

2019

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Recommended Citation

Mette P. Hartov, *The North Atlantic Treaty—Preamble and Principles*, 34 Emory Int'l L. Rev. 37 (2019).
Available at: <https://scholarlycommons.law.emory.edu/eilr/vol34/iss0/4>

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THE NORTH ATLANTIC TREATY—PREAMBLE AND PRINCIPLES[†]

*Mette Prassé Hartov**

[I]t might be thought that the Treaty is exclusively a military alliance ... Nevertheless, the Preamble and the first two articles of the Treaty make it crystal clear that the member countries believe they belong to a community of nations within which co-operation should be developed not only for defence, but in all fields.¹

INTRODUCTION

Of its fourteen articles, five articles in the North Atlantic Treaty (“Treaty”) reference the Charter of the United Nations.² Not all of the original twelve Allies were at the time parties to the Charter, and the references were crafted to consolidate communities of mutual values and interest while clearly defining the purpose and principles of the Alliance as a collective self-defense initiative.³ The references to the Charter and, in supporting discussions, to the Vandenberg Resolution, were not a coincidence: “This was to assure Congress and the American public that the treaty’s purpose was not only to support the aims of the world organization but to conform with its restrictions as well.”⁴

These references framed the context and purpose of the Treaty in 1949 as it does in 2019. The Treaty and as such the North Atlantic Treaty Organization (NATO) rely on the United Nations to maintain international peace and security, “[t]he Treaty thus operates inside the Charter but outside the veto. It does not replace United Nations peace machinery; it functions only if and when that machinery breaks down.”⁵ Even today the link between the U.N. Charter and the

[†] The views and opinions of the author expressed herein are of a personal character and do not state or reflect those of NATO, ACT, or ACO.

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¹ LORD ISMAY, *NATO: THE FIRST FIVE YEARS 1949–1954* 15 (1954).

² See North Atlantic Treaty pmbl., arts. 1, 5, 7, 12, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243; U.N. Charter.

³ See North Atlantic Treaty, *supra* note 2; *Member States*, UNITED NATIONS, <https://www.un.org/en/member-states/index.html>. Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom and the United States of America were signatories to the U.N. Charter at the time of signing the North Atlantic Treaty. *Id.* Italy and Portugal both joined the U.N. Charter in 1955. *Id.*

⁴ S. Res. 239, 80th Cong. (1948); PROFESSOR LAWRENCE S. KAPLAN, *NATO DIVIDED, NATO UNITED – THE EVOLUTION OF AN ALLIANCE 2* (2004).

⁵ Richard H. Heindel, Thorsten V. Kalijarvi, & Francis O. Wilcox, *The North Atlantic Treaty in The*

Treaty is often restated by NATO. It is repeated in the strategic concepts and keystone documents adopted by NATO over the years, beginning with the first Strategic Concept citing the Preamble in its entirety.⁶ The Terms of Reference for the North Atlantic Council adopted in 1949 defines that the:

task of the Council is to assist the Parties in implementing the Treaty and particularly in attaining its basic objective. That objective is to assist, in accordance with the Charter, in achieving the primary purpose of the United Nations—the maintenance of international peace and security.⁷

When NATO in 1994 adopted the Partnership for Peace Framework it, too, repeated the commitment:

to fulfil in good faith the obligations of the Charter of the United Nations and the principles of the Universal Declaration on Human Rights; specifically, to refrain from the threat or use of force against the territorial integrity or political independence of any State, to respect existing borders and to settle disputes by peaceful means.⁸

While NATO is not an observer to the General Assembly, institutional relations between NATO and the U.N. have developed over the years.⁹ NATO's 2010 Strategic Concept references the 2008 NATO and the U.N. Declaration on enhanced dialogue, regular political consultations, and practical cooperation.¹⁰ The Joint Declaration was reissued in 2018 by NATO's Secretary General and the Secretary General of the U.N., facilitating exchanges and dialogue between the two organizations.¹¹

United States Senate, 43 AM. J. OF INT'L. L. 633, 638 (1949).

⁶ Memorandum by the Standing Group on The Strategic Concept for the Defense of The North Atlantic Area (Oct. 19, 1949), <https://www.nato.int/docu/stratdoc/eng/a491019a.pdf>.

⁷ Final Communiqué of the First Session of the North Atlantic Council - (Terms of Reference and Organisation), Sept. 17, 1949.

⁸ Partnership for Peace: Framework Document; Issued by the Heads of State and Government participating in the Meeting of the North Atlantic Council, Jan. 10–11, 1994.

⁹ See generally U.N.G.A., *List of non-Member States, entities and organizations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly*, U.N. Doc. A/INF/73/5 (Sept. 4, 2018) (listing those who have received a standing invitation as observers, note more of the observers are not regional arrangements). NATO has participated in the U.N. Secretary-General's meeting with Regional Organisations. *Id.*

¹⁰ *Active Engagement, Modern Defence: Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation*, NATO SUMMIT (Nov. 19–20, 2010), https://www.nato.int/strategic-concept/pdf/Strat_Concept_web_en.pdf.

¹¹ Updated joint declaration on UN-NATO secretariat cooperation, Oct. 30, 2018; see also *Relations with the United Nations*, NORTH ATLANTIC TREATY ORG. (Feb. 15, 2019), https://www.nato.int/cps/en/natohq/topics_50321.htm?selectedLocale=en.

