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# SCOPE AND HISTORICAL DEVELOPMENTS OF ARTICLE 6<sup>†</sup>

*Antoaneta Boeva\**  
*Ivan Novotny\*\**

## Article 6<sup>1</sup>

For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack:

1. on the territory of any of the Parties in Europe or North America, on the Algerian Departments of France,<sup>2</sup> on the territory of Turkey or on the Islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer;
2. on the forces, vessels, or aircraft of any of the Parties, when in or over these territories or any other area in Europe in which occupation forces of any of the Parties were stationed on the date when the Treaty entered into force or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer.<sup>3</sup>

## INTRODUCTION

As stressed many times in this special series of articles and commentaries, the North Atlantic Treaty (“Treaty”), which celebrates its 70th anniversary this year, is in many ways unique. With its only fourteen articles, it has been providing the very basis of functioning of NATO throughout the seven decades

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<sup>†</sup> This Article contains views provided in the authors’ personal capacity and may not reflect agreed upon policy or views of the NATO International Staff or the North Atlantic Treaty Organization.

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<sup>1</sup> “The definition of the territories to which Article 5 applies was revised by Article 2 of the Protocol to the North Atlantic Treaty on the accession of Greece and Turkey signed on 22 October 1951.” North Atlantic Treaty n.2, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

<sup>2</sup> “On 16 January 1963, the North Atlantic Council heard a declaration by the French Representative, who recalled that by the vote of self-determination on 1 July 1962, the Algerian people had pronounced itself in favour of the independence of Algeria in co-operation with France. In consequence, the President of the French Republic had on 3 July 1962, formally recognized the independence of Algeria. The result was that the “Algerian departments of France” no longer existed as such, and that at the same time the fact that they were mentioned in the North Atlantic Treaty no longer any bearing. Following this statement, the Council noted that insofar as the former Algerian Departments of France were concerned, the relevant clauses of this Treaty had become inapplicable as from 3 July 1962.” Final Communiqué of the Ministerial Meeting of the North Atlantic Council (Czechoslovakia), November 1968 reproduced in ROBERT S. JORDAN & MICHAEL W. BLOOME, POLITICAL LEADERSHIP IN NATO: A STUDY IN MULTINATIONAL DIPLOMACY Appendix 7 (1979).

<sup>3</sup> North Atlantic Treaty, *supra* note 1, art. 6.

since its signature. None of the articles of the Treaty were ever amended except one, Article 6. This article goes to the heart of the obligation for NATO's collective defense, as it sets out the territorial reach of the obligation. It has been subject to modifications to both its text and scope throughout the history of the Alliance, and these modifications are a testament to the Treaty's adaptability to the times.

In this commentary, the original and current scope of the Article 6 of the Treaty will be examined and put into perspective. Historical declassified documents are providing a valuable insight into the original objectives of the Parties, and a basis for the analysis of all the modifications of Article 6, formal and informal. This commentary also discusses the necessity of the modifications, from both a political and legal point of view; and it looks through the lens of Article 6 over territories of the North Atlantic areas and the Pacific which have been subject to some uncertainty or questions. Finally, it looks at the contemporary relevance of Article 6.

#### *A. Scope and History of Article 6*

Seventy years ago, when the Treaty was signed in 1949, the text of Article 6 was not the same as it is today. Being only part of the Treaty to have been ever amended, Article 6 is a testimony, first and foremost, to the evolution of the historical context in which it was conceived and denotes a certain interdependence—if not mutual reliance—on the collective defense regimes already in place. The original text of Article 6 as drafted in 1949 stated:

For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack on the territory of any of the Parties in Europe or North America, on the Algerian departments of France, on the occupation forces of any Party in Europe, on the islands under the jurisdiction of any Party in the North Atlantic area north of the Tropic of Cancer or on the vessels or aircraft in this area of any of the Parties.<sup>4</sup>

##### *1. North Atlantic Area*

The Treaty was always intended to have strict geographical limits when it came to bringing Article 5 into operation. Historic documents from the drafting

