



Is there really such a thing as NATO airspace?

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Abstract

NATO countries view Russia violating alliance members' airspace not as a bilateral issue but as violating NATO airspace. If this concept is accepted it could set the precedent for other international organizations to exercise air sovereignty and establish CSTO airspace, SCO airspace, ASEAN airspace, or EU airspace. With Brussels beginning to adopt the concept of regional sovereignty and "EU airspace" by establishing the Permanent Structured Cooperation (PESCO) for an EU military, the world may be entering a post-Westphalian order where the state would no longer be sovereign.

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Analysis

On August 24, the *BBC* reported that British fighter jets intercepted¹ a Russian military aircraft over the Black Sea.

The article said “typhoons were scrambled from a base in Romania on Thursday after a Be-12 maritime patrol aircraft was seen heading south-west from Crimea towards NATO airspace.”

This begs the question – is there such thing as a NATO airspace?

According to international law, only sovereign countries have the right to regulate their own airspace, not international organizations. Of course, individual countries can ask allies to help patrol their airspace, but the state remains the sole authority that can exercise air sovereignty. Thus, technically, the *BBC* article should have said that a Russian plane was violating a NATO member’s airspace – in this case Romanian airspace – and not “NATO airspace.”

Interestingly, NATO countries view Russia violating Romanian airspace not as a bilateral issue but as violating “NATO airspace,” and Spanish planes violating Finland’s airspace is described as “NATO planes² violating Finnish airspace.”

Back in August 2017, two Spanish NATO planes breached³ Finnish airspace while intercepting Russian aircraft near Estonia. Since Finland is not a NATO member, the violation of its airspace by the alliance’s members is viewed as a solely Finnish issue.

But what if Finland had been a member of a collective security organization such as the Russian-led CSTO (Collective Security Treaty Organization), or planes under NATO command breached the airspace of CSTO member Belarus while in pursuit of Russian jets? Would the incident then be described as Spanish planes violating “CSTO airspace” or NATO violating “CSTO airspace”?

In the case where a breach is between two NATO members such as Turkey violating Greek airspace, will it be classified as violating “NATO airspace” or would both be able to invoke Article 5 against each other?

Moreover, if the concept of NATO airspace is accepted, could this set the precedent for other international organizations to exercise air sovereignty and establish CSTO airspace, SCO airspace, ASEAN airspace, or EU airspace?

NATO, EU, or SCO airspace?

Presently there is no clear answer, but it seems the EU is perhaps following NATO’s footsteps and beginning to conceive of its own airspace.

In 2017, the EU issued a warning⁴ to Turkey after it violated Greek airspace 141 times in one day.

¹ “RAF intercepts Russian aircraft over Black Sea”, *BBC*, August 24, 2018, <https://www.bbc.com/news/uk-45301539>

² “NATO planes suspected of violating Finnish Airspace”, *Defense Aerospace*, August 1, 2017, <http://www.defense-aerospace.com/articles-view/release/3/185779/nato-planes-suspected-of-violating-finnish-airspace.html>

³ “NATO planes briefly violating Finnish airspace while intercepting Russian aircraft”, *Fox News*, August 1, 2017, <http://www.foxnews.com/world/2017/08/01/2-spanish-nato-planes-briefly-violate-finnish-airspace-while-intercepting-russian-aircraft.html>

⁴ Sarantis Michalopoulos, “EU warns Turkey after it violates Greek airspace 141 times in one day”, *Euractiv*, May 16, 2017, <https://www.euractiv.com/section/enlargement/news/eu-warns-turkey-after-it-violates-greek-airspace-141-times-in-one-day/>



For decades, NATO members Turkey and Greece have been conducting a secret war⁵ against each other over territorial disputes in the Aegean Sea, with Turkey repeatedly violating Greek airspace on a regular basis. Greek and Turkish jets often engage in dangerous “dogfights”⁶ with one another – flying wildly in the sky while trying to obtain a missile lock before breaking off.

The Greek military recorded 1,671 violations of its airspace by Turkish jets in 2016 and 3,317 violations in 2017. Since both countries are NATO members but Turkey is not in the EU, Greece resorted to obtaining Brussels’ backing against these violations.

In support of Athens, the EU warned⁷ Ankara that it must “avoid any kind of source of friction, threat or action directed against a member state... and the EU also stresses the need to respect the sovereignty of member states over their territorial sea and airspace.”

However, despite these warnings, Brussels faces difficulty defending member states’ territorial sea and air-space because it does not yet have its own integrated⁸ military structure, and NATO’s largest military forces, such as Turkey and Britain post-Brexit, are not part of the EU.

Nonetheless, the EU is beginning to take steps to form its own military⁹ by establishing the Permanent Structured Cooperation (PESCO),¹⁰ in the face of Brexit and decreasing¹¹ American public support for NATO.

