

# The principle of distinction under the law of armed conflict

## – challenges in modern warfare



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# What is NATO?



# North Atlantic Treaty



I CERTIFY THAT the foregoing is a true copy of the North Atlantic Treaty signed at Washington on April 4, 1949 in the English and French languages, the signed original of which is deposited in the archives of the Government of the United States of America.

IN TESTIMONY WHEREOF, I, DEAN ACHESON, Secretary of State of the United States of America, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this fourth day of April, 1949.

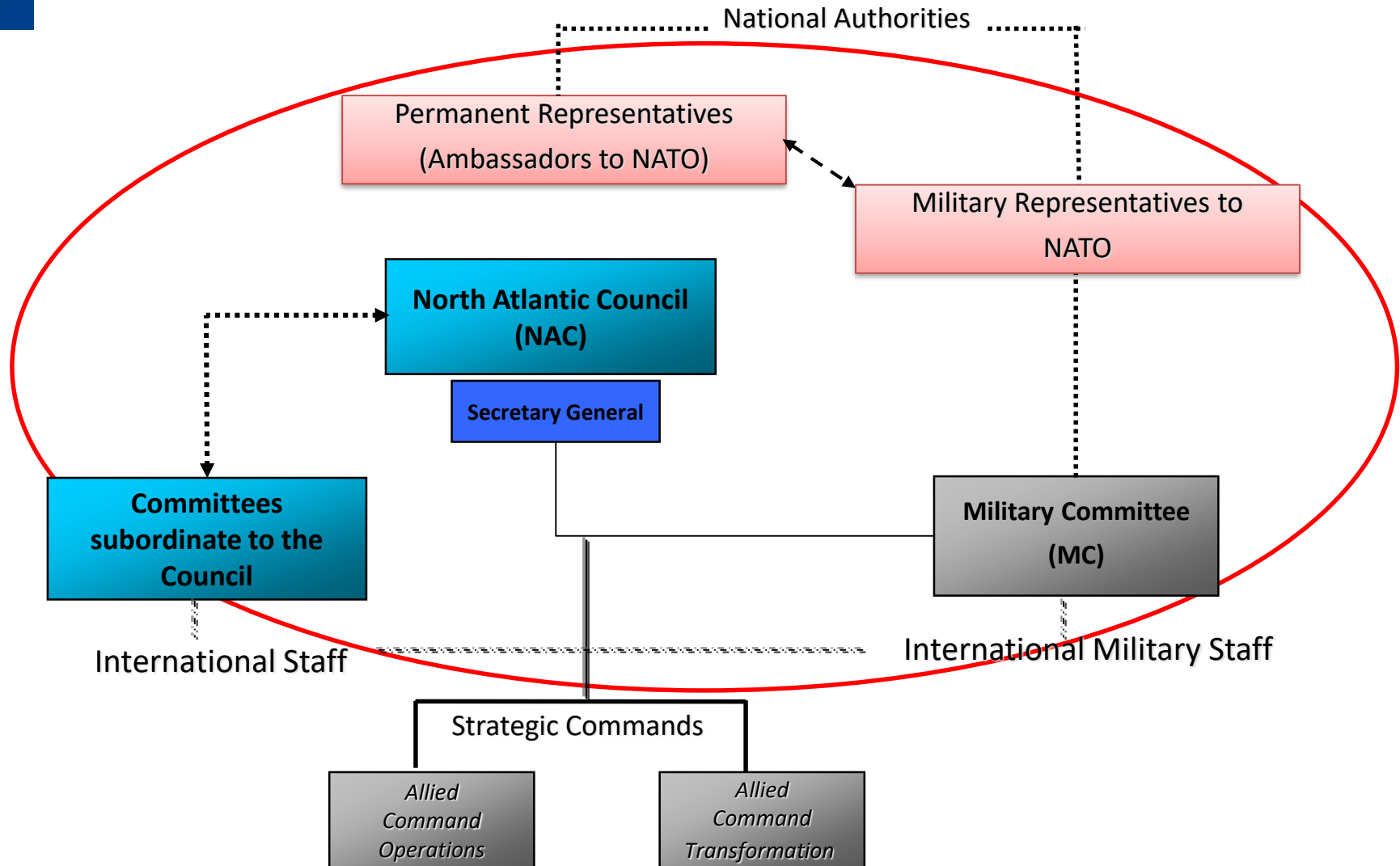
By    
Authentication Officer  
Department of State

# *North Atlantic Treaty Preamble*



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 civilisation 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.

