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### Legal Dialogue on Human Rights Obligations: NATO's Aegean Sea Activity as a Case Study

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## INTRODUCTION

This Article examines the background, design, and early execution of NATO's naval deployment in the Aegean Sea in support of broader international efforts to address the 2016 crisis involving persons crossing or attempting to cross waters in that area.<sup>1</sup> That crisis was often popularly referred to interchangeably as a "refugee crisis" or "migrant crisis."<sup>2</sup> For the purposes of this Article, we distinguish between "refugee" and "migrant," as these are different legal terms.<sup>3</sup> In the midst of intensive focus on this growing crisis in early 2016, ministers of defense from the then 28 NATO Allies agreed on February 11, 2016, that NATO ships should deploy to the Aegean Sea to support Greece and Turkey, as well as the European Union's (EU) border agency, Frontex,<sup>4</sup> in their efforts to tackle the crisis.<sup>5</sup> What would eventually become known as NATO's Aegean Sea Activity was launched quickly thereafter,<sup>6</sup> with NATO's Standing Maritime Group 2 (SNMG2) arriving in the Aegean Sea within 48 hours of the ministers' decision.<sup>7</sup> The Activity's operations were ongoing in 2020. The Activity has featured an average of six deployed ships at any one time, with contributions of national naval resources from numerous NATO Allies including Greece, Turkey, Germany, Albania, the Netherlands, France, Canada, and the United Kingdom.<sup>8</sup> Germany currently leads these deployments.<sup>9</sup> During the period of the Activity, illegal

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<sup>1</sup> This Article is based on an unpublished paper submitted by the authors to a conference held at the NATO Maritime Interdiction Operational Training Center in Souda Bay, Greece, in June 2016.

<sup>2</sup> Compare, e.g., Siobhán O'Grady, *Mapped: The Refugee Crisis in the Aegean Sea*, FOREIGN POL'Y (Jan. 25, 2016), <https://foreignpolicy.com/2016/01/25/mapped-the-refugee-crisis-in-the-aegean-sea/> [https://perma.cc/MG92-72FR] ("[R]ickety boats and inflatable rafts . . . have become synonymous with the refugee crisis that now threatens to tear the European Union apart."), with *Migrant crisis: Nato deploys Aegean people-smuggling patrols*, BBC NEWS (Feb. 11, 2016), <https://www.bbc.com/news/world-europe-35549478> [https://perma.cc/7394-Y6CZ] ("The decision marks the security alliance's first intervention in Europe's migrant crisis.").

<sup>3</sup> For our purposes, a "migrant" is a person attempting to begin residence in a new country for any reason, while a "refugee" is a special subset, fleeing violence, persecution, or other severe peril (a meaningful distinction because refugees are accorded special legal rights). Because some of the individuals involved in the current crisis would likely be classed as economic migrants and not refugees, we, like NATO Allies, use both terms to refer to the crisis generally.

<sup>4</sup> FRONTEX has since been renamed the European Border and Coast Guard Agency.

<sup>5</sup> See *NATO Defence Ministers Agree on NATO support to assist with the Refugee and Migrant Crisis*, N. ATL. TREATY ORG. (Feb. 11, 2016), [https://www.nato.int/cps/en/natohq/news\\_127981.htm](https://www.nato.int/cps/en/natohq/news_127981.htm) [https://perma.cc/2MKC-45CU].

<sup>6</sup> This Article will refer to the deployment as "the Activity," as this is term used within the Alliance to describe NATO's support.

<sup>7</sup> See *NATO Defence Ministers Agree on NATO support to assist with the Refugee and Migrant Crisis*, supra note 5.

<sup>8</sup> See N. ATL. TREATY ORG., NATO'S DEPLOYMENT IN THE AEGEAN SEA (2016), [https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2016\\_07/20160627\\_1607-factsheet-aegean-sea-eng.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_07/20160627_1607-factsheet-aegean-sea-eng.pdf) [https://perma.cc/TY6P-SVF9].

