the possible interface between them was virtually nil. Today, in contrast, the EU and NATO seem to develop new areas of cooperation and harmonisation of their respective activities with amazing speed, the most widely documented example of which was the 2002 Berlin Plus agreement on the borrowing of assets by the EU from NATO for its crisis management operations in the Balkans. But there are many others. Indeed, it seems increasingly hard today to fathom them all in their entirety and to see them together in a coherent framework. From the entire range of this EU–NATO interface currently existing, this book will attempt to describe the most important areas, without claiming to cover them all. Cooperation on terrorism, the Western Balkans, military capabilities, civil emergency response and so on could all be treated as separate areas of EU–NATO cooperation, but this will not be done here. From the EU side, the policy which covers most if not all of the EU–NATO interface is ESDP.¹ Therefore, the term ‘ESDP–NATO relationship’ could equally be employed.

The relationship between NATO and the European Union evolved gradually though the 1990s, to an already mature state today. Yet, it seems bound for further changes in the future. During the Cold War, circumstances which shaped the socio-political division of the roles of the EU and NATO, as found enshrined in the organisations’ statutes and practice, had remained constant for close to forty years. With the Berlin Wall gone, new and different forces began to unravel and underlying interests began to shift. After the threat of Soviet invasion had disappeared, old definitions of security centring mainly on territorial defence gave way to a broader view reflecting different, and more complex and diverse, security problems, taking

1 Single exceptions are e.g. EU–NATO co-operation in the field of anti-terrorism (which touches many 3rd pillar aspects of the EU) and in space-related activities (as the EU’s Galileo programme falls within the purview of the EU Commission’s DG Transport).

also account of the human dimension.² In search of answers to these problems, crisis management (including peacekeeping) became significantly more important.³

Both NATO and the EU were equally challenged for new roles after the end of the Cold War. In NATO's case this was evident as, its main *raison d'être*, the Soviet threat, had disappeared.⁴ Also, after German reunification, there was no more perceived need to 'contain' that country.⁵ For the EU as well, its respective evolution, politics and agenda were shaped before Maastricht by the logic of the Cold War.⁶

The old status quo between NATO and the European Community essentially consisted in an institutional division of labour between the two organisations: NATO for European security in the military sense, and the European Community, as a 'civilian institution'⁷ for economic prosperity.⁸ This combination – in which America's protecting role over Western Europe was inherent – is widely credited with restoring the continent from its ashes after the Second World War economically with remarkable speed, and has led to an era of unprecedented peace in this region of

2 T. Marauhn, *Building a European Security and Defence Identity* (1996), pp. 65–6; A.G. Harryvan and J. van der Harst, *A Threat of Rivalry? Dutch Views on European Security Today*, in: M. Dumoulin, *La communauté européenne de défense, leçons pour demain?* (2000), p. 401 at pp. 402–6; K.E. Eliassen, *Introduction*, in: *Id.* (ed.), *Foreign and Security Policy in the European Union* (1998), p. 1 at p. 2; S. Stavridis, 'Militarising' the EU: the Concept of Civilian Power Europe Revisited, 36 *The International Spectator* 4 (2001), pp. 45–6; J. Medcalf, *Going Global? The North Atlantic Treaty Organisation and the Extra-European Challenge*, Ph.D. Dissertation, University of Bath, 2002 (unpublished; on file with the author), pp. 76–101; M.M. Gallagher, *Declaring Victory and Getting out [of Europe]: Why the North Atlantic Treaty Organization Should Disband*, 25 *Houston J. Int. L.* (2003), pp. 358–9. The European Convention's Working Group VIII (Defence) duly summarised this new development in its Final Report (16 Dec. 2002, CONV 461/02, at para. 6): 'The concept of security is very broad, by nature indivisible, and one that goes beyond the purely military aspects covering not only the security of States but also the security of citizens.'