# NATO Civil and Military Structure



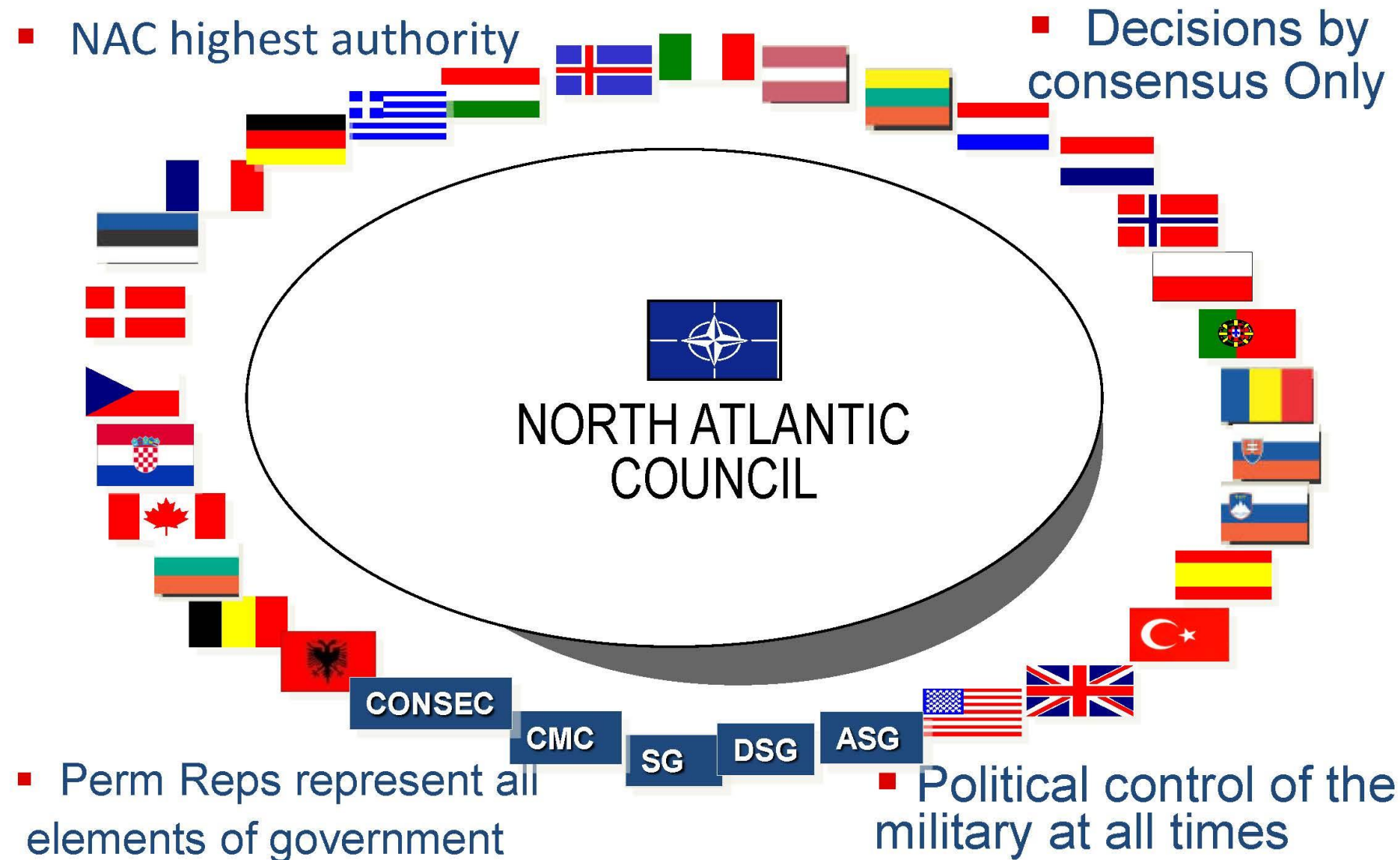
# NATO Secretary General



**Mr. Jens Stoltenberg**



# North Atlantic Council



# Cooperation Article 3

*"In order more effectively to achieve the objectives of this Treaty, the Parties, Separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack"*