<sup>9</sup> See Jens Stoltenberg, Sec'y-Gen., N. Atl. Treaty Org., Doorstep Statement of the Meeting of NATO Defence Ministers in Brussels, (Feb. 12, 2020), in N. ATL. TREATY ORG. (Feb. 12, 2020), [https://www.nato.int/cps/en/natohq/opinions\\_173292.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/opinions_173292.htm?selectedLocale=en) [https://perma.cc/U8H4-EW58].

trafficking and migration flows in the area have decreased dramatically from 211,663 arrivals by sea into Greece in October 2015 to 2,255 such arrivals in March 2020.<sup>10</sup>

The Activity has been seen as a success story for NATO, in particular because it represents a potentially useful model for cooperation between NATO and the EU in addressing one of Europe's contemporary security challenges. A perhaps lesser known aspect of the Activity is its success in navigating legal concerns, particularly those raised by some observers about potential tensions with international law relating to refugees and migrants.<sup>11</sup> If not addressed appropriately, these concerns could have jeopardized the Activity's propriety in the public eye, and undermined the willingness of NATO Allies to attach themselves to the Activity and lend their resources toward its aims. Aware of these challenges, NATO took careful steps to articulate its commitment that each participating Nation would conduct its contribution to the Activity in accordance with its obligations under international and national law. This process, which required a considerable amount of legal diplomacy to achieve under the compressed timeframes involved, enabled the Activity to move forward.

Written from the perspective of a NATO practitioner on the one hand and a lawyer who observed the crisis unfold in Brussels from 2015 to 2016, this Article has three aims: 1) to describe the Activity's objectives and operation, 2) to identify attendant concerns under international law and examine how NATO legal diplomacy addressed these concerns, and 3) to consider which aspects of this legal diplomacy may serve as a model for future intergovernmental cooperation in the face of new challenges or crises. In doing so, the Article aims to offer a window into the nature of legal decision-making at NATO, as well as illustrate by example the lengths to which NATO and Allied Nations commit in order to ensure compliance with international and national law.

## I. CRISIS BACKGROUND AND NATO'S ROLE

With the emergence in 2015 of an unprecedented refugee and migrant crisis, Europe was confronted with a humanitarian and strategic challenge of immense scale and complexity. In 2015 alone, official estimates counted over 1,800,000 individuals fleeing regions of conflict and

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<sup>10</sup> U.N. HIGH COMM'R FOR REFUGEES, OPERATIONAL PORTAL, <https://data2.unhcr.org/en/situations/mediterranean/location/5179> [https://perma.cc/LP7V-ZQ5M]. Significantly, the pattern of decline in the migration figures has not been linear. For a brief treatment of migration figures by month in 2016 relative to counterpart figures in 2015, see Sewell Chan, *Migration to Greece by the Aegean Sea has Plummeted*, U.N. SAYS, N.Y. TIMES (July 8, 2016), <https://www.nytimes.com/2016/07/09/world/europe/migrants-greece.html> [https://perma.cc/W2C4-JCXL]. For more detailed statistics on migration figures and their pattern of decline, see U.N. HIGH COMM'R FOR REFUGEES, MOST COMMON NATIONALITIES OF MEDITERRANEAN SEA AND LAND ARRIVALS FROM JANUARY 2020 (2020), <http://data2.unhcr.org/en/situations/mediterranean?id=83> [https://perma.cc/X64N-XU99].

<sup>11</sup> Representatives from Human Rights Watch and Amnesty International were among those publicly voicing concerns over the activity's legality. See, e.g., Bill Frelick, *NATO enters the migration control business*, HUMAN RIGHTS WATCH (Feb. 18, 2016), <https://www.hrw.org/news/2016/02/18/nato-enters-migration-control-business> [https://perma.cc/K84K-NDC9]; Julian Barnes, Valentina Pop, and Dion Nissenbaum, *NATO Deploys Ships to Aegean to Help in Migrant Crisis*, WALL STREET JOURNAL (Feb. 11, 2016), <http://www.wsj.com/articles/nato-to-expand-naval-mission-in-the-mediterranean-to-address-migrant-crisis-1455187749> [https://perma.cc/9DT7-ZV67].

instability in Africa and the Middle East, with the heaviest streams of movement by way of the Mediterranean and Aegean Seas.<sup>12</sup>

Initial European efforts to coordinate a response to the crisis cast a central role for the EU's border control agency, Frontex.<sup>13</sup> However, migrants were passing through Turkey on their way to the EU border. Turkey's cooperation became necessary, yet Turkey could not participate in a Frontex-headed response effort, nor did Frontex have jurisdiction to extend its response policy to Turkey or to commit its resources to the protection of Turkish borders. Moreover, since Turkey is not within Frontex's jurisdiction, Frontex's capacity to coordinate an effective response effort was limited. Turkey is a NATO Ally. NATO also includes other States, such as Canada and the United States, that were ready to help. NATO could therefore be a useful forum to add elements not otherwise available to Frontex.