I. HISTORY AND PREPARATORY WORK

A. *The 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 civilization 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.

They are resolved to unite their efforts for collective defence and for the preservation of peace and security.

They therefore agree to this North Atlantic Treaty:¹²

The draft treaty circulated by the Ambassadors' Committee in December of 1948 did not include a preamble, but the earlier Washington Paper from September 1948 had already proposed a starting point for discussion based on the Rio Treaty, the Brussels Treaty, and the U.N. Charter, mirroring a traditional preamble.¹³ However, the conventional format was dismissed in favor of a shorter text with more "popular appeal," expressing "briefly in simple prose the main objectives of the parties concluding the North Atlantic Treaty."¹⁴ This approach was adopted to mitigate more elaborate proposals, and it specifically omitted suggestions to include a reference in the Preamble to Chapter VIII of the U.N. Charter.¹⁵ It also marked a different approach to treaty drafting—which is repeated in the preambles of the subsequent status agreements from 1951 and 1952.¹⁶ In February 1949 Mr. Jack Hickerson, a U.S. State Department representative, in conversation with Mr. Nicholas Henderson, from the British Embassy in Washington, suggested to consider including a statement that the Treaty signatories were hoping to "see the development of other regional and

¹² North Atlantic Treaty, *supra* note 2, at pmb1.

¹³ *Draft text of North Atlantic Treaty proposed by the Ambassadors' Committee on 24 December 1948*, in SIR NICHOLAS HENDERSON, *THE BIRTH OF NATO* Appendix A, 101 (1983); Inter-American Treaty of Reciprocal Assistance (entering into force in 1948); see 'The Brussels Treaty': The Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, Mar. 17, 1948; *Memorandum by the Participants in the Washington Security Talks, July 6 to Sept. 9, Submitted to Their Respective Governments for Study and Comment*, in 3 FOREIGN RELATIONS OF THE UNITED STATES, 1948, WESTERN EUROPE 237, 237–48 (1948).

¹⁴ SIR NICHOLAS HENDERSON, *supra* note 13, at 101.

¹⁵ *Id.*

¹⁶ See Agreement between the Parties to the North Atlantic Treaty regarding the Status of Their Forces [hereinafter London SOFA], June 19, 1951; Protocol on the Status of International Military Headquarters set up Pursuant to the North Atlantic Treaty [hereinafter Paris Protocol], August 28, 1952.

collective defence arrangements in other parts of the world in accordance with the United Nations Charter.”¹⁷ This suggestion did not make it into the Preamble but may have inspired the later wording of Article 12—Review Clause—found in the final draft and referring to “universal as well as regional arrangements [established] under the Charter of the United Nations for the maintenance of international peace and security.”¹⁸

Drafted in the sixteenth meeting, only weeks before the signature of the Treaty, the Preamble may be a stylistic compromise, but it skillfully captures the aspirations of the signatories to the Treaty in three short lines.¹⁹ It ties the Treaty to the U.N. Charter, it describes the non-military aspects of the Alliance, and it defines the military resolution of the treaty.²⁰ The first line deliberately uses the verb “reaffirm” instead of “undertake” to alleviate the status of Portugal and Italy as—at the time—non-signatories to the Charter.²¹ The second paragraph was equally significant and perhaps particularly against the historical setting of the Alliance. It is repeated in the 1949 Terms of Reference of the North Atlantic Council, where the reference to “common heritage” is termed as the “common heritage of freedom and to defend themselves against aggression while emphasizing at the same time their desire to live in peace with all governments and all peoples.”²² This is repeated in the 1951 Ottawa Declaration by the North Atlantic Council: “The peoples of the North Atlantic Community are united under the North Atlantic Treaty to preserve their freedom and to develop their common heritage of democracy, liberty and the rule of law.”²³ Without diminishing the possible spiritual notion which has been inferred by some, the reference distinguishes a community of like-minded nations striving to consolidate the non-military side of an Alliance tasked with collective self-defense.²⁴ The uniting values of democracy, liberty, and of rule of law appears

¹⁷ See DOCUMENTS ON BRITISH POLICY OVERSEAS, SERIES I, VOLUME X, THE BRUSSELS AND NORTH ATLANTIC TREATIES 1947–1949, 366–67 (Tony Insall & Patrick Salmon eds., 2015).

¹⁸ North Atlantic Treaty, *supra* note 2, art. 12. The language in the Treaty omits the word “other.” *Id.*

¹⁹ *Minutes of the Sixteenth Meeting of the Washington Exploratory Talks on Security*, in 4 FOREIGN RELATIONS OF THE UNITED STATES, 1949, WESTERN EUROPE 166, 167–74 (1949); *Minutes of the Eighteenth Meeting of the Washington Exploratory Talks on Security March 15 1949*, in 4 FOREIGN RELATIONS OF THE UNITED STATES, 1949, WESTERN EUROPE 213, 214–24 (1949).

²⁰ *Id.*

²¹ *Minutes of the Seventeenth Meeting of the Washington Exploratory Talks on Security, March 11, 1949*, in 4 FOREIGN RELATIONS OF THE UNITED STATES, 1949, WESTERN EUROPE 185, 188 (1949).

²² Final Communiqué of the First Session of the North Atlantic Council, *supra* note 7.

²³ North Atlantic Council Declaration, Ottawa, 20 September 1951.