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<sup>4</sup> *The Original North Atlantic Treaty*, NORTH ATLANTIC TREATY ORG., art. 6 (1949), [https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/history\\_pdf/20161122\\_E1-founding-treaty-original-treaty\\_NN-en.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/history_pdf/20161122_E1-founding-treaty-original-treaty_NN-en.pdf).

of the Treaty show that this intention was generally shared.<sup>5</sup> Thus, describing the North Atlantic area in general terms rather than by definitive lines on a map was the preference of the states during the drafting of the Treaty.<sup>6</sup> “North Atlantic area” was finally chosen as the general term for the zone that the Treaty was to cover.<sup>7</sup> The parties found inspiration in the previous collective defense treaties—the 1947 Rio Treaty and the 1948 Brussels Treaty. The former describes its area as “the territory of an American State.”<sup>8</sup> The latter treaty is even briefer and refers to the area with a potential invocation of a collective self-defense as “Europe” without any limitations provided further in the treaty whatsoever.<sup>9</sup>

## 2. *Borders of the Area*

The Treaty itself determines a very clear southern border of the “North Atlantic area”—the Tropic of Cancer.<sup>10</sup> The Tropic was considered a logical southern limit to the area, and it did not need to include the independent republics in the Caribbean or the islands in that area under the jurisdiction of any of the Parties, since they lied in the zone covered by the 1947 Rio Treaty.<sup>11</sup> Interestingly, while the southern border is clearly set, a northern border of the North Atlantic area is not mentioned. For example, in the 1947 Treaty of Rio the parties agreed: “the region to which this Treaty refers is bounded as follows: beginning at the North Pole....”<sup>12</sup> The Treaty has no such a provision and the northern border is not determined even implicitly.<sup>13</sup> In fact, no official records

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<sup>5</sup> John F. Hickman, *North Atlantic Pact: The Drafting of the Treaty*, PACT D-6/1, 20 (Mar. 29, 1949).

<sup>6</sup> *Id.* at 21.

<sup>7</sup> North Atlantic Treaty, *supra* note 1 art. 6.

<sup>8</sup> Inter-American Treaty of Reciprocal Assistance, art. 3, ¶ 1, Sept. 2, 1942 [hereinafter Rio Treaty]. However, it must be stated, that the Treaty then in the following Article 4 goes into deeper details and geographically limits the general term “an American State.” *Id.* art. 4.

<sup>9</sup> See Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, art. 4, Mar. 17, 1948.

<sup>10</sup> North Atlantic Treaty, *supra* note 1, art. 6.

<sup>11</sup> Hickman, *supra* note 5, at 21.

<sup>12</sup> Rio Treaty, *supra* note 8, art. 4.

<sup>13</sup> See North Atlantic Treaty, *supra* note 1.

from the drafting of the Treaty indicate that any deliberation on this issue took place.

### 3. *Occupation Forces*

A further element of the historical dating of Article 6 is the mention of “occupation forces of any Party in Europe.”<sup>14</sup> Now obsolete, this provision of Article 6 was subject to a note during 1949 exploratory talks where it was noted that for the purposes of Article 6 the British and American forces in the *Free Territory of Trieste* as well as in Germany are understood to be occupation forces.<sup>15</sup> It was felt that an armed attack on the occupation forces should accordingly be specifically mentioned.<sup>16</sup>

### 4. *Vessels and Aircraft*

“North Atlantic area” north of the Tropic of Cancer as used in Article 6 refers to the general area of the North Atlantic Ocean north of the line, including adjacent seas and airspaces between the territories covered by the Article.<sup>17</sup> That of course means, that an armed attack on vessels or aircraft in such seas or airspaces could trigger collective defense mechanism.<sup>18</sup>

While not reflected in the text of the treaty, an important element of clarification was brought during the drafting of the Treaty. Not all incidents in the relevant seas or airspace are alike, and during the drafting of the Treaty the parties explained that: “with particular reference to attacks on ships or aircraft, but also with respect to other attacks, it was clearly understood that Articles 5 and 6 were not intended to apply to minor sporadic incidents but only to attacks of sufficient gravity to endanger or breach international peace and security.”<sup>19</sup> This clarification is without doubt not just another reference to the Charter of

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<sup>14</sup> *The Original North Atlantic Treaty*, *supra* note 4, art. 6.