Thus, if NATO has opened the door to concepts of regional sovereignty such as NATO airspace, EU airspace, SCO airspace and so on, this begs another question: is the world entering a post-Westphalian order?

Will individual states have sovereignty?

The Peace of Westphalia in 1648 set the foundation for the concept of state sovereignty in international law. A state is recognized as having a defined territory, a permanent population, a government, the capacity to enter into relations with others, and the sovereignty principle of non-interference was further developed in the 18th century.

After the Cold War, however, this Westphalian norm faced increasing challenges from advocates of humanitarian intervention.¹² Especially in the Middle East and North Africa region, Western norms for human rights and democracy-promotion trumped the norm of state sovereignty.

This was demonstrated by Western interventions in Kosovo (1999), Iraq (2003), Libya (2011), Syria (2011 to present) and currently with an eye towards intervening in Iran.

⁵ Ben Brimelow, “A ‘secret war’ between Turkey and Greece just turned deadly after a long history of dogfights over the Aegean Sea”, *Business Insider*, April 14, 2018, <https://www.businessinsider.de/greece-turkey-secret-war-dogfights-aegean-sea-2018-4/?r=US&IR=T>

⁶ <https://www.youtube.com/watch?v=YEp6wJmrTV8>

⁷ <https://www.euractiv.com/section/enlargement/news/eu-warns-turkey-after-it-violates-greek-airspace-141-times-in-one-day/>

⁸ Robin Emmot, “EU countries agree to create a European mega-army”, *Business Insider*, November 13, 2017,

<https://www.businessinsider.com/eu-countries-agree-mega-army-2017-11?IR=T>

⁹ Justin Huggler, “Merkel voices support for Macron’s proposed European defence forces”, *The Telegraph*, June 3, 2018

<https://www.telegraph.co.uk/news/2018/06/03/merkel-voices-support-macrons-proposed-european-defence-force/>

¹⁰ “Permanent Structured Cooperation (PESCO)—Factsheet”, *Europa External Action Service*, June 28, 2018,

https://eeas.europa.eu/headquarters/headquarters-homepage/34226/permanent-structured-cooperation-pesco-factsheet_en

¹¹ Phil Stewart, “Nearly Half of American links defense of NATO to allies’ spending: Reuters/Ipsos poll, July 18, 2018,

<https://www.reuters.com/article/us-usa-nato-voters/nearly-half-of-americans-link-defense-of-nato-to-allies-spending-reuters-ipsos-poll-idUSKBN1K82QK>

¹² https://en.wikipedia.org/wiki/Humanitarian_intervention



The post-Westphalian norms of humanitarian interventions and counter-terrorism are further supported by the extraterritorial application of US domestic law, such as the 2001 AUMF (Authorization for the Use of Military Force) for counter-terrorism operations in other countries and US extraterritorial sanctions on Iran, Russia, Syria, China, among others.

Unfortunately, as New Delhi-based academic Brahma Chellaney argued in the *Japan Times*,¹³ the promiscuous use of US sanctions has the unintended consequence of “leaving other countries with little choice but to work around its sanctions by using non-dollar currencies so as to avoid the American banking system, which “could ensure that the dollar’s days as the world’s reserve currency are numbered.”

University of Hong Kong’s Andrew Sheng¹⁴ shares a similar outlook, arguing that the world is already shifting into a multi-currency reserve system where now the dollar accounts for 40% of global GDP, with the RMB at 30%, the euro at 20%, the yen at 5% and 3% for the sterling.

Given the amount of Western interventions that over time have eroded the concept of state sovereignty, coupled with emerging regional orders such as the EU consolidating into a euro and military bloc, an emerging yuan-denominated Asian bloc, and other regions still within the dollar bloc, perhaps the world is indeed entering into a post-Westphalian order where the state, it seems, may no longer be sovereign.

Remarks: Opinions expressed in this contribution are those of the author. This article was first published in *Asia Times* on August 27, 2018.

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¹³ Brahma Chellaney, “The challenge of America’s new extraterritorial sanctions”, *Japan Times*, June 5, 2018, <https://www.japantimes.co.jp/opinion/2018/06/05/commentary/world-commentary/challenge-americas-new-extraterritorial-sanctions/#.W44m-cJCSUm>

¹⁴ Andrew Sheng, “ The shift from a US dollar dominant world to a multipolar one where the Chinese yuan is rising could provoke considerable geopolitical turmoil. For nations seeking to mitigate their risks, gold has much to offer, says Andrew Sheng” *Interest*, July 6, 2018, <https://www.interest.co.nz/personal-finance/94674/shift-us-dollar-dominant-world-multipolar-one-where-chinese-yuan-rising-could>