²⁴ Heindel, *supra* note 5, at 654 (the statement presented in the Resolution was later used by Senator Vandenberg in his closing speech); Treaty of Economic, Social and Cultural Collaboration and Collective Self-

to be another testimony to the Charter of the United Nations, which in its preamble underlines the importance of governance, separation of powers, equality before the law, respect for human rights,²⁵ and “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”²⁶

Early North Atlantic Council Declarations—such as the 1951 Ottawa Declaration—refers to the “North Atlantic Community,” a term repeated in the years that followed.²⁷ The term may have been a nod to a Canadian request repeated during the drafting to expand Article 2 to include economic, social, and cultural cooperation. The proposal, which did not enjoy support with the U.S. and U.K. in the course of drafting the Treaty, was picked up at the 1951 Ottawa meeting in which the North Atlantic Council established a Ministerial Committee.²⁸ The Committee was tasked to present recommendations in the fields of: (1) coordination and consultation on foreign policy directed at promoting peace; (2) economic, financial, and social cooperation promoting stability and wellbeing—within the North Atlantic Treaty area, seeking to “build up the inner strength of the North Atlantic Community;” and (3) collaboration in the fields of culture and public information.²⁹ In 1953, the Committee on Information and Cultural Relations was formed with the purpose of disseminating information—“cultural exchange”—regarding the Alliance and its activities.³⁰ It was an early public relations and diplomacy initiative seeking to “raise public awareness and understanding of NATO’s policies and objectives” and working together with the member states and the International

Defence, March 17, 1948, Amended By The Protocol Modifying And Completing The Brussels Treaty, Oct 23, 1954, (“To fortify and preserve the principles of democracy, personal freedom and political liberty, the constitutional traditions and the rule of law, which are their common heritage.”).

²⁵ See *What is the Rule of Law?*, UNITED NATIONS AND THE RULE OF LAW, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>.

²⁶ See U.N. Charter, *supra* note 2, at pmb1. Rule of law is a focus area of the United Nations particularly during and in the wake of conflict. See The Secretary General, The rule of law and transitional justice in conflict and post-conflict societies, U.N. Doc S/2004/616* (Aug. 23, 2004). While the preamble of the North Atlantic Treaty refers to governance as a ruling principle amongst the NATO member states, NATO and NATO member states have conducted Rule of Law support missions in Afghanistan. See *NATO Rule of Law Field Support Mission (NROLFSM)*, NORTH ATLANTIC TREATY ORG., https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2011_06/20110609-Backgrounder-Rule_of_Law-en.pdf.

²⁷ See North Atlantic Council Declaration, Ottawa, *supra* note 26.

²⁸ See DOCUMENTS ON BRITISH POLICY OVERSEAS, *supra* note 20, at 377. The U.K. appeared to be opposed to including references to collaboration economic, social, and cultural matters. *Id.*; see also SIR NICHOLAS HENDERSON, *supra* note 13, at 62, 64, 98.

²⁹ See DOCUMENTS ON BRITISH POLICY OVERSEAS, *supra* note 20, at 377; see also SIR NICHOLAS HENDERSON, *supra* note 13, at 62, 64, 98.

³⁰ See LORD ISMAY, *supra* note 1, at 153.

Staff at NATO Headquarters.³¹ This area of the Alliance was subject to further review in the 1956 report submitted by Lester B. Pearson, Foreign Minister of Canada, Gaetano Martino, Foreign Minister of Italy, and Halvard Lange, Foreign Minister of Norway, also referred to as NATO's Three Wise Men.³² The Committee still exists and in 2004 was renamed to the Committee on Public Diplomacy (CPD).³³ These are not the only non-military activities dating back to the origins of the Treaty. The NATO Science for Peace and Security Programme marked its 60th anniversary in 2018, and other initiatives such as the Atlantic Treaty Association and its youth association has continued to expand with the accession of new members.³⁴ Likewise, the NATO Parliamentary Assembly has since 1955 engaged parliamentarians in trans-Atlantic dialogue.³⁵

B. *The Principles*

Article 1: The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.³⁶

A draft of Article 1 was circulated in December 1948, and appears not much different from the wording adopted in the final version, but some fine precisions were made, a reference to Article 2 of the U.N. Charter in the first line was deleted; and instead of “settle their international disputes in such a manner that ...”³⁷ the final text reads “settle any international dispute in which they may

³¹ Draft Terms of reference for the preceding Joint Working Group on Information Policy and Cultural Cooperation, NATO Doc. AC/52-D/7 (Aug. 20, 1952), http://archives.nato.int/uploads/r/null/1/5/15652/AC_52-D_7_ENG.pdf; *Committee on Public Diplomacy (CPD)* [hereinafter *CPD*], NORTH ATLANTIC TREATY ORG. (Nov. 26, 2014), https://www.nato.int/cps/en/natolive/topics_69272.htm.

³² *Report of the Committee of Three on Non-Military Cooperation*, NORTH ATLANTIC TREATY ORG. (Dec. 13, 1956), https://www.nato.int/cps/en/natohq/official_texts_17481.htm?

³³ *CPD*, *supra* note 34.

³⁴ *NATO's Science for Peace and Security Programme*, NORTH ATLANTIC TREATY ORG. (Nov. 29, 2018), https://www.nato.int/cps/en/natohq/news_160936.htm; *Atlantic Treaty Association and Youth Atlantic Treaty Associations*, NORTH ATLANTIC TREATY ORG. (Nov. 13, 2017), https://www.nato.int/cps/en/natohq/topics_69053.htm?selectedLocale=en.