<sup>15</sup> Minutes of the Eighteenth Meeting of the Washington Exploratory Talks on Security, March 15, 1949 in FOREIGN RELATIONS OF THE UNITED STATES, 1949, WESTERN EUROPE, IV, OFFICE OF THE HISTORIAN 213, 223 (1974).

<sup>16</sup> Hickman, *supra* note 5, at 21.

<sup>17</sup> *See* North Atlantic Treaty, *supra* note 1, art. 6.

<sup>18</sup> *See Id.* pmb., art. 6.

<sup>19</sup> *Id.* at 22.

the United Nations but also a precaution, capturing perhaps more realistically the uncertainties, which the passage of time could bring.

### *B. Amendments and Modifications of Article 6*

It is also the passage of time which led to the amendment of Article 6. In a certain sense, the Treaty has already been amended sixteen times, and subject to ratification of the Accession Protocol for the Republic of North Macedonia, this will happen again.<sup>20</sup> Each time a state becomes a new NATO member, it also becomes a Party to the Treaty. The accession is done through the signature of Protocols to the Treaty, which, under international law, amend and modify the Treaty.<sup>21</sup> Of course, each time a new Ally is added, the geographical space covered by Article 6 is expanded to cover the new Ally's territory. This is an example not of a treaty amendment in the strict sense, of course. The text itself was formally amended only once by such an accession protocol.<sup>22</sup> It was the very first Protocol for the accession of Greece and Turkey, which amended and modified the text of Article 6 in 1951.<sup>23</sup>

Aside from this one and formal amendment, Article 6 was also modified informally. It was done so by a declaration by the French Representative in the North Atlantic Council in 1963.<sup>24</sup> Both formal and informal modifications are discussed below.

#### *1. Greece and Turkey*

Article 6 has been modified upon the accession of Greece and Turkey in 1951, and this is reflected in the text of the treaty with a footnote which states that: "(1) The definition of the territories to which Article 5 applies was revised

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<sup>20</sup> At the time of writing and following the agreement between Athens and Skopje on the solution of the name issue, accession talks with Skopje were ongoing.

<sup>21</sup> See Vienna Convention on the Law of Treaties, art. 30(2), May 23, 1969, 1155 U.N.T.S.

<sup>22</sup> See Protocol to the North Atlantic Treaty on the Accession of Greece and Turkey, Oct. 22, 1951 [hereinafter Protocol on Greece and Turkey].

<sup>23</sup> *Id.*

<sup>24</sup> *Following a Statement by the French Representative, the Council Notes that Insofar as the Former Algerian Departments of France are Concerned, the Relevant Clauses of the North Atlantic Treaty Became Inapplicable as of 3 July 1962*, NORTH ATLANTIC TREATY ORG. (Jan. 16, 1963) [hereinafter *Council Notes Inapplicable*], [https://www.nato.int/cps/en/natohq/news\\_26599.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/news_26599.htm?selectedLocale=en).

by Article 2 of the Protocol to the North Atlantic Treaty on the accession of Greece and Turkey signed on 22 October 1951.”<sup>25</sup>

The Protocol itself stipulates that:

If the Republic of Turkey becomes a Party to the North Atlantic Treaty, Article 6 of the Treaty shall, as from the date of the deposit by the Government of the Republic of Turkey of its instruments of accession with the Government of the United States of America, be modified to read as follows:

For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack:

1. on the territory of any of the Parties in Europe or North America, on the Algerian Departments of France, *on the territory of Turkey* or on the islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer;
2. on the forces, vessels, or aircraft of any of the Parties, when in or over these territories or any other area in Europe in which occupation forces of any of the Parties were stationed on the date when the Treaty entered into force or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer.<sup>26</sup>

The Republic of Turkey deposited its Instrument of Ratification of the North Atlantic Treaty on February 18, 1952, and, consequently Article 6 of the Washington Treaty was modified *as from that date*, in accordance with the language as mentioned in Article 2 of the Protocol to the North Atlantic Treaty on the Accession of Greece and Turkey.<sup>27</sup>

## 2. *Subsequent Enlargements*

Subsequent enlargements of the Alliance resulted in the signature of the corresponding Protocols which, although they did not modify the text of Article

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<sup>25</sup> Protocol on Greece and Turkey, *supra* note 22.

