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## **Armed attack under Article 5 – legal justification for the NATO response to drone incursion into Poland in 2025**

### **Introduction**

In 2025, Poland experienced an unprecedented drone intrusion that triggered Article 4 consultations<sup>1</sup> and forced the alliance to confront a long-anticipated but previously avoided challenge: deliberate Russian kinetic activity inside NATO airspace<sup>2</sup>.

After up to 30 suspected Russian drones entered Polish airspace during an attack on Ukraine on 9 September 2025, Polish F-16s, Dutch F-35s, and Italian AWACS aircraft worked alongside NATO refuelling tankers<sup>3</sup>, marking the “first direct military engagement between NATO and Russia” since the Alliance’s founding in 1949<sup>4</sup>. Airports in Warsaw, Rzeszów, and Lublin were temporarily closed, and debris from intercepted drones fell near residential

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<sup>1</sup> North Atlantic Treaty (adopted 4 April 1949, entered into force 24 August 1949) 34 UNTS 243, art. 4 (allowing any member state to call for consultations with other members when it believes its „territorial integrity, political independence or security” is threatened).

<sup>2</sup> D. Sydorenko, *Moscow’s creeping escalation: hybrid pressure on Poland and the Alliance*, Warsaw Institute, 19.11.2025, <https://warsawinstitute.org/moscows-creeping-escalation-hybrid-pressure-on-poland-and-the-alliance/> (accessed: 5.01.2025).

<sup>3</sup> S.O. Tustin, *Russia’s expanding drone and airspace violations across NATO*, World Mind, 13.10.2025, <https://www.theworldmind.org/briefing-archive/mounting-pressure-in-the-skies-russias-expanding-drone-and-airspace-violations-across-nato2025/10/12> (accessed: 5.01.2025).

<sup>4</sup> *European Parliament resolution of 9 October 2025 on a united response to recent Russian violations of the EU Member States’ airspace and critical infrastructure* (2025/2901(RSP)), available at: [https://www.europarl.europa.eu/doceo/document/TA-10-2025-0230\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-10-2025-0230_EN.html) (accessed: 11.10.2025), Preamble, section D. See also: S. Düz et al., *Russian drone incursions: blurring the line between provocations and probing*, SETA Foundation, 17.09.2025, <https://www.seta.org/en/russian-drone-incursions-blurring-the-line-between-provocations-and-probing> (accessed: 6.10.2025).

areas, but no injuries were reported<sup>5</sup>. NATO forces shot down several drones<sup>6</sup> – engaged in an identified attempted attack on key strategic targets and assets at the Rzeszów-Jasionka logistics hub<sup>7</sup> – while the others were allowed to crash harmlessly in unpopulated areas<sup>8</sup>.

Following the wave of airspace violations by drones and jets<sup>9</sup>, NATO has enhanced deterrence and defence posture, including through Operation Eastern Sentry<sup>10</sup>, and Secretary General Mark Rutte emphasised the Alliance’s readiness, stating that NATO is “a defensive Alliance is ready and willing to do what it takes to keep our one billion people safe and our territory secure”<sup>11</sup>. Then NATO warned Russia, following a “pattern of increasingly irresponsible behaviour”, that it would use – “in accordance with international law” – “all necessary military and non-military tools” to “defend itself and deter all threats from all directions”<sup>12</sup>.

The 9/10 September drone incursion consisted of two parallel military operations: 1) directing a swarm of unarmed combat-capable drones against a NATO critical infrastructure at the Rzeszów-Jasionka logistics hub, protected

<sup>5</sup> S. Walker, *Russian drone incursion into Poland ‘was Kremlin test on Nato’*, Guardian, 15.09.2025, <https://www.theguardian.com/world/2025/sep/14/russian-drone-incursion-poland-nato-ukraine-europe> (accessed: 17.09.2025).

<sup>6</sup> C. Edwards, *The paradox of Russian escalation and NATO’s response*, „International Institute for Strategic Studies”, 26.09.2025, <https://www.iiss.org/online-analysis/online-analysis/2025/09/the-paradox-of-russian-escalation-and-natos-response/> (accessed: 14.01.2026); M. Becker et al., *NATO and the EU seek a convincing response to Russian aggression*, Spiegel, 20.09.2025, <https://www.spiegel.de/international/world/drones-over-poland-nato-and-the-eu-look-for-a-convincing-response-to-russian-aggression-a-6a2ff5af-6cd7-4cd1-86a3-989a246a8538> (accessed: 5.01.2026).