³⁵ *NATO Parliamentary Assembly*, NORTH ATLANTIC TREATY ORG. (Nov. 13, 2017), https://www.nato.int/cps/en/natohq/topics_50080.htm?selectedLocale=en.

³⁶ North Atlantic Treaty, *supra* note 2, art. 1.

³⁷ *Report of the International Working Group to the Ambassadors' Committee*, in 3 FOREIGN RELATIONS OF THE UNITED STATES, 1948, WESTERN EUROPE 333, 334–35 (1948).

be involved by peaceful means in such a manner that”³⁸ the latter change may seem insignificant but inasmuch as the first draft was repeating the text of the Charter, the final version broadens the commitment from “their” to “all,” and aligns the text to read consistently with the Charter, Article 2, paragraph 3. The obligation to settle international disputes peacefully is not limited to disputes related to the Treaty and its signatories but is a general statement consistent with the Charter, Article 2: “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”³⁹ Sir W. Eric Beckett uses this change to clarify that the Treaty “therefore in this sense clearly goes beyond the scope of any regional arrangement.”⁴⁰ While it would appear unproblematic to restate the commitment to the U.N. Charter, it did give rise to concern for the Norwegian delegation.⁴¹ Prior to joining the negotiations, Norway had declined a Soviet proposal to conclude a non-aggression treaty, the Norwegian argument being that it was unnecessary to restate the U.N. Charter’s pre-existing obligations of non-aggression.⁴² Norway therefore suggested that Article 1 be deleted or integrated into the preamble.⁴³ While the seven initial drafting delegations were sympathetic to the Norwegian predicament, Article 1 remained.⁴⁴ Sir Oliver Frank, the British Ambassador to the U.S., and Mr. Dean Acheson, U.S. Secretary of State, both held that “Article 1 represented the link for moving into the articles of the Treaty in terms of the Vandenberg Resolution.”⁴⁵ It was more than a reaffirmation and restatement; it “negates any possible suggestion of aggressive designs” or of being a non-aggression agreement by virtue of the collective defense commitment in Article 5.⁴⁶

The treaty text was made public on 20 March 1949.⁴⁷ On 31 March 1949 the U.S.S.R. Ambassador to the U.S. delivered a memorandum to the U.S. State Department contesting the intent of the Alliance: since the Alliance included the U.S., U.K., and France, and as it was created as a multilateral arrangement,

³⁸ North Atlantic Treaty, *supra* note 2, art. 1.

³⁹ U.N. Charter, *supra* note 2, art. 2.

⁴⁰ SIR ERIC BECKETT, *THE NORTH ATLANTIC TREATY, THE BRUSSELS TREATY, AND THE CHARTER OF THE UNITED NATIONS* 25 (1950).

⁴¹ *Id.*

⁴² See *Minutes of the Seventeenth Meeting of the Washington Exploratory Talks on Security*, *supra* note 22, at 187.

⁴³ See *id.* at 188.

⁴⁴ See *id.*

⁴⁵ See *id.* at 189.

⁴⁶ *Id.* at 190 (emphasis added).

⁴⁷ *North Atlantic Treaty*, 20 DEP’T ST. BULL. 339, 339 (1949).

including two states not signatories to the U.N. Charter, the Treaty was perceived to undermine the U.N. Charter as well as the functions of the U.N.⁴⁸ It was not seen as a collective self-defense organization, and the references to the Charter were considered “untenable and designed solely to cover up the real aggressive aims of the military grouping of states which is being established by the conclusion of the North Atlantic Treaty.”⁴⁹ This was not the first assertion delivered by the U.S.S.R., and President Truman—implicitly—addressed the Soviet contentions in his speech on April 4, 1949, rejecting the suggestion that the Treaty was motivated by aggressive motives.⁵⁰ Rather, the Treaty intended to “create a shield against aggression and the fear of aggression—a bulwark which will permit us to get on with the real business of government and society, the business of achieving a fuller and happier life for all our citizens.”⁵¹ Regardless of affirmations offered by the Treaty signatories in a joint statement on April 2, 1949 and the statements made by President Truman on the occasion of the signature, the message was replicated in the U.N. by the Soviet Union. It got some traction amongst U.N. officials, but it did not have a lasting impact on the understanding of the relationship between the Treaty and the Charter.⁵² During the Cold War, the intent of the Alliance and NATO’s defensive nature were repeated in high-level documents such as Final Communiqués.⁵³

Article 7 of the Treaty states:

This Treaty does not affect, and shall not be interpreted as affecting in any way the rights and obligations under the Charter of the Parties which are members of the United Nations, or the primary responsibility of the Security Council for the maintenance of international peace and security.⁵⁴

⁴⁸ *Letter from the Ambassador of the Soviet Union (Panyushkin) to the Secretary of State [Informal Translation]*, in 4 FOREIGN RELATIONS OF THE UNITED STATES, 1949, WESTERN EUROPE 261, 261–65 (1949).

⁴⁹ *Id.* at 264.

⁵⁰ Pres. Harry S. Truman, Address on the signing of the North Atlantic Treaty (Apr. 4, 1949).

⁵¹ See DOCUMENTS ON BRITISH POLICY OVERSEAS, *supra* note 20, at 452–54 (referencing a letter from Sir O. Franks (Washington) to Mr. Attlee, 7 April 1949).

