

CONTENTS

Acknowledgments	v
Abbreviations	xiii
Chapter 1	
Introduction	1
1. Problem statement	1
1.1. Research question	3
1.2. Sub-questions	5
1.2.1. What is the interrelationship between the EU and NATO legal regimes under public international law?	5
1.2.2. How do dual NATO/EU Member States resolve conflicting obligations under public international law and the EU and NATO treaties?	6
1.2.3. How does the CJEU interpret the scope of Article 351 TFEU?	10
1.2.4. What instruments are available to individual NATO Members within NATO's legal framework to remedy norm conflicts with EU law by lack of a judicial NATO institution?	11
1.2.5. How does the CJEU interpret Article 4(2) TEU in the context of concurrent obligations under the NATO treaties?	12
2. State of the art	15
3. Methodology	21
4. Structure	26
Chapter 2	
The interrelationship of the EU and NATO treaty regimes under public international law	29
1. Introduction	29
2. The EU	29

2.1.	Legal regime	31
2.2.	The Court of Justice of the EU	33
3.	NATO	36
3.1.	Legal regime	37
3.2.	Institutional dispute settlement and treaty interpretation within NATO	42
3.2.1.	NATO Administrative Tribunal	43
3.2.2.	Lack of a NATO institutional judicial mechanism	44
4.	NATO-EU interaction	47
5.	The interrelationship between the EU and NATO treaties under international Law	48
5.1.	Hierarchy of norms in international law	49
5.1.1.	EU law and international law: the <i>Kadi</i> -case	51
5.1.2.	Human rights as ‘primus inter pares’?	54
5.2.	Non-applicability of EU Law to third States and international organizations	55
5.2.1.	State immunity, including its organs	55
5.2.2.	Immunities of NATO as an international organization	57
5.3.	Obedience despite non-applicability	59
5.3.1.	‘Moral obligation’	60
5.3.2.	EU citizen personnel of Visiting Forces and international organizations	62
6.	Conclusion	64

Chapter 3

Norm conflict resolution under Public International Law and the EU and NATO treaties 65

1.	Introduction	65
2.	What is a norm conflict?	65
3.	Treaty conflict resolution in international law	68
3.1.	Application of successive treaties relating to the same subject matter (Article 30 VCLT)	68
3.1.1.	<i>Short v. Kingdom of the Netherlands</i>	70
3.1.2.	‘Same subject-matter’	72
3.2.	Treaty interpretation (Articles 31-33 VCLT)	74
3.3.	The ‘principle of political decision’ (Article 30(4)(b) VCLT)	75
4.	EU treaty conflict provision: Article 351 TFEU	76
4.1.	Relation to Article 42(2) TEU	78
4.2.	Application in regard to intra-Community relations	82
4.3.	Application to posterior treaties	83
4.4.	The recent accession of Finland and Sweden to NATO	87
4.5.	Obligation to remedy incompatibilities	90

5.	NATO treaty conflict provision: Article 8 NAT	92
6.	The interrelationship between public international law and the treaty regimes of the EU and NATO	93
6.1.	The CJEU's exclusive competence to interpret EU law	95
6.2.	The CJEU's interpretation of the interrelationship between EU law and public international law	100
6.3.	The CJEU and public international law: judicial activism or competence creep?	102
6.4.	Legal recourse against CJEU rulings inconsistent with public international law?	107
7.	Conclusion	110

Chapter 4

	The 'National Security' exception	113
1.	Introduction	113
2.	Scope of the 'national security' exception	116
2.1.	Definition of 'national security'	116
2.2.	CJEU case law regarding the scope of Article 4(2) TFEU	119
2.2.1.	<i>Data Protection Officer v. Facebook and Maximilian Schrems (Schrems II)</i>	123
2.2.2.	<i>La Quadrature du Net and others v. Commission</i>	124
2.2.3.	<i>Privacy International v. Secretary of State</i>	130
2.2.4.	<i>H.K. v. Prokuratuur and SpaceNet and Telekom Deutschland</i>	131
2.2.5.	Developments after the CJEU's rulings on data retention	133
2.2.6.	Interrelation with ECtHR case law	135
3.	Significance to NATO and its Member States	137
4.	Conclusion	138

Chapter 5

	Examples of (potential) norm conflict	141
1.	Example 1 – Military mobility	143
1.1.	Standardized customs formalities	145
1.2.	Infrastructural construction	147
1.3.	Transport of dangerous goods	147
1.4.	Health certificate requirement for meat imports into the EU	150
1.5.	Military movements during the COVID pandemic	153
2.	Example 2 – Military procurement	155
2.1.	Military procurement in the framework of NATO	155
2.2.	EU law on military procurement	158

2.2.1.	Military procurement in the EU until 2009	159
2.2.2.	The Defence and Security Procurement Directive 2019/81/EU	159
2.2.2.1.	Derogations provided in the DSPD	161
2.2.2.2.	Applicability of Article 351 TFEU	165
2.2.3.	Other defence cooperation initiatives	168
2.2.4.	European Parliament proposal for reform of the Treaties	169
2.3.	Possible conflicts in the area of military procurement	171
3.	Example 3 – Environmental protection	173
3.1.	EU legislation on environmental protection	173
3.2.	NATO and environmental protection	174
3.3.	EU REACH Regulation	176
3.4.	Other considerations	178
4.	Example 4 – Mutual legal assistance	180
5.	Example 5 – NATO defence spending versus EU budgetary constraints	181
6.	Example 6 – Personal data protection	184
6.1.	Processing of personal data within NATO	185
6.1.1.	Relevant legal provisions	187
6.1.2.	Data processing in the context of mutual legal assistance	188
6.2.	Scope of the GDPR and DPLED	190
6.2.1.	Territorial scope	191
6.2.2.	Material scope	194
6.3.	Exceptions in regard to data transfers to third States and international organizations	197
6.3.1.	Adequacy decision	198
6.3.2.	Appropriate safeguards and legal remedies	199
6.3.3.	Derogations for specific situations	200
6.3.4.	Enforcement measures	201
6.4.	(Non-)Applicability of GDPR and DPLED	202
7.	Synthesis	203
Chapter 6		
Conclusions		207
1.	Findings regarding the sub-questions	208
1.1.	What is the interrelationship between the EU and NATO legal regimes under public international law?	208
1.2.	How do dual NATO/EU Member States resolve conflicting obligations under public international law and the EU and NATO treaties?	209
1.3.	How does the CJEU interpret the scope of Article 351 TFEU?	215

1.4.	What instruments are available to individual NATO Member States within NATO's legal framework to remedy norm conflicts with EU law by lack of a judicial NATO institution?	219
1.5.	How does the CJEU interpret Article 4(2) TEU in the context of concurrent obligations under the NATO treaties?	221
2.	Examples of possible norm conflicts	226
3.	Synthesis and recommendations	228
Bibliography		233
Curriculum Vitae		269