The crisis thus presented States with an urgent question of coordination, one outside of the traditional Frontex paradigm and which required an effective balancing of State and intergovernmental interests in response to a novel problem. This was especially the case due to the explosive growth of the crisis after its onset. Soon after the crisis had begun, States already faced strain on their logistical and administrative capacities to respond. In particular, after the crisis's onset there was dramatic growth in the refugee and migrant flow through the Aegean Sea and toward States sharing Aegean coastlines, straining the naval and border guard capacities of those affected States. Given the overwhelming movement in the Aegean Sea and of individual cases to be addressed, affected States expressed an urgent need for aid in the form of information gathering and logistical support.

Against this challenging backdrop, in February 2016, Germany, Greece, and Turkey jointly proposed that NATO offer assistance with these several aspects of support in the crisis. Acting quickly in response to the petition, NATO Ministers of Defense on February 11, 2016, made the decision to initiate an unprecedented deployment in the Aegean Sea.<sup>14</sup>

NATO envisioned the action to provide dedicated logistical support and assistance to Turkey, Greece, and Frontex in their continuing efforts to respond to the crisis. To this end, NATO deployed SNMG2 in order to provide a presence which would enhance surveillance and monitoring capabilities and provide critical information to involved parties in real-time.

## II. NATURE AND BOUNDARIES OF THE ACTIVITY

Consistent with its support role, SNMG2 was responsible with sharing information with the national naval authorities of the Greek and Turkish Coast Guards, as well as Frontex, which still maintained its own role in border protection for affected EU nations. NATO stressed that its

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<sup>12</sup> This represents Frontex's official estimate for the total number of migrants—documented or not—crossing into Europe in 2015. See *Migrant crisis: Migration to Europe explained in seven charts*, BBC NEWS (Mar. 4, 2016), <http://www.bbc.com/news/world-europe-34131911> [https://perma.cc/U8SC-NKMK].

<sup>13</sup> See *Implementing the EU-Turkey Agreement – Questions and Answers*, EUR. COMM'N (Apr. 20, 2016), [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_16\\_1494](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_1494) [https://perma.cc/2KBM-232Q] (discussing deployment of 339 additional Frontex officers to Greek island to support the readmission process).

<sup>14</sup> See *NATO Defence Ministers Agree on NATO support to assist with the Refugee and Migrant Crisis*, *supra* note 5.

own participation was to facilitate and support individual State efforts to respond, that each State retained its prior obligations under international law, and that the Activity would not in any sense constitute a militarization of Europe's response to the crisis. For example, to avoid a possible impression of militarization, SNMG2 would not confront any migrant ships or force them to turn back, nor take over in whole or in part, any of the existing roles of the involved parties.<sup>15</sup> Rather, the Activity would facilitate communication between the involved parties and provide them with additional surveillance and information in real-time, enabling them to more effectively perform their own obligations.

In the weeks following the initial launch of action, NATO acted to expand the Activity's logistical scope in three distinct ways.<sup>16</sup> First, the Activity expanded its area of operation within the Aegean Sea, such that SNMG2 covered a broader geographic space and assumed responsibility for surveillance and information in the new larger area.<sup>17</sup> Second, NATO took measures to establish closer working ties with Frontex, in an effort to further streamline the exchange of information between involved parties.<sup>18</sup> Finally, it increased the number of SNMG2 ships deployed in the Aegean, to enhance the working capacity of the Activity in serving its objectives.<sup>19</sup>

These measures were taken to expand and improve the contributions of the Activity prospectively, while retaining the Activity's initial aim of providing logistical and informational support in compliance with relevant international and national laws.