⁵² LAWRENCE S. KAPLAN, NATO 1948–THE BIRTH OF THE TRANSATLANTIC ALLIANCE 219–20 (2007) (summarizing).

⁵³ See, e.g., Final Communiqué, Dec. 16–17, 1963 (“Ministers stressed the peaceful and defensive purposes of the North Atlantic Alliance. In subscribing to the North Atlantic Treaty the members of NATO, whether members of the United Nations or not, had affirmed their faith in the principles of the United Nations Charter and had pledged themselves to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.”); Final Communiqué, June 7–8, 1966 (“The defensive nature of the North Atlantic Treaty is indisputable.”).

⁵⁴ North Atlantic Treaty, *supra* note 2, art. 7.

In the draft circulated in September 1948 Article 7—then Article 6—included two additional paragraphs stating responsibilities to report to the U.N. Security Council in case of Article 4 consultations or actions taken under Article 5—and thus the Charter, Article 51. The paragraphs on reporting were removed and reporting requirements follow directly from the Charter. The intention was to overcome any doubts as to the commitment to the Charter and Article 7 was reworded to clearly state:

[T]he basic principle that the Treaty does not affect “in any way the rights and obligations under the Charter of the Parties which are members of the United Nations....” This is merely repeating in another way Article 103 of the Charter which makes clear that in the event of a conflict between a Member’s obligations under the Charter and its obligations under any other international agreement, the former shall prevail.⁵⁵

The overriding authority of the Charter was preserved by the short statement of Article 7, but the legal significance of the article does not appear to have been subject to much discussion. Perhaps this is in part owed to the lack of practice under Article 103 at the time; perhaps the inclusion of Article 7 in the Treaty would not change the outcome in case Article 103 of the Charter was to be invoked, as it already applies by virtue of participation in the Charter.⁵⁶ One area where it could have an impact is in the jurisdiction of the International Court of Justice (ICJ). During the drafting of the Treaty, France had on more occasions suggested to include dispute settlement procedures, but a clause was not included.⁵⁷ In comparison and consistent with this approach, the subsequent NATO status agreements concluded in 1951 and 1952 reserve that disputes are to be settled internally.⁵⁸ The NATO Status of Forces Agreement (London SOFA) explicitly renounces outside jurisdiction and appoints the North Atlantic Council as the final voice to resolve differences between member states over the interpretation of the NATO Status of Forces Agreement—and its Protocol on the Status of International Military Headquarters (Paris Protocol).⁵⁹ The Agreement on the Status of NATO, National Representatives and International Staff includes a dispute resolution clause, but this is linked to contractual

⁵⁵ Heindel, *supra* note 5, at 638.

⁵⁶ See U.N. Charter, *supra* note 2, art. 103; North Atlantic Treaty, *supra* note 2, art. 7.

⁵⁷ SIR NICHOLAS HENDERSON, *supra* note 13, at 71.

⁵⁸ London SOFA, *supra* note 19; Paris Protocol, *supra* note 19; Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, Sept. 20, 1951.

⁵⁹ See *id.*

disputes and to disputes involving staff members, who enjoy immunities.⁶⁰ Short of a dispute resolution clause in the Treaty, in 1956 NATO nations adopted a “Resolution on the Peaceful Settlement of Disputes and Differences between Members of the North Atlantic Treaty Organization” with direct reference to Article 1 of the Treaty and to Article 33 of the U.N. Charter.⁶¹ The Resolution was the result of the Report of the Three Wise Men, and (re)states the intention to address matters between Allies within the Alliance.⁶² The purpose of the dispute resolution was to provide a procedure and offer the NATO Secretary General’s “good offices” to assist in resolution, and only if the disputing Allies would so request would the NATO mechanism seek to engage on the substantive matters.⁶³ While the existence of a dispute clause is not a requirement in the context of Article 103 for states to preclude ICJ jurisdiction, it appears in the Report by the Three Wise Men to be helpful to have a procedure in place to aid Allies in matters internal to the Alliance.⁶⁴

C. NATO and the Concept of Regional Arrangements

The term “regional arrangements” is not defined in the U.N. Charter.⁶⁵ The lack of definition caused controversy in the early days of the U.N., but grants flexibility in today’s context by allowing different organizations to contribute to the maintenance of peace and security.⁶⁶ Some organizations are by design regional arrangements with direct reference to Article 52 of the Charter⁶⁷ and are invited to be observers at the General Assembly.⁶⁸ Other organizations have

⁶⁰ Agreement on the Status of the North Atlantic Treaty Organization, *supra* note 58, art. 24.

⁶¹ *Resolution on the Peaceful Settlement of Disputes and Differences between Members of the North Atlantic Treaty Organization*, NORTH ATLANTIC TREATY ORG. (Dec. 11–14, 1956), https://www.nato.int/cps/en/natohq/official_texts_17482.htm?selectedLocale=en.

⁶² *Report of the Committee of Three on Non-Military Cooperation in NATO*, NORTH ATLANTIC TREATY ORG. (Dec. 13, 1956), https://www.nato.int/cps/en/natohq/official_texts_17481.htm?.

⁶³ See *Resolution on the Peaceful Settlement of Disputes and Differences between Members of the North Atlantic Treaty Organization*, *supra* note 64; Final Communiqué, Dec. 11–14, 1956.