<sup>7</sup> Known as a cornerstone of NATO’s eastern flank and the primary „logistical artery” responsible for 95% of all military and humanitarian aid entering Ukraine, Rzeszów-Jasionka hub remains as a NATO critical infrastructure site under intense multi-national protection. See: President of the Republic of Poland, *Visit to the POLLOGHUB Rzeszów-Jasionka logistics centre*, 2.12.2025, <https://www.president.pl/news/visit-to-the-polloghub-rzeszowjasionka-logistics-centre,111451> (accessed: 14.01.2026); *300 Dutch soldiers with Patriot air defense systems stationed in Poland from today*, NL Times, 1.12.2025, <https://nltimes.nl/2025/12/01/300-dutch-soldiers-patriot-air-defense-systems-stationed-poland-today> (accessed: 14.01.2026).

<sup>8</sup> A. Mukherjee, *Russian drones enter Polish airspace: NATO responds*, Perrin Institution, 15.10.2025, <https://perrininstitution.org/news/1760568414941> (accessed: 17.01.2026).

<sup>9</sup> *Briefing on incursion of Russian aircraft into Estonian airspace*, Security Council Report, 21.09.2025, <https://www.securitycouncilreport.org/whatsinblue/2025/09/briefing-on-incursion-of-russian-aircraft-into-estonian-airspace.php> (accessed: 17.09.2025).

<sup>10</sup> NATO, *Eastern Sentry to enhance NATO’s presence along its Eastern flank*, 12.09.2025, <https://shape.nato.int/news-releases/eastern-sentry-to-enhance-natos-presence-along-its-eastern-flank> (accessed: 31.10.2025); Chancellor of the Prime Minister of Republic of Poland, „*Eastern Sentry*”: *NATO responds to Russian provocations in Poland*, 12.09.2025, <https://www.gov.pl/web/primeminister/eastern-sentry-nato-responds-to-russian-provocations-in-poland> (accessed: 31.10.2025).

<sup>11</sup> NATO, *Press conference by NATO Secretary General Mark Rutte following the meeting of NATO Ministers of Defence in Brussels*, 15.10.2025, [https://www.nato.int/cps/en/natohq/opinions\\_238506.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/opinions_238506.htm?selectedLocale=en) (accessed 29.10.2025).

<sup>12</sup> NATO, *Statement by the North Atlantic Council on recent airspace violations by Russia*, 23.09.2025, [https://www.nato.int/cps/en/natohq/official\\_texts\\_237721.htm](https://www.nato.int/cps/en/natohq/official_texts_237721.htm) (accessed: 2.10.2025).

by NATO forces; and 2) long-range penetration of NATO territory by un-armed combat-capable drones and decoy drones designed to confuse air defences to undermine Article 5's guarantee of the inviolability of NATO territory.

The legal analysis aims to verify the legal nature of the 9/10 September drone violation of the Polish airspace as an armed attack and to define the legal basis for the Alliance's kinetic response to these actions. Although NATO allies provided a coordinated military response, NATO leadership and member states, including Poland, clearly stated that there was no basis to conclude that the incursion constituted an armed attack triggering NATO Article 5.

An analysis of NATO's use of force against the intruding drones indicates that the states using force exercised the right of collective self-defence under Article 5 without invoking this provision.

The legal analysis involves deliberations concerning 1) a notion of armed attack under Article 5; 2) a legal qualification of a drone airspace violation as a use of force and an armed attack; and 3) a notion of the right to self-defence.

## Notion of armed attack under Article 5 of the NATO Treaty

The principle of collective defence, meaning that an attack against one Ally is considered as an attack against all Allies, is at the heart of NATO<sup>13</sup>. Article 5 of the North Atlantic Treaty was the clearest articulation of that promise, and it has remained the bedrock of the transatlantic bond at the heart of NATO ever since<sup>14</sup>.

The NATO Treaty was drafted four years after the adoption of the United Nations Charter in 1945<sup>15</sup>. The Treaty makes explicit reference to the Charter five times throughout its short text (only 14 articles, 1144 words)<sup>16</sup> – in the Preamble and Articles 1, 5, 7, 12<sup>17</sup>. Article 7 of the NATO Treaty explicitly declares that nothing in the agreement affects the rights and obligations of the contracting parties under the Charter<sup>18</sup>.

Accordingly, Article 5's term 'armed attack' derives from Article 51 of the UN Charter. This is confirmed by the express reference made to that

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<sup>13</sup> NATO, *NATO's purpose*, 11.11.2025, <https://www.nato.int/en/what-we-do/introduction-to-nato/natos-purpose> (accessed: 15.01.2026).

<sup>14</sup> NATO, *Collective defence and Article 5*, 12.11.2025, <https://www.nato.int/en/what-we-do/introduction-to-nato/collective-defence-and-article-5> (accessed: 15.01.2026).

<sup>15</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945), 1 UNTS 16.