### III. PRINCIPAL LEGAL CONSIDERATIONS

From the outset, the Activity's objectives and configuration implicated substantive legal obligations under international law, relating to the proper operation of SNMG2 in interactions with migrant boats at sea. These encounters can raise complex questions under international law as to the nature of the obligations and rights held by each party.<sup>20</sup> It is important to note that these obligations are national responsibilities: individual States, not NATO, are parties to relevant

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<sup>15</sup> See Martin Banks, *NATO, European Commission Chiefs Hail Cooperation on Security, Migrant Crisis*, DEFENSE NEWS (Mar. 11, 2016), <http://www.defensenews.com/story/defense/international/europe/2016/03/11/nato-european-commission-chiefs-hail-cooperation-security-migrant-crisis/81666166> [https://perma.cc/6PD5-Z2G4].

<sup>16</sup> Secretary-General Stoltenberg discussed the threefold expansion at a joint press conference with European Commission President Jean-Claude Juncker. See Jens Stoltenberg, Sec'y-Gen., N. Atl. Treaty Org., and Jean-Claude Juncker, President, Eur. Comm'n, Joint press point (Mar. 11, 2016), in N. ATL. TREATY ORG. (Mar. 11, 2016), [http://www.nato.int/cps/en/natohq/opinions\\_129162.htm?selectedLocale=en](http://www.nato.int/cps/en/natohq/opinions_129162.htm?selectedLocale=en) [https://perma.cc/L8RC-YXPB].

<sup>17</sup> See Jens Stoltenberg, Sec'y-Gen., N. Atl. Treaty Org., and Ahmet Davutoğlu, Turk. Prime Minister, Joint press point (Mar. 7, 2016), in N. ATL. TREATY ORG. (Mar. 7, 2016), [http://www.nato.int/cps/en/natohq/opinions\\_128859.htm?selectedLocale=en](http://www.nato.int/cps/en/natohq/opinions_128859.htm?selectedLocale=en) [https://perma.cc/8VGP-W4VZ].

<sup>18</sup> See *Assistance for the refugee and migrant crisis in the Aegean Sea*, N. ATL. TREATY ORG. (Jun. 20, 2019), [https://www.nato.int/cps/en/natohq/topics\\_128746.htm](https://www.nato.int/cps/en/natohq/topics_128746.htm) [https://perma.cc/C65F-NR63].

<sup>19</sup> See *id.*

<sup>20</sup> For a general overview of some of these issues in the context of NATO's Aegean Sea activity, see Paweł Mielniczek, *Legal Aspects of NATO In The Aegean Sea Migrant Crisis*, 9 SILESIAN J. LEGAL STUD. 64 (2017), <https://www.ceeol.com/search/article-detail?id=616309> [https://perma.cc/54DN-B445].

treaties. Moreover, different States are subject to different legal frameworks, including for some the European Convention on Human Rights (ECHR).<sup>21</sup>

National ships making contact with migrants at sea have their actions directed and constrained in two primary, distinct ways. First, ships have an affirmative obligation to assist any ship in distress at sea; second, they must honor the negative obligation of non-refoulement, which prohibits the return of refugees to a place where they have a well-founded fear of persecution.<sup>22</sup> The two obligations, both firmly established in international law, are distinct but often coexisting concerns in practice, such that States must direct their actions carefully in order to comply with both.

The affirmative obligation concerning distress at sea is a maritime rule of universal applicability, established both through relevant treaties and customary international law. Where any shipmaster encounters persons in danger at sea, the shipmaster acquires a twofold obligation (insofar as is possible without serious danger to his own ship)<sup>23</sup>: first to rescue the distressed passengers, and second to bring them to a “place of safety.”<sup>24</sup>

International law does not specifically dictate where that place of safety is, although it is said that this should be “a place which can meet the immediate needs of those disembarked and in no way jeopardises their fundamental rights.”<sup>25</sup> This precludes a narrow reading of “place of safety” as merely any tranquil shore removed from the immediate hazards of the sea, or the geographically nearest point; rather, the point of disembarkation must be reasonably secure from a wide range of threats.

The negative obligation of non-refoulement, a cornerstone of international refugee law long in force both as customary and treaty law, provides that persons may not be returned to a place where they have a well-founded fear of facing persecution.<sup>26</sup> This core substantive protection has developed in some jurisdictions into a more extensive suite of rights and entitlements for the refugee. Notably, under the ECHR, “persecution” more broadly includes not only immediate endangerment of life and livelihood but also violations of fundamental rights under the

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<sup>21</sup> See, e.g., Steven Hill & David Lemétayer, *Legal Issues of Multinational Military Operations: An Alliance Perspective*, 55 MIL. L. & L. OF WAR REV. 13, 21-22 (2016-17), [https://heinonline.org/HOL/LandingPage?handle=hein.journals/mlwr55&div=6&id=&page=\[https://perma.cc/4Y6E-EX7T\]](https://heinonline.org/HOL/LandingPage?handle=hein.journals/mlwr55&div=6&id=&page=[https://perma.cc/4Y6E-EX7T]).