⁶⁴ See Professor Dr. Rudolf Bernhard, *Article 103*, in 2 THE CHARTER OF THE UNITED NATIONS, A COMMENTARY, 1301 ¶ 31 (B. Simma, 2d ed. 2002); Hummer & Schweitzer, in 2 THE CHARTER OF THE UNITED NATIONS, A COMMENTARY, 853 ¶ 147 (B. Simma, 2d ed. 2002) (on regional arrangements and inter-parties dispute settlement/the jurisdiction of the regional arrangement).

⁶⁵ See U.N. Charter, *supra* note 2.

⁶⁶ CHRISTINE GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 204–05 (4th ed. 2018) (referencing U.N. Secretary General in his report to the General Assembly in 1995).

⁶⁷ See Charter of the Organization of American States.

⁶⁸ G.A. Res. 253 (Oct. 16, 1948).

no mention of Chapter VIII in their constituent documents but self-identify as regional arrangements in later documents.⁶⁹

Short of explicit guidance, it has been suggested that the real feature of a regional arrangement is functional, providing for enforcement measures in case of a conflict between two or more of the members of the arrangement⁷⁰ and thus directed at providing collective regional security as compared to “externally focused systems of collective self-defence under Art. 51.”⁷¹

Neither Articles 1 nor 7 defines NATO as a regional arrangement under Chapter VIII of the U.N. Charter. However, throughout the drafting it was a reoccurring question if the Alliance was to be considered a regional arrangement under the Charter. A legal memo was circulated in support of the eighteenth meeting, and both national lawyers and representatives of the drafting committee appeared to take different positions.⁷² For some, it was evident that a collective self-defense organization would have no purpose under Chapter VIII. Others sought to keep the door open while generally agreeing that NATO was not a regional arrangement and thus not constrained by Article 53 of the Charter for collective self-defense purposes or required to comply with the reporting requirements defined in Article 54 for the actions taken to deliver effective self-defense across the Alliance. It was also contemplated if the Alliance at the same time could be both a collective defense organization and a regional arrangement. The U.S. and French delegates believed this to be so; the British argued that it was not the case and the Brussels Treaty Powers did not find the Treaty to be a Chapter VIII arrangement.⁷³ With the Treaty membership being curbed by geographical criteria, the mere term “regional” was considered likely to invite further discussion and an agreement was reached to not include any references to Chapter VIII in the Preamble—or elsewhere.⁷⁴ Moreover, it was decided to not comment on the question in public: “It is further understood that the Parties will, in their public statements, stress this primary purpose, recognized and

⁶⁹ See Ress & Bröhmer, *Article 53*, in 1 THE CHARTER OF THE UNITED NATIONS, A COMMENTARY ¶8 (B. Simma, 2d ed., 2002) (identifying the Organization for Security and Co-operation in Europe (OSCE) as an example of such an organization).

⁷⁰ SIR ERIC BECKETT, *supra* note 43, at 21–23; see also DANESH SAROOSHI, THE UNITED NATIONS AND THE DEVELOPMENT OF COLLECTIVE SECURITY 251 (1999); Hummer & Schweitzer, *Article 52*, in 1 THE CHARTER OF THE UNITED NATIONS, A COMMENTARY, ¶ 30–65 (B. Simma, 2d ed. 2002) (for a detailed commentary).

⁷¹ Hummer & Schweitzer, *supra* note 74, at ¶ 65. See also Ress & Bröhmer, *supra* note 73.

⁷² Legal memo not reviewed by the author.

⁷³ See SIR NICHOLAS HENDERSON, *supra* note 13, at 102–03.

⁷⁴ *Id.* at 103–05.

preserved by Article 51, rather than any specific connection with Chapter VIII or other Articles of the United Nations Charter.”⁷⁵ The question was however revisited in academic discussions following the signature of the Treaty. In *The North Atlantic Treaty, The Brussels Treaty, and the Charter of the United Nations*, (1950) Sir Beckett is clear in his perception of the Alliance not being a regional arrangement in the context of Chapter VIII.⁷⁶ Sir Beckett’s book was reviewed by Professor Hans Kelsen, who differed from the arguments presented by Sir Beckett.⁷⁷ Kelsen, largely based on the “enemy state clause” in Article 53 of the U.N. Charter, but also based on the geographical distinctions of the Treaty and its reliance upon the U.N. Charter, argues that the intent of Chapter VIII indeed “was that regional arrangements would be directed against former enemy states.”⁷⁸ Kelsen submits that nothing in the Treaty “exclude[s] the application of its Article 5 against an aggressor who is a contracting party to the Pact” and leaves the reader with an open conclusion as to where the Treaty sits in this regard: “As in so many cases, the Charter allows contradictory interpretations.”⁷⁹ In this way Kelsen appears to rebut Beckett’s conclusion that the Treaty is not:

[T]echnically a regional arrangement under Chapter VIII of the Charter.... It refers to none of the Articles of Chapter VIII of the Charter and it does not contain the provisions which I consider the hallmark of a regional arrangement. It does not contemplate that, if a party to the North Atlantic Treaty violates the peace, the other parties should be the medium of taking enforcement action against it.⁸⁰

Lord Ismay describes in the First Five Years that:

NATO is not a regional organization in the strict sense of the term. Nor is the NATO area a geographical entity, since by no means all the countries border on the North Atlantic or its inlets. To quote a legal expert on the Treaty: “Insofar as there is a regional character at all in the North Atlantic Treaty, it lies in common interest in the peace and security of a certain area, and not necessarily in the possession of territory within a certain area.”⁸¹

⁷⁵ *Minutes of the Eighteenth Meeting of the Washington Exploratory Talks on Security, March 15, 1949*, in 4 FOREIGN RELATIONS OF THE UNITED STATES, 1949, WESTERN EUROPE 213, 223 (1949).