<sup>26</sup> *Id.*, art. 2 (emphasis added).

<sup>27</sup> *See id.*

6, modified the scope of territorial implementation of the Treaty, by adding the territories of the respective Member States.

Thus, the Protocol to the North Atlantic Treaty on the Accession of the Federal Republic of Germany has modified the territorial scope of implementation of Article 5 of the North Atlantic Treaty, noting that the Federal Republic of Germany became a Party to the North Atlantic Treaty, once it had deposited its Instrument of Ratification of the North Atlantic Treaty.<sup>28</sup> The same applies with regard to the accession to the North Atlantic Treaty of Spain, Poland, the Republic of Hungary, the Czech Republic, the Republic of Slovenia, the Slovak Republic, Romania, the Republic of Bulgaria, the Republic of Lithuania, the Republic of Latvia, the Republic of Estonia, the Republic of Albania, the Republic of Croatia as well as Montenegro.<sup>29</sup> It will also be the case when the Accession Protocol for the Republic of North Macedonia is ratified by all current Allies, and that country becomes the thirtieth NATO Ally.<sup>30</sup>

### 3. *Informal Modifications and Issue of Algerian Territories*

When reading the Article 6, one of the most interesting elements is a provision on the “Algerian Departments of France.”<sup>31</sup> Algeria is today a sovereign unitary state, and France has no departments in its territory.<sup>32</sup> In 1949, the situation was different, and while the world has changed significantly, the Treaty and its definition of the North Atlantic area did not change to reflect this

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<sup>28</sup> See Protocol to the North Atlantic Treaty on the Accession of the Federal Republic of Germany, Oct. 23, 1954.

<sup>29</sup> See Protocol to the North Atlantic Treaty on the Accession of Spain, Dec. 10, 1981; Protocol to the North Atlantic Treaty on the Accession of the Republic of Poland, Dec. 16, 1997; Protocol to the North Atlantic Treaty on the Accession of the Republic of Hungary, Dec. 16, 1997; Protocol to the North Atlantic Treaty on the Accession of Czech Republic, Dec. 16, 1997; Protocol to the North Atlantic Treaty on the Accession of Slovenia, Mar. 26, 2003; Protocol to the North Atlantic Treaty on the Accession of Slovak Republic, Mar. 26, 2003; Protocol to the North Atlantic Treaty on the Accession of Romania, Mar. 26, 2003; Protocol to the North Atlantic Treaty on the Accession of the Republic of Bulgaria, Mar. 26, 2003; Protocol to the North Atlantic Treaty on the Accession of the Republic of Lithuania, Mar. 26, 2003; Protocol to the North Atlantic Treaty on the Accession of the Republic of Latvia, Mar. 26, 2003; Protocol to the North Atlantic Treaty on the Accession of the Republic of Estonia, Mar. 26, 2003; Protocol to the North Atlantic Treaty on the Accession of the Republic of Albania, Apr. 1, 2009; Protocol to the North Atlantic Treaty on the Accession of the Republic of Croatia, Apr. 1, 2009; Protocol to the North Atlantic Treaty on the Accession of Montenegro, May 19, 2016.

<sup>30</sup> See *NATO Secretary General Welcomes the Prime Minister Zoran Zaev of North Macedonia*, NORTH ATLANTIC TREATY ORG. (Mar. 19, 2019), [https://www.nato.int/cps/en/natohq/news\\_164671.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/news_164671.htm?selectedLocale=en).

<sup>31</sup> See North Atlantic Treaty, *supra* note 1, art. 6.

<sup>32</sup> See JORDAN & BLOOME *supra* note 2, n.2.

case. The reason is, that it was not necessary since that part of Article 6 became simply inapplicable.