<sup>22</sup> See Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150, art. 33.

<sup>23</sup> See United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, art. 95.

<sup>24</sup> Int’l Mar. Org. [IMO], Res. MSC.153(78), *Adoption of Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended*, at Annex, Regulation 33-4 (May 20, 2004), [http://www.imo.org/en/OurWork/Facilitation/personsrescued/Documents/Resolution%20MSC.153\(78\)-MSC%2078.pdf](http://www.imo.org/en/OurWork/Facilitation/personsrescued/Documents/Resolution%20MSC.153(78)-MSC%2078.pdf) [https://perma.cc/YTU5-NNVV].

<sup>25</sup> Council of Eur., Parliamentary Assembly Res. 1821 (2011), *The Interception and Rescue at Sea of Asylum Seekers, Refugees and Irregular Migrants*, para. 9.5 (June 21, 2011).

<sup>26</sup> See Convention and Protocol Relating to the Status of Refugees, *supra* note 22.

Convention.<sup>27</sup> There are a number of legal issues associated with non-refoulement obligations in the context of the Activity, including their extraterritorial application.

Generally, the non-refoulement principle requires not only the substantive protection itself, but also certain procedural entitlements, principally—at least for ECHR parties—an individual’s right to a status determination before being returned, although the precise contours of this obligation might vary. In this vein, the European Court of Human Rights in the case of *Hirsi Jamaa v. Italy*, which concerned Italy’s naval interception and “pushing back” of migrants and asylum seekers to their shores of origin, recognized a procedural right to a case-by-case assessment of each individual’s claims before disembarkation.<sup>28</sup> In the wake of *Hirsi Jamaa*, the standard now requires that each individual receive a “fair and efficient” asylum procedure in which his claims are to be thoroughly treated.<sup>29</sup> This entails not only an individualized assessment but also access to remedies to challenge an unfavorable assessment. This “fair and efficient” standard places a heightened responsibility on nations that are party to the Convention—one which likely carries special significance in the current crisis. Exactly how such standards might apply in the context of the present Activity, which occurs in a context different from that of the “push-backs” at issue in *Hirsi Jamaa*, is a difficult legal issue.

However, the above heightened standards for “place of safety” and “fair and efficient” procedure, respectively, may together hold special significance in the case of persons who both 1) find themselves in distress at sea and 2) claim refugee status. In such a scenario, the “place of safety” requirement likely overlaps meaningfully with the requirement of non-refoulement in determining a person’s substantive entitlements,<sup>30</sup> while the “fair and efficient” standard implies strict procedural safeguards for the determination of those entitlements.

#### IV. NATO’S RESPONSE

In contemplation of the Activity and before its launch, the above legal considerations necessitated that NATO leadership design the Activity with attendant legal caution, anticipate legal scenarios that might arise at sea, and prepare to respond to possible questions from international observers concerned with the compliance of participating Allies. Operating on a compressed timeline, NATO leadership took action to ensure internally that SNMG2 and each of the national

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<sup>27</sup> This principle has important roots in the landmark European Court of Human Rights case *Soering v. United Kingdom*. While *Soering* itself concerned extradition to face a possible criminal death penalty rather than refoulement *per se*, the *Soering* holding suggested broadly that Convention nations must consider the consequences of returning a person to a nation where he would face possible treatment that would breach the Convention. *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) (1989), reprinted in 11 EUR. HUM. RTS. REP. 439 (1989), and in 28 I.L.M. 1063 (1989). More recent scholarship and jurisprudence has tended to uphold this broader view. See, e.g., Maria-Teresa Gil-Bazo, *Beyond Non-Refoulement: Status and International Human Rights Law* (July 30, 2015), EUR. DATABASE OF ASYLUM L., <http://www.asylumlawdatabase.eu/en/journal/beyond-non-refoulement-status-and-international-human-rights-law> [https://perma.cc/VH2Y-QKXL].