<sup>16</sup> S. Fournier, S.L. Bumgardner, *Article 5 of the North Atlantic Treaty: the cornerstone of the Alliance*, „NATO Legal Gazette” 2014, No. 34, p. 6.

<sup>17</sup> M.P. Hartov, *The North Atlantic Treaty: preamble and principles*, „Emory International Law Review” 2019, No. 34, p. 37.

<sup>18</sup> NATO Treaty, Art. 7.

provision in Article 5 and by the latter's drafting history<sup>19</sup>. Since the prohibition of the use of force has the status of *jus cogens*<sup>20</sup> and the most important principle that emerged in the last century to govern inter-State conduct<sup>21</sup>, it might be surprising that the UN Charter lacks a definition of both 'use of force' and 'armed attack'<sup>22</sup>. Consistent with Article 51 of the Charter of the United Nations, Article 5 does not define the term 'armed attack'<sup>23</sup>.

If the concept of 'armed attack' has no autonomous meaning under Article 5 of the NATO Treaty but carries the same connotations as in Article 51 of the UN Charter, Article 5 cannot authorise the use of force in self-defence in a broader set of circumstances than those envisaged in the Charter. Yet nothing in either agreement precludes the contracting parties of the NATO Treaty from adopting a more restrictive definition of armed attack for Article 5<sup>24</sup>. This is exactly the case with the problem in question.

The Terms of Reference for the North Atlantic Council, adopted in 1949, defined 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"<sup>25</sup>.

Furthermore, an armed attack was "understood to mean one of sufficient gravity to endanger the maintenance of international peace and security" according to the agreed interpretations of the North Atlantic Pact drafted in March 1949<sup>26</sup>. Accordingly, Article 5 "only authorises collective defence in order to restore or maintain the security of the North Atlantic area"<sup>27</sup>. Maintenance of international peace and security is the first of the purposes set

<sup>19</sup> A. Sari, *The mutual assistance clauses of the North Atlantic and EU Treaties: the challenge of hybrid threats*, „Harvard National Security Journal” 2019, No. 10, pp. 411–412.

<sup>20</sup> *Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America)* (Merits), Judgment of 27 June 1986, ICJ Rep 1986, paras. 190, 100.

<sup>21</sup> R. Fordoński, *Unilateral use of force under Article 2(4) of the UN Charter: hostage-rescue operations*, „Polski Rocznik Praw Człowieka i Prawa Humanitarnego” 2013, No. 4, p. 133. See also: M. Glennon, *Limits of law, prerogatives of power: interventionism after Kosovo*, New York 2001, p. 3; *International law: an interview with Oscar Schachter*, „Fletcher Forum of World Affairs” 1985, No. 9(1), pp. 233–234.

<sup>22</sup> T. Ruys, *'Armed attack' and Article 51 of the UN Charter: evolutions in customary law and practice*, Cambridge 2010, p. 1.

<sup>23</sup> S. Fournier, S.L. Bumgardner, op. cit., p. 24. The only definition the North Atlantic Treaty offers is a convoluted description of the geographic area and military forces against which an armed attack would be considered, „for the purpose of Article 5”, contained in Article 6.

<sup>24</sup> A. Sari, op. cit., p. 412.

<sup>25</sup> M.P. Hartov, op. cit., p. 38.

<sup>26</sup> W. Rech, *Indirect aggression and the North Atlantic Treaty*, „Journal of Conflict & Security Law” 2025, No. 30, p. 36.

<sup>27</sup> M.N. Schmitt, *The North Atlantic Alliance and collective defense at 70: confession and response revisited*, „Emory International Law Review” 2019, No. 34, p. 116.

forth for the United Nations<sup>28</sup>. Yet the UN Charter does not require that action in individual or collective self-defence serve to restore peace and security that has been breached or maintain it in situations where they are at risk<sup>29</sup>. As a result, a State is entitled to defend itself, and other States are entitled to come to its defence pursuant to Article 51, even if defensive action is likely to be destabilising for the international community, by broadening a conflict<sup>30</sup>. By the text of Article 5, however, NATO is not entitled to resort to defensive force in support of an Ally if it would be escalatory or otherwise destabilising in the circumstances at hand (and unless doing so would contribute to the restoration and maintenance of security in the region<sup>31</sup>).

### **September 2025 intrusion into Poland's airspace – factual background**

In a 10 September letter to the UN Security Council (S/2025/572), Poland noted that “19 cases of incursion by Russian drone-type objects into Polish airspace” were recorded, describing the incident as the first time since Russia’s invasion of Ukraine in February 2022 that “Polish territorial integrity has been violated on such an unprecedented, massive scale”. The letter further argued that the incursion was a major violation of EU and NATO airspace, which marks an escalation by Russia that brings “the whole region closer to conflict than ever before”<sup>32</sup>.