On January 16, 1963, the North Atlantic Council heard a declaration by the French Representative who recalled that by the vote on self-determination on July 1, 1962, the Algerian people had pronounced itself in favor of the independence of Algeria in cooperation with France.<sup>33</sup> In consequence, the President of the French Republic had on July 3, 1962, formally recognized the independence of Algeria.<sup>34</sup> The result was that the “Algerian Departments of France” no longer existed as such, and that their mention in the North Atlantic Treaty had no longer any bearing.<sup>35</sup>

Following this statement, the North Atlantic Council noted that, insofar as the former Algerian Departments of France were concerned, the relevant clauses of this Treaty had become inapplicable as from July 3, 1962.<sup>36</sup> A very short press release was issued and leaves no place for interpretation as to the inapplicability of Treaty to Algeria: “The Council noted that insofar as the former Algerian Departments of France are concerned, the relevant clauses of this Treaty had become inapplicable as from 3rd July, 1962.”<sup>37</sup>

So, while the text of Article 6 of the Treaty has not been modified, the wording “*on the Algerian Departments of France*” has no longer any legal impact.<sup>38</sup> The French declaration was preferred to other alternatives, such as the modification of the Treaty or an additional protocol to it.

Moreover, international law recognizes and regulates situations when the provision of a treaty is impossible to perform due to disappearance of the object of a provision.<sup>39</sup> The Vienna Convention on the Law of the Treaties, in its Article 61, stipulates that a Party to the treaty is not obliged to perform the obligation which is impossible to perform.<sup>40</sup> That is definitely the case in the provision of Article 6 of the Treaty, since no part of Algerian territory is under French sovereignty and control. Article 44 of the Vienna Convention deals with the separability of the provisions of a treaty and stipulates conditions under which

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See *Council Notes Inapplicable*, *supra* note 24.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See *id.*

<sup>39</sup> Vienna Convention on the Law of Treaties, *supra* note 21, art. 61.

<sup>40</sup> *Id.*

the provision can be separated from the treaty and obligation thereof suspended without having an effect on the treaty as a whole.<sup>41</sup> As the provision on “*Algerian Departments of France*” fulfills the criteria and does not have any effect on application of the rest of the Treaty, the relevant provision became inapplicable under international law and the statement by the French Representative from 1963 had a declaratory character only.

*C. What is the North Atlantic Area and What Does It (not) Include?*

There is no doubt that the parties intended to limit geographically the scope of their obligations, as already discussed in the first part of this commentary. However, the specific choice of words has caused questions particularly the odd choice of the word “area.” The Preamble of the Treaty provides that the Parties to this Treaty “seek to promote stability and well-being in the North Atlantic *area*.”<sup>42</sup> Further, under Article 5, the Parties are to assist each other by taking such action as deemed necessary in order “to restore and maintain the security of the North Atlantic *area*.”<sup>43</sup> Finally, in Article 12, which addresses the potential review of the Treaty, reference is made to factors affecting “peace and security in the North Atlantic *area*.”<sup>44</sup>

As mentioned in the first chapter, the word area is to be understood to cover the general region rather than merely the North Atlantic Ocean in a narrow sense. This is also confirmed in the 1949 Executive Report on the North Atlantic Treaty produced by the U.S. Senate Committee on Foreign Relations.<sup>45</sup> In it, the U.S. Senate stressed that “[i]n view of the purpose of the treaty to deter armed attack, the area covered by the treaty was deliberately described in general terms rather than defined by the lines of a map.”<sup>46</sup>

And there is a distinct reason for this. Most of the NATO members have clear territory without overseas lands where Article 6 needs no interpretation. However, some NATO members have other dependent or overseas territories.

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<sup>41</sup> *Id.* art. 44(3).

<sup>42</sup> North Atlantic Treaty, *supra* note 1 pmb1.

<sup>43</sup> *Id.* art. 5.

<sup>44</sup> *Id.* art. 12.

<sup>45</sup> EXEC. REP. NO. 8 OF THE COMM. ON FOREIGN REL. ON THE NORTH ATLANTIC TREATY (1949), at 15.

<sup>46</sup> *Id.*

The status of such territories in the context of Article 6 has required deliberation in the North Atlantic Council to establish some clarity.