⁷⁶ See SIR ERIC BECKETT, *supra* note 43.

⁷⁷ See Hans Kelsen, *Is the North Atlantic Treaty a Regional Arrangement?*, 45 Am. J. INT’L L., 162, 165 (1951).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See SIR ERIC BECKETT, *supra* note 43, at 34.

⁸¹ See LORD ISMAY, *supra* note 1, at 14.

There clearly are geographical elements to the Treaty. The title indicates a geographical connotation and it was originally signed by two North American and ten European states, membership—or enlargement—is limited by geography, and Article 6 defines the geographical area to which Article 5 applies.⁸² However, this is not the same as NATO representing a geographic region or the Treaty constituting a regional arrangement in the meaning of Chapter VIII of the U.N. Charter.⁸³ It does not appear to have been the intention of NATO nations to create a Chapter VIII arrangement nor does the U.N. Charter group self-defense treaties in the category of Chapter VIII organizations.⁸⁴

Nothing in the Treaty prevents NATO from undertaking other missions as long as it remains within the general objectives of the Treaty, i.e. to promote stability and well-being in the North Atlantic area.⁸⁵ Mr. Theodore C. Achilles, one of the drafters of the Washington Treaty, explained that “there was no doubt in anybody’s minds that NATO operations could also be conducted south of the Tropic of Cancer and basically, worldwide.”⁸⁶ This view is repeated in the 1967—Harmel Report, which recognized that crisis arising outside the North Atlantic area may affect the security of the Allies either directly or through global imbalance; it identifies that Allies contribute to U.N. missions and other international organizations to maintain international peace and security.⁸⁷ While the statement in the Harmel report should be understood in the geo-political context of the Cold War, the 1999 Strategic Concept added under the heading of “The Approach to Security in the 21st Century” crisis management to the list of NATO tasks and linking this effort to the Treaty Article 7 while emphasizing the relationship with and role of the U.N.⁸⁸ As such, NATO has maintained its status as a collective self-defense organization and not a regional arrangement. At the same time, NATO nations have utilized the Alliance in response to

⁸² See North Atlantic Treat, *supra* note 2.

⁸³ See U.N. Charter, *supra* note 2, at ch. VIII.

⁸⁴ See Hummer & Schweitzer, *supra* note 74, at 819 ¶ 27.

⁸⁵ See North Atlantic Treaty, *supra* note 2.

⁸⁶ *Founding Treaty*, NORTH ATLANTIC TREATY ORG. (Jan. 30, 2017), http://www.nato.int/cps/en/natolive/topics_67656.htm?selectedLocale=en. See also *Theodore Achilles Oral History Interview*, HARRY S. TRUMAN LIBRARY & MUSEUM, <https://www.trumanlibrary.gov/library/oral-histories/achilles>.

⁸⁷ *Harmel Report*, NORTH ATLANTIC TREATY ORG. (Nov. 16, 2017), https://www.nato.int/cps/en/natohq/topics_67927.htm.

⁸⁸ The Alliance's Strategic Concept, Approved by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C., NORTH ATLANTIC TREATY ORG. (Apr. 24, 1999), https://www.nato.int/cps/en/natohq/official_texts_27433.htm. See DANESH SAROOSHI, *supra* note 70, at 251 (discussing this shift); James P. Terry, *The Emerging Role of NATO in UN Peace Enforcement Operations*, 72 INT'L. L. STUD. 297, 301 (1998).

requests from the U.N.⁸⁹ Consistent with the U.N. Charter and with the Treaty, such enforcement actions require a mandate, and U.N. Security Council Resolutions have over the years defined the mandates for NATO nations—coalitions of willing states and regional organizations—to conduct or coordinate operations in the Balkans, Libya, Iraq, and Afghanistan—and to report back to the U.N. on actions taken to implement the mandates.⁹⁰ In a speech delivered in 2004 at the U.N., Mr. Robert F. Simmons, NATO Deputy Assistant Secretary-General for Political Affairs identified that:

[T]he past decade has also seen a stronger reliance on regional organizations, not as a challenge to the primary role of the United Nations, but, rather, to support it. NATO is proud to be one of those organizations. Although the alliance does not consider itself formally a regional organization under Chapter VIII of the United Nations Charter, NATO's transition from a purely collective-defence organization into a security manager in a broad sense has enabled it to act in that same spirit, first in Europe and now beyond.⁹¹

Crisis management remains one of the three NATO core tasks along with collective defense and cooperative security as defined in the 2010 Strategic Concept, “three essential core tasks, all of which contribute to safeguarding Alliance members, and always in accordance with international law.”⁹² A detailed account or discussion of the legalities of such operations is not provided here, but a list of operations and areas of cooperation can be found at the NATO webpage.⁹³

⁸⁹ Bruno Simma, *NATO, the UN and the Use of Force: Legal Aspects*, 10 EUR. J. INT'L. L. 1, 10 (1999) (“NATO is not a regional organization in the sense of Chapter VIII of the U.N. Charter. On the part of NATO, this was expressly clarified years ago in a letter addressed by the organization's former Secretary-General Willy Claes to the U.N. Secretary-General.”).