<sup>28</sup> See *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09 (Feb. 23, 2012), <https://hudoc.echr.coe.int/spa#%7B%22itemid%22:%5B%22001-109231%22%7D> [https://perma.cc/4TRR-J9TU].

<sup>29</sup> Anne T. Gallagher & Fiona David, *The International Law of Migrant Smuggling* 479 (2014).

<sup>30</sup> Indeed, there is an increasing tendency by some commentators to view the “place of safety” obligation as itself encompassing protection from refoulement. See *id.* at 480.

ships rotating in and out of its service would operate under the same cohesive plan of action, consistent both with the Activity's purpose as well as each ship's own obligations as a national vessel. In view of the Activity's anticipated high degree of international visibility and NATO's own important institutional role in preserving the legitimacy and force of international law, it was important to ensure not just actual compliance with relevant obligations, but the appearance of compliance in the eyes of external observers. NATO thus took proactive efforts to design and oversee the Activity properly, as well as to offer a transparent external window into the Activity's nature and objectives, and to remain responsive to voiced concerns.

Even if the legal obligations applicable to each NATO Ally may not have been exactly the same and even if there is scope for debate about at least some aspects of their applicability to the Activity, NATO recognized from the beginning that there would be a clear need for care not only in executing the Activity itself, but also in managing its perception and positioning in the public eye. One lesson learned from the Activity's early days was how careful legal precision in early public communications regarding the Activity helped alleviate some observers' concerns about its legality under international law.

In the first place, the Activity came about as the result of a political agreement between three ministers from Germany, Greece, and Turkey, who then brought the deal to a NATO defense ministerial meeting for consideration by their colleagues. Reflecting the original broadly-conceived political nature of the deal, the language of the original public announcement offered a fairly broad and high-level account of the Activity's plan and purpose.<sup>31</sup> This public announcement did not include language about what would happen if NATO vessels encountered migrant vessels coming from Turkey.<sup>32</sup>

This lack of specificity led some observers to be concerned that the announced returns might be a blanket policy and thus might override the ordinary process for considering claims related to non-refoulement that would ordinarily apply to returns. Depending on the legal obligations applicable to each participating Nation, even if such claims are ultimately unfounded, an individual claimant may be entitled to a case-by-case determination of his or her claim's merit. In light of the above considerations, these observers argued, proceeding with a blanket policy of hasty returns could conceivably result in instances of short-circuiting each nation's responsibilities in this area.

Of course, the initial announcement's language did not deny the existence of the above legal requirements. However, observers pointed out, at the same time it did not contain a specific proviso qualifying that all returns to Turkey would adhere to international law. In this instance an initial lack of precision proved to be a significant source of concern for some observers.

Reflecting this reality, NATO in the weeks following the initial announcement worked to unambiguously communicate the actual intent for the Activity, including through public factsheets, press conferences and interviews by the Secretary General, and a press tour for international media in April 2016. NATO also made efforts to explain the legal issues involved and its approach at

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<sup>31</sup> See *NATO Defence Ministers Agree on NATO support to assist with the Refugee and Migrant Crisis*, *supra* note 5.

<sup>32</sup> See *NATO Defence Ministers Agree on NATO support to assist with the Refugee and Migrant Crisis*, *supra* note 5.

international law conferences and other venues.<sup>33</sup> It also promoted legal dialogue among Allies about how each Nation intends to implement its legal obligations as the Activity continued. This work can be seen as a form of legal diplomacy, where better understanding of each Ally's legal position can help increase confidence and enable Alliance activities to go forward with a greater level of comfort by all Allies.<sup>34</sup> This openness in addressing the Activity's legal dimensions also improved NATO's relationship with outside observers. For example, it became the foundation for a dialogue between NATO and the Office of the UN High Commissioner for Refugees. High Commissioner Filippo Grandi visited NATO at the beginning of the Activity, and his staff produced a detailed follow-up legal analysis.<sup>35</sup> Above all, NATO reaffirmed that even in the face of the overwhelming logistical challenges presented by the crisis, there remained a need for a nuanced and principled approach in each Nation's compliance with international and national law.

