

## Editorial

*International and European Security Law*

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### Keywords

International Security Law, European Security Law, Conflict and Security

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Merkourios 2012 – Volume 28/Issue 74, Editorial, pp. 01-03.

URN: NBN:NL:UI:10-1-112846

ISSN: 0927-460X

URL: [www.merkourios.org](http://www.merkourios.org)

Publisher: Igitur, Utrecht Publishing & Archiving Services

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It was with great enthusiasm that I accepted the invitation to contribute this editorial to the latest issue of *Merkourios* focused on international and European security law. It is a complex and exciting area of the law, fully deserving of a dedicated issue of this journal, the effects of which are on display each day when one picks up the newspaper or watches the evening news.

Security law, or more comprehensively conflict and security law, on the international level represents the intersection of three distinct but interrelated fields: international humanitarian law (the law of armed conflict, *jus in bello*), the law of collective security (most identified with the United Nations (UN) system, *jus ad bellum*) and arms control law (including non-proliferation). Security in this sense is multifaceted – interest security, military security and, as is often referred to in the context of the EU, human security. As such, the law covers a wide range of specific topics with respect to conflict, encompassing the use of force, including choice of weapons and fighting techniques, extending to the rules applicable in peacekeeping and peace enforcement, and yet also dictating obligations outside the context of conflict, such as safeguarding and securing dual-use materials (those with both peaceful and military applications) to prevent malicious use. This list is by no means exhaustive.

Contemporary examples of the real-world application of security law rules and principles can be witnessed in yet another round of inspections being conducted in Iran by representatives of the International Atomic Energy Agency,<sup>1</sup> demonstrating the supervisory mechanism in place to determine compliance with nuclear safeguards obligations as required under the Nuclear Non-proliferation Treaty (NPT), or in the use of force for the protection of civilians and to enforce a no-fly zone in Libya as mandated by the UN Security Council.<sup>2</sup> Both of these examples are highly topical, but one could also point to the ongoing debate over how the rules of international humanitarian law apply to the increasing use of unmanned military vehicles in armed conflict or how to approach the certain inability of a couple of States to meet the impending, already extended, deadline for the destruction of all chemical weapons under the Chemical Weapons Convention.<sup>3</sup>

At the European level, security has traditionally been the purview of member States, though over the years the European Union (EU) has obtained more competencies with respect to security as part of the developments in Common Foreign, Security and Defence Policy to ‘provide the Union with an operational capacity drawing on civilian and military assets’.<sup>4</sup> Looking then, for example, at the growing number of European military activities it becomes clear how extensively this policy area has developed since the days of limited cooperation following the Maastricht Treaty in 1992. It is interesting now to see, for example, and as has been pointed out by a number of scholars, that the competencies of the EU in this area overlap to a certain extent with those of the Organisation for Security and Cooperation in Europe and with NATO.<sup>5</sup> As the security dimension of EU law and policy has evolved, newer issues have arisen, including to what extent the EU has the competence to regulate counter-terrorism measures, which incidentally is of central importance to a current research project being conducted within the Centre of Conflict and Security Law.

All of the aforementioned issues are rooted in the broader context of security law. This issue of *Merkourios* takes a more detailed look at selected topics of high importance and great interest, touching on these themes both at the European and international level, in two articles devoted to the field of international security law. In the first article, ‘The Tagliavini Report revisited: *Jus ad Bellum* and the Legality of the Russian Intervention in Georgia’, Alexander Lott focuses on legally contentious issues as contained in the Tagliavini Report on the 2008 armed conflict between Georgia and Russia, namely with respect to the use of force in South Ossetia by Georgia under the banner of (pre-emptive) self-defense and the legality of the subsequent Russian intervention. The author, in systematically discussing the legal justifications for using force as set forth by both sides, pays particular attention to the claim by Russia, and supported in the Tagliavini Report, that it acted in self-defense following an armed attack on peacekeepers of Russian nationality.

The second contribution by Jing Geng, ‘The Legality of Foreign Military Activities in the Exclusive Economic Zone under UNCLOS’, uses the 2009 incident in the South China Sea involving a US Navy surveillance vessel, *Impeccable*, as a jumping off point for a discussion of the rules of international law pertaining to military activities of one State in the Exclusive

1 See eg, International Atomic Energy Agency, ‘Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic Republic of Iran, Report by the Director General’ (8 November 2011) GOV/2011/65.

2 UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973.

3 See eg, Organisation for the Prohibition of Chemical Weapons, ‘Decision, Final Extended Deadline of 29 April 2012’ (1 December 2011) C-16/DEC.11; Organisation for the Prohibition of Chemical Weapons, ‘Note by the Director General, Report of the Advisory Panel on the Future Priorities of the Organisation for the Prohibition of Chemical Weapons’ (25 July 2011) S/951/2011.

4 Article 42 (ex Article 17 TEU) Consolidated Version of the Treaty on the European Union [2008] OJ C115/13.

5 See eg, M Trybus and N White (eds), *European Security Law* (Oxford University Press 2007).

Economic Zone of another under the terms of the UN Convention of the Law of the Sea (UNCLOS). By examining the relevant provisions of UNCLOS, the article draws conclusions regarding the related ongoing Sino-American tensions.

Complementing the topics addressed in the first two pieces, this issue of *Merkourios* contains interviews with two scholars noted for their work on topics related to conflict and security. Margriet Drent discusses the role of the EU in the recent developments in North Africa and the Middle East. The interview with Dr. Drent focuses on the broad sweep of the Arab Spring, the military intervention in Libya, the latest round of sanctions imposed on Iran, and the more general issue of how the economic situation in EU will affect involvement in international security matters. Bibi van Ginkel is asked to reflect on the broader implications of the judgments of the European Court of Human Rights in the *Al-Skeini* and *Al-Jedda* cases for the future security-related activities of EU member States abroad. Dr. van Ginkel also discusses the effect of the European Court's jurisprudence on issues related to counter-terrorism policies.

This issue further contains articles of a more general international legal character, including one on the implications of the concept of de facto regimes, and concludes with two case notes concerning judgments of the European Court of Human Rights in the cases of *Al-Jedda v the United Kingdom* and *Al-Skeini and others v the United Kingdom*. Both cases involved the issue of the territorial scope of the European Convention on Human Rights as contained in Article 1, whereas the former dealt further with the right to liberty and security (namely unlawful detention) under Article 5 as impacted by a contradictory element contained in a UN Security Council Resolution, while the latter looked more closely at the procedural obligations with respect to the right to life under Article 2.

This issue of *Merkourios* provides a taste of certain issues of contemporary relevance which I hope arouse, or further encourage, the reader's interest in the field of international security law. ■