In more detail, Article 6 addresses three situations:

1. *The Territories of any of the Parties in Europe or North America and the Territory of Turkey*

Under this notion, Alaska, as a part of the territory of the United States of America, is fully covered by Article 6. In the words of the U.S. Senate Committee, “the only outlying territories covered are the islands in the North Atlantic area, Alaska, the Aleutian Islands, and the islands of the Canadian Arctic.”<sup>47</sup>

In general, however, overseas territories outside of Europe and North America are not covered by the Article 6 of the Treaty. It can be observed by the careful wording “on the territory of any of the Parties in Europe or North America...,” where this additional geographical limitation is added. The cases of the discussed Algerian departments of France were different because they were part of metropolitan France under the French Constitution and were not overseas possessions.<sup>48</sup>

The U.S. State of Hawaii raises one of the most unclear questions concerning Article 6. At the time of signature and entry into force of the Treaty, Hawaii was not a part of the U.S. and only became a state in 1959.<sup>49</sup> Its geographical situation is in the North Pacific, not in the North Atlantic. These elements, at a first glance, disqualify Hawaii from falling under the scope of Article 6. The fate of Hawaii, however, may not necessarily depend on the strict reading of the text. During a session of questions and answers which took place on 16 October 2017, Minister of State of the United Kingdom, Sir Alan Duncan stated that:

Article 6 of the Washington Treaty defines the geographical scope of Article 5 primarily as “the territory of any of the Parties in Europe or North America” or “islands under the jurisdiction of any of the Parties in the North Atlantic Area north of the Tropic of Cancer.”<sup>50</sup> However, any attack against the United States, whether directed against Hawaii, Guam, or another U.S. state or territory, is

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> An Act to Provide for the Admission of the State of Hawai'i into the Union (March 18, 1959). In March 1959, the U.S. passed the Hawaii Admission Act, which U.S. President D.D. Eisenhower signed into law. However, Hawaii had been a U.S. territory before its statehood. *Id.*

<sup>50</sup> North Atlantic Treaty, *supra* note 1, art. 6.

likely to be part of a major conflict. In such a case, either the consultation provisions of Article 4 or the collective defense provisions of Article 5 would plainly apply, and the decision of the North Atlantic Council would determine the response of the Alliance.<sup>51</sup>

2. *The Islands Under the Jurisdiction of any of the Parties in the North Atlantic Area North of the Tropic of Cancer*

Under this much more rounded notion, islands such as Greenland, Svalbard, Madeira, Canary Islands as well as all other islands which are under the jurisdiction of one of the Parties to the Treaty are included in the scope of Article 6 as well.

3. *Waters and Airspace*

Finally, the waters and airspaces between North America and Europe, including around and above any of the islands, are covered by Article 6. This means that bodies of water as clearly defined as the Atlantic Ocean or the North Sea are covered alongside waters, described by the U.S. Senate Committee on Foreign Relations as “most of the Gulf of Mexico.”<sup>52</sup> In addition, the Mediterranean Sea, which is specifically named in Article 6, and which is a well-established geographical term, is obviously included as well.

As far as waters are concerned, there is merit in noting that it is now generally accepted that the sovereignty rights of coastal state extend over its territorial sea in accordance with the Law of the Sea.<sup>53</sup>

A final clarification of the scope of Article 6 stems from the combination of covered elements and covered territory envisaged in its text. It refers to an attack “On the forces, vessels, or aircraft of any of the Parties when in or over these territories ... or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer.”<sup>54</sup> It is then certain that an attack on a vessel of a Party to the North Atlantic Treaty within the territorial waters of a Mediterranean coastal

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<sup>51</sup> Sir Alan Duncan, Minister of State, U.K. Foreign Commonwealth Office (Oct. 16, 2017), <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons&member=343&keywords=guam> (responding to a written question about the U.K.’s obligations in relation to Guam and Hawaii under NATO asked by Dr. Julian Lewis).

<sup>52</sup> EXEC. REP. NO. 8, *supra* note 45.

<sup>53</sup> While not all NATO Allies are Party to the U.N. Convention on the Law of the Sea, many of its provisions are now regarded as customary international law.

<sup>54</sup> North Atlantic Treaty, *supra* note 1, art. 6.

State, including any North African State, would not preclude the member States from the potential assistance foreseen in Article 5 of the Treaty.