### CONCLUSION

The Aegean Activity has been a showcase for successful NATO-EU cooperation, building on the achievements and lessons from earlier NATO-EU collaborative experiences working to counter the scourge of piracy in the Indian Ocean. Alongside other efforts undertaken in response to the crisis, including the EU-Turkey Statement,<sup>36</sup> the Activity has contributed to a considerable decrease in illegal trafficking and migration flows, and augmented affected Allies' capacities to respond in areas where migration concerns remain most pressing. Apart from these measurable successes, the Activity is also a model of success in that it represents a cohesive multinational coordinated response under NATO auspices, to a novel challenge under pressing circumstances, and at tremendous stakes.

Four years after its inception, the Activity carries value as a model for potential future multilateral action in response to international crises, whether similar in character to the Aegean crisis or otherwise. The Activity has demonstrated NATO's ability as a multinational organization to form ad hoc solutions to pressing nonmilitary crises, where for various legal or logistical reasons the more traditional institutions in place (in this instance, Frontex) were not well suited for the particular challenge at hand. This suggests that NATO holds not just the capacity but also the responsibility, as a premier European institution with considerable attendant prestige and

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<sup>33</sup> See, e.g., Steven Hill & David Lemétayer, *supra* note 21.

<sup>34</sup> See, e.g., Brian Egan, *International Law, Legal Diplomacy, and the Counter-ISIL Coalition: Some Observations*, 92 INT'L L. STUD. 244 (2016), <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1668&context=ils> [<https://perma.cc/8D2H-J3PU>] (noting from the perspective of the former Legal Adviser of the U.S. Department of State that "frequently . . . it is through private consultations that governments seek to understand each other's legal rationale for military operations. These private discussions help frame the public conversation on some of the central legal issues, and they are crucial to securing the vital cooperation of partners who want to understand our legal basis for acting").

<sup>35</sup> U.N. High Comm'r for Refugees, *General Legal Considerations of Relevance to NATO's Engagement with the Refugee and Migrant Movements in the Aegean Sea* (2016), <https://www.refworld.org/pdfid/56f3eccc4.pdf> [<https://perma.cc/2QAD-WLU8>].

<sup>36</sup> The EU-Turkey Statement affirmed the shared goal of addressing the crisis and included commitments to additional action points aimed at ending irregular migrant flow from Turkey into the EU. Eur. Council, *EU-Turkey Statement*, 18 March 2016 (Mar. 18, 2016), <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> [<https://perma.cc/L8D5-4N34>].

influence, to be prepared to play a central role in other such ad hoc nonmilitary efforts where new humanitarian or security challenges so dictate. For example, nearing the time of this Article's publication, NATO took on an innovative role focused on institutional cooperation and trust-building by hosting technical talks between Greece and Turkey aimed at establishing "mechanisms for military de-confliction to reduce the risk of incidents and accidents in the Eastern Mediterranean."<sup>37</sup>

Additionally, the Activity highlighted the centrality of legal considerations in urgent responses to pressing crises. One significant concern in this context is the complexity of the relationship between NATO as umbrella organization and each of its participating member States, and the resulting importance of transparency in such coordinated NATO nonmilitary action. As the Activity demonstrates, the mere issuance by NATO of what some might have perceived as an ambiguous statement could provoke significant concerns regarding the legal compliance of involved States and whether the Activity's umbrella nature might threaten to compromise any one State's own adherence to its existing legal obligations. While in one respect this is a testament to NATO's international influence and esteem, it also places an even greater duty on the organization and Allies not only to comply with international law, but to do so with the fullest possible clarity and transparency. This lesson should be borne in mind, especially in light of NATO's evolution of its ongoing maritime support to the EU to the Central Mediterranean, where similar legal concerns are likely to arise.

This Article's assessment of this case study shows that NATO acknowledges the intimate link between its compliance with international law and its own legitimacy. Moreover, NATO's institutional awareness extends not only to the importance of adhering to international law in its actions, but also to the importance of being perceived as doing so in the international community. Its experience with the Activity highlights the need for careful attention to legal considerations in all phases of design and execution of NATO action, including the representation of that action to the public. Legal precision in all channels of public communication must continue to be a critical component of NATO's efforts to lead by example in dedicated commitment to international law.

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<sup>37</sup> *NATO Secretary General Statement on Technical Talks for De-Confliction in the Eastern Mediterranean*, N. ATL. TREATY ORG. (Sept. 3, 2020), [https://www.nato.int/cps/en/natohq/news\\_177733.htm](https://www.nato.int/cps/en/natohq/news_177733.htm) [https://perma.cc/BL9F-ACEC].