3 T. Marauhn, *ibid.*, p. 131.

4 A. Deighton, *The European Security and Defence Policy*, 40 *JCMS* (2002), p. 719 at p. 724.

5 N.M. Abbasi, *Security Issues between the US and EU within NATO*, 20 *Strategic Studies* 4 (2000), pp. 83–4.

6 J. Verbeke, *A new security concept for a new Europe*, 51 *Studia diplomatica* (1998), p. 125 at p. 130.

7 A. Deighton, *The European Security and Defence Policy*, 40 *JCMS* (2002), p. 719 at p. 720.

8 H. Ojanen, *Theories at a loss? EU–NATO fusion and the 'low-politicisation' of security and defence in European integration*, Finnish Institute of International Affairs, Working Paper 35 (2002), p. 4; H. Larsen, *Concepts of Security in the European Union After the Cold War*, 54 *Australian J. Int'l Aff.* (2000), p. 337; W. Bradford, *The Western European Union, Yugoslavia, and the (dis)integration of the EU, the new sick man of Europe*, 24 *B.C. Int'l & Comp. L. R.* (2000), p. 13 at 75.

the world.⁹ But even under this clear division of labour, each of the two organisations recognised that their main function, clearly defined as it was, also had implications into the other's. NATO profited from European economic integration because 'economic cooperation was a means to strengthen political and ideological cohesion with a view to ... the establishment and maintenance of a defence capability'.¹⁰ The European Coal and Steel Treaty of 1951, although a purely economic project, was born out of the underlying security rationale to forestall another war in Europe and, in this way, also turned out an 'excellent security instrument'.¹¹ As long as the massive common threat existed, this division of labour was without alternative.¹²

In many ways, it also laid the tracks for a fully integrated Europe, heading today for confederation or maybe even federation. At the start of the 1990s the idea that the EU should itself take responsibility for the security of the European continent was too uncomfortable to old strategic and popular habits bred in the decades of the Cold War.¹³ It was only the St-Malo process driven jointly by France and the UK after the latter's turn-about on European defence in 1998¹⁴ which 'let the genie out of the bottle' and created the real possibility of a European defence capacity autonomous of the Atlantic alliance.¹⁵ By that time, public opinion was also slowly swinging in favour of a common European defence policy.¹⁶

But this new development also created a new problem: from the moment the new European Community began – with Maastricht – to assume in addition to its primary economic role¹⁷ a political role as the European *Union* (with its Common Foreign and Security Policy), gradually taking on responsibility for security in Europe and its

9 J. Solana, *The Washington Summit: A New NATO for the Next Century*, 34 *The International Spectator* 2 (1999), pp. 37–8; G. Robertson, *Die NATO und die EU: Partner oder Rivalen?*, in: W. Hoyer / G.F. Kaldrack (eds.), *Europäische Sicherheits- und Verteidigungspolitik* (2002), p. 181; M. Muschwig, *European Security and Defense Policy: European vs. United States: Crisis of Transatlantic Relations: Nato and the Future European Security and Defense Identity (ESDI)*, 13 *Miami Int'l & Comp.L.Rev.* (2002), p. 13 at 17.

10 M. Weller, *The European Union within the 'European Security Architecture'*, in: M. Koskeniemi, *International Law Aspects of the European Union* (1998), p. 57 at p. 69.

11 D. Smith, *Europe's peacebuilding hour? – Past failures, future challenges*, 55 *Journal of International Affairs* (Columbia University) (2002), p. 441 at p. 449.

12 G. Robertson, *Die NATO und die EU: Partner oder Rivalen?*, in: W. Hoyer / G.F. Kaldrack (eds.), *ESVP* (2002), p. 182.

13 J. Howorth, *European integration and defence: the ultimate challenge* (2000), CP 43, p. 4.

14 For a fuller account of these developments, see below Chapter 2 (ESDP Today).

15 *Ibid.*

16 See e.g. the opinion poll, taken in January and February 1996, cited in WEU Assembly Doc. 1523, *The armed forces, European defence and informing the public in WEU member countries*, Report by Mr. Benvenuti (Rapp.), 13 May 1996, para. 19.

17 J. Verbeke, *A new security concept* (1998), p. 130.