#### *D. Relevance of Article 6 Today*

The relevance of Article 6 does not end with its clarification of the scope of Article 5. Article 6 is still often discussed in light of current threats all around the world, not just in the North Atlantic area *per se*. Moreover, the definition of the area is now used in many other treaties in NATO framework today, most importantly NATO SOFAs.<sup>55</sup>

##### *1. Current threats and Article 6*

In 1963, during the Cuban Missile Crisis, NATO received a letter from the Secretary General of the Western European Union, communicating, for information, the text of a Recommendation 88 of the Western European Union Assembly on defense outside of the NATO area and the Cuban Crisis.<sup>56</sup> In this recommendation, the Union was requesting NATO to “initiate discussions in the NATO Council.... On the interpretation of Article 6 of the North Atlantic Treaty in the light of the present situation in which the security of NATO member States is indivisible whether north or south of the Tropic of Cancer”<sup>57</sup> and, as mentioned in the draft reply provided by the Union for use by the NATO Council “with a view to re-examination in the light of present circumstances of the geographical concept therein defined.”<sup>58</sup>

More recently, missile threats in the Pacific triggered lively discussions in international community, including a legal one when in 2017, North Korea outlined a plan to launch missiles towards Guam, a U.S. territory in the Pacific.<sup>59</sup> The Treaty serves for purpose of preserving peace in the North Atlantic area and the security of NATO Allies. Guam, like Hawaii, is not geographically located in the North Atlantic area, and it would seem that the Treaty would not cover the territory. But Guam is a U.S. territory and an armed attack against it would be

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<sup>55</sup> See Agreement Among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace Regarding the Status of Their Forces, art. 2, June 19, 1995 (using area as defined) [hereinafter Status of Their Forces].

<sup>56</sup> Letter from Western European Union, Secretary General (Mar. 20, 1963) (concerning Recommendation 88/1962 of the Assembly).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Eric Talmadge, *North Korea Outlines Plan to Launch Missiles Toward Guam*, ASSOC. PRESS (Aug. 9, 2017), <https://www.apnews.com/931769550f3b433ca64f6c5e633da23b>.

an attack against the U.S., a NATO Ally. As the UK Minister of State stated in 2017 “[a] decision of the North Atlantic Council would determine the response of the Alliance.”<sup>60</sup>

While the deliberations and decisions in the North Atlantic Council in 1963 are not available, the issue of exact territorial reach of Article 6 of the Treaty is obviously very actual and debated. *It is not inconceivable that the UK Minister of State assessment will be tested in light of contemporary threats to the peace and security of the North Atlantic area.*

## 2. *The Use of North Atlantic Treaty Area in Other Treaties*

Defining of the area of the Treaty is not relevant solely for the treaty itself, as it provides also practical basis for other important international agreements within the NATO system and for NATO operations. References to the Treaty are found in several treaties, including the NATO Status of Forces Agreement (SOFA), the Paris Protocol or the Partnership for Peace (PfP) SOFA.<sup>61</sup> Defining or distinguishing between what falls within the Treaty area and what is outside of it is of crucial importance. This has a significant impact on deployment of NATO Forces within or outside the NATO area.<sup>62</sup>

## CONCLUSION

Article 6 has perhaps the richest history from among the provisions of the North Atlantic Treaty, and its changes and modifications clearly reflect the historical development and evolution of the Alliance both in time and space. This geographical evolution has tracked the expansion of the Alliance to new Allies over the years, a process that continues to this day with the accession of the Republic of North Macedonia. In this sense, Article 6 is the physical and spatial manifestation of NATO’s adaptation and its enduring value. And given discussions in recent years about whether Article 6 would apply to a North Korean attack on Guam or Hawaii, there is a clearly a contemporary interest in this important provision, even outside of NATO’s traditional area.

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<sup>60</sup> Duncan, *supra* note 51.

<sup>61</sup> *See* Agreement Between Parties to the North Atlantic Treaty Regarding the Status of their Forces, art. 1(1)(a), 20(2), June 19, 1951; Protocol on the Status of International Military Headquarters Set up Pursuant to the North Atlantic Treaty, pmbl., art. 2, Aug. 28, 1952; Status of Their Forces, *supra* note 55.

<sup>62</sup> DIETER FLECK, THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW, 536–38 (2001).