⁹⁰ See *Relations with the United Nations*, NORTH ATLANTIC TREATY ORG. (Feb. 15, 2019), https://www.nato.int/cps/en/natohq/topics_50321.htm?selectedLocale=en#.

⁹¹ Mr. Robert F. Simmons, NATO Deputy Assistant Secretary-General for Political Affairs at United Nations Security Council 5007th meeting on Cooperation between the United Nations and regional organizations in stabilization processes, 20 July 2004, S/PV.5007, p. 24-25 at https://www.securitycouncilreport.org/atf/cf/{65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/PKO_SPV_5007.pdf.

⁹² Active Engagement, Modern Defence - Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation adopted by Heads of State and Government in Lisbon, NORTH ATLANTIC TREATY ORG. (Nov. 19, 2010), https://www.nato.int/cps/en/natohq/official_texts_68580.htm.

⁹³ See *id.* For a discussion of the legal aspects of NATO operations in support of UNPPROFOR and later IFOR/SFOR and the relationship between the U.N. Security Council and NATO, and particularly the legalities of enforcement operations, see Rosalyn Higgins, *Some Thoughts on the Evolving Relationship between the Security Council and NATO*, BOUTROS BOUTROS-GHALI AMICORUM DISCIPULORUMQUE LIBER: PAIX, DÉVELOPPEMENT, DÉMOCRATIE : PEACE, DEVELOPMENT, DEMOCRACY (1998).

While the debate on the status of NATO and its relationship with the U.N. Charter seems to resurface from time to time, the Treaty has not been changed, nor have the principles, the main tasks of the Alliance, or the understanding that NATO is not a regional arrangement as defined by the U.N. Charter, Chapter VIII. NATO has remained an alliance of states sharing values and committed to the principles defined in the Treaty and in the U.N. Charter. But the security environment has changed, and the relationship between the U.N. and NATO has evolved. A responsive and more flexible approach to further international peace and security was articulated by the U.N. in 1992 in Secretary General Boutros Boutros-Ghali's Agenda for Peace.⁹⁴ NATO Summit declarations as well as NATO Strategic Concepts have confirmed that crisis management and out-of-area operations are considered to be well within NATO's mission, when certain conditions are met. This is framed in a speech delivered in 1993 by NATO Secretary General Manfred Wörner:

The Alliance, in the security interests of its own members, is prepared to assist the UN; but it cannot commit itself to supporting globally every peacekeeping operation; especially where the conditions for success are absent, where it believes that the mandate and rules of engagement are inadequate, and where it cannot exercise unity of command. The Alliance's primary task will remain the self-defence of its members.⁹⁵

Consistent with the Preamble and Articles 1, 5, and 7, NATO nations have remained committed to perform all functions, self-defense and mandated enforcement actions, in accordance with the U.N. Charter, which "contribute to safeguarding Alliance members, and always in accordance with international law."⁹⁶ NATO shares U.N. values while NATO nations maintain the exclusive decision to support a request from the U.N. to participate in peace operations. The mandates inviting NATO support generally refer to Chapter VII of the U.N. Charter and the obligations of Nations to comply with and carry out Security Council decisions, but some also refer to Chapter VIII,⁹⁷ possibly because Article 53 in Chapter VIII holds the authority for the Security Council to entrust enforcement actions to regional arrangements, with corresponding reporting

⁹⁴ The Secretary General, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, U.N. Doc. A/47/277 - S/24111 (June 17, 1992).

⁹⁵ See Manfred Wörner, NATO Sec'y Gen. to the Int'l Press Inst., Speech, Venice, (May 19, 1993) ("NATO may have lost an enemy but it has not lost its *raison d'être*: which is to be a provider of security and stability.").

⁹⁶ *Active Engagement, Modern Defence*, *supra* note 97.

⁹⁷ See Ress & Bröhmer, *supra* note 73, at ¶ 9.

requirements as defined in Article 54 of the Charter. Whether this is regarded as a matter of function over form, it seems agreeable that functions should be implemented consistent with their mandate.⁹⁸ While NATO, by decision of its member States, has implemented U.N. enforcement mandates, this indeed does not alter the form—or mission—of NATO from a collective self-defense organization to a regional arrangement. Rather, “NATO’s transition from a purely collective-defence organization into a security manager in a broad sense has enabled it to act in that same spirit.”⁹⁹

⁹⁸ Monica Hakimi, *To Condone or Condemn? Regional Enforcement Actions in the Absence of Security Council Authorization*, 40 VAND. J. TRANSNAT’L L. 643, 651 (2007) (“The more workable approach, therefore, is to interpret the phrase regional arrangements or agencies in Chapter VIII in terms of function rather than form. Where regional arrangements or agencies act under Chapter VII authority, that Chapter governs. Otherwise, Chapter VIII applies.”) (footnote omitted).

⁹⁹ Mr. Robert F. Simmons, NATO Deputy Assistant Secretary-General for Political Affairs at United Nations Security Council 5007th meeting on Cooperation between the United Nations and regional organizations in stabilization processes, 20 July 2004, S/PV.5007, p. 24-25 at [https://www.securitycouncilreport.org/atf/cf/{65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/PKO SPV 5007.pdf](https://www.securitycouncilreport.org/atf/cf/{65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/PKO%20SPV%205007.pdf).