CONSEC

CMC

SG

DSG

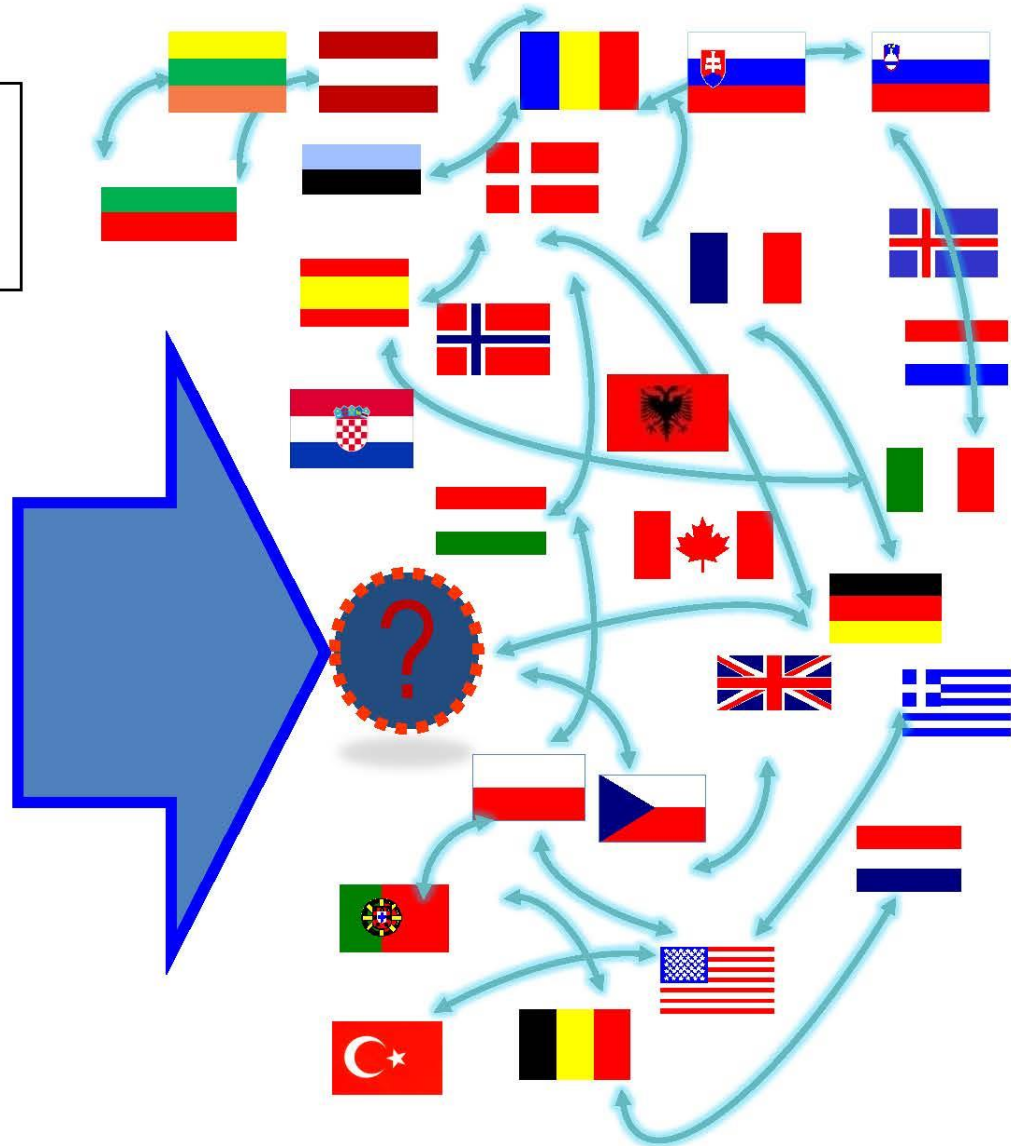
ASG





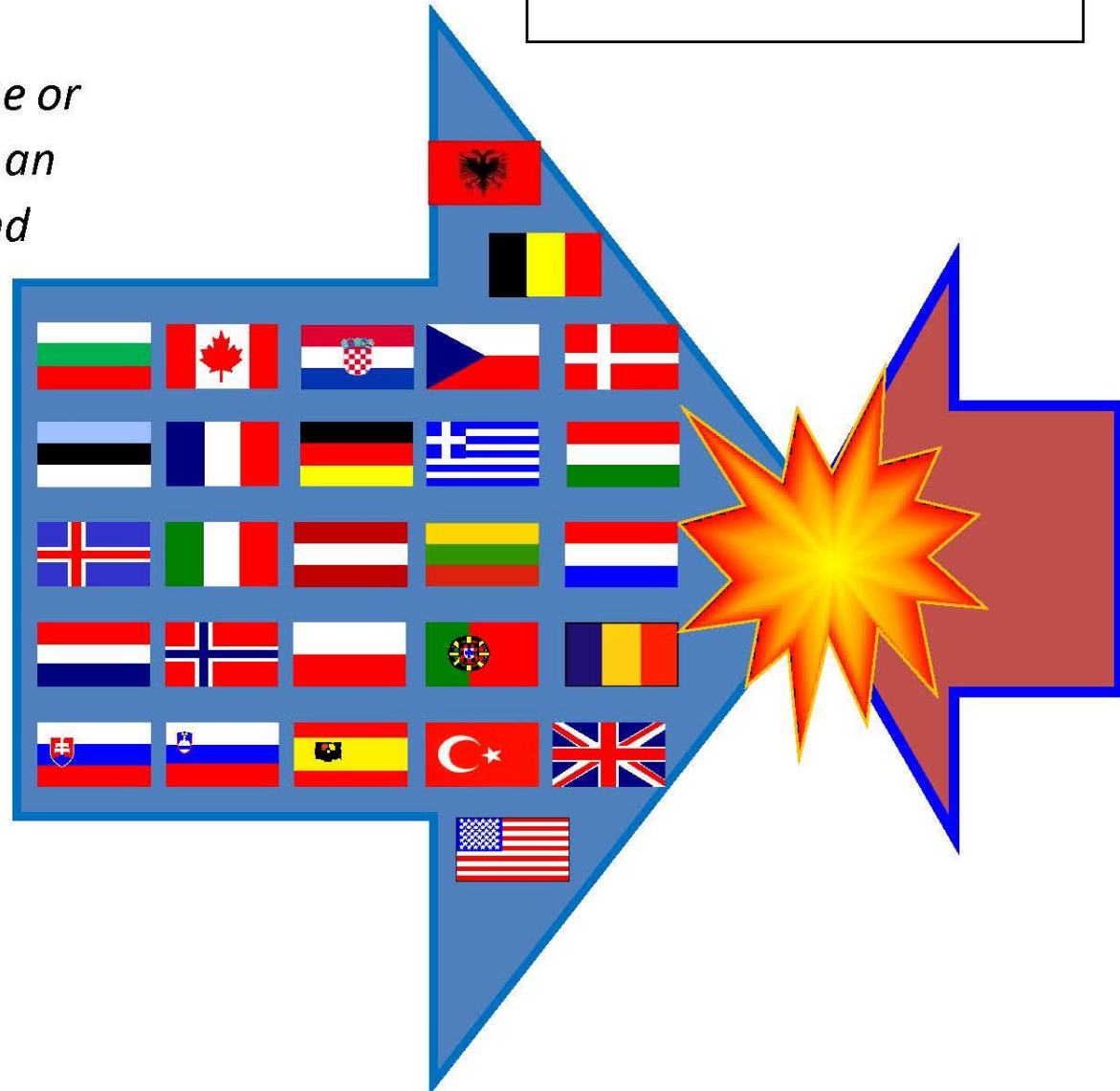
## Consultation Article 4

*...“Parties will consult...whenever,  
in the opinion of any of them,  
the territorial integrity, political  
independence or security of any  
of the parties is threatened.”*



## Article 5

*“... armed attack against one or more ....shall be considered an attack against them all... and each of them... will assist the party or parties... by taking..., individually and in concert with the other parties, such action as it deems necessary, including the use of armed force [...].”*





# The three legal bases for NATO operations



- Article 5 (an armed attack)
- UNSCR
- Invitation from a Host Nation

# How does NATO do it?



The NAC sets the conditions;

- all NATO operations are conducted in accordance with international law.
  - as applicable and appropriate

Different legal understandings

## Example: The type of conflict?



Values lead to importance placed on respect for international law, and IHL specifically.

- will apply the highest denominator
- the requirement to respect the principle of distinction is paramount

# NATO Operations Plan



An OPLAN will always contain an Annex dedicated fully to the legal aspects of the operation.



# Different legal understandings



NATO does not determine the type of conflict.

How is this applied in practice?:

- a consensus decision
- different perspectives on lawful target
- designation as a terrorist (law enforcement vs the use of military means)

Above and beyond the law



The NAC may dictate, or

Operational commander's orders;

- zero civilian casualties

# Current policies relevant to distinction



Protection of civilians

Protection of children in armed conflict

Prevention of gender and sexual based  
violence in conflict

Prevention of sexual exploitation and abuse

# Emerging areas of focus and new challenges



## Principle of distinction:

- hybrid activities
- cyber
- in space

A photograph of a modern building with a large glass facade. In the foreground, there is a rusted metal sculpture on a circular base. To the right, there are several blue banners or flags. The sky is blue with some clouds.

Questions?