After a 10 September meeting of the North Atlantic Council, NATO Secretary General Mark Rutte denounced the intrusion as the “largest concentration of violations of NATO airspace that we have seen” and “extremely serious and deeply dangerous behaviour”<sup>33</sup>. He considered NATO’s response to the incident as a “very successful”: “Last night showed that we can defend every inch of NATO territory, including, of course, its airspace. We stand

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<sup>28</sup> UN Charter, Art. 1. The Charter also limits actions authorised by the Security Council under Chapter VII, such as the use of force in the face of a „threat to the peace, breach of the peace, or act of aggression” to those necessary to „maintain or restore international peace and security” – *ibidem*, Arts. 39, 41–42.

<sup>29</sup> M.N. Schmitt, *The North Atlantic Alliance...*, p. 117.

<sup>30</sup> *Ibidem*.

<sup>31</sup> *Ibidem*. Schmitt concludes, however, that „such a strict textual reading of Article 5” would be misleading since „a failure to respond forcefully to any armed aggression against an Alliance member would itself be destabilizing in that it would encourage further aggression”.

<sup>32</sup> *Emergency briefing on drone incursion into Poland*, Security Council Report, 12.09.2025, <https://www.securitycouncilreport.org/whatsinblue/2025/09/emergency-briefing-on-drone-incursion-into-poland.php> (accessed: 17.09.2025).

<sup>33</sup> NATO, *Joint press conference by NATO Secretary General Mark Rutte and Supreme Allied Commander Europe General Alexus G. Grynkewich*, 12.09.2025, [https://www.nato.int/cps/en/natohq/opinions\\_237596.htm](https://www.nato.int/cps/en/natohq/opinions_237596.htm) (accessed: 31.10.2025).

ready, that we are vigilant, and that we will defend every inch of NATO territory”<sup>34</sup>.

The foreign ministers of Ukraine, Poland and Lithuania published a joint statement calling the incursion “a deliberate and coordinated strike constituting an unprecedented provocation and escalation of tension”<sup>35</sup>. Poland’s foreign minister Radosław Sikorski confirmed that, as the drones that entered Poland could carry ammunition, they were not loaded with explosives: “Interestingly, they were all duds, which suggests Russia tried to test us without starting a war”<sup>36</sup>. Indeed, images of the crashed drones reveal that many of them did not carry an explosive load but additional fuel tanks to extend their range<sup>37</sup>. In result, the drones flew deep into Poland before crashing in regions that host several important Air Force bases, including Malbork, Mińsk Mazowiecki, and Łask<sup>38</sup>. Russia’s choice to enter Polish airspace with low-cost, made primarily from foam and plywood, Gerbera drones, usually used as decoys to distract enemy air defence or for reconnaissance missions during mass attacks on Ukraine, suggested the “Russian intention was to keep escalation risks minimal”<sup>39</sup>. The Russians “used unarmed drones, without any explosive charge and with such flight paths, which minimised the danger of harming civilian lives, not flying over big cities”<sup>40</sup>.

## Legal commentary

The legal assessment of Russian drone incursions and NATO’s response to them hinges on a modern state practice concerning a long-range airspace penetration and selected related judgments and legal writings.

<sup>34</sup> M. Yang et al., *Poland dismisses Russia’s claim drone incursion was unintentional as Ukraine calls for joint European air defence system*, Guardian, 10.09.2025, [https://www.theguardian.com/world/live/2025/sep/10/poland-pm-condemns-repeated-violation-of-airspace-amid-russian-attack-on-ukraine-follow-live?CMP=share\\_btn\\_url&page=with%3Ablock-68c1472b8f08b0ae1805e70d](https://www.theguardian.com/world/live/2025/sep/10/poland-pm-condemns-repeated-violation-of-airspace-amid-russian-attack-on-ukraine-follow-live?CMP=share_btn_url&page=with%3Ablock-68c1472b8f08b0ae1805e70d) (accessed: 5.01.2026).

<sup>35</sup> C. Ciobanu, *Russian drone incursion in Poland prompts NATO leaders to take stock of bigger threats*, AP News, 12.09.2025, <https://apnews.com/article/russia-ukraine-war-poland-drones-fa2d5d8981454499fa611a1468a5de8b> (accessed: 17.09.2025).

<sup>36</sup> S. Walker, *Russian drone incursion into Poland ‘was Kremlin test on Nato’*, Guardian, 15.09.2025, <https://www.theguardian.com/world/2025/sep/14/russian-drone-incursion-poland-nato-ukraine-europe> (accessed: 17.09.2025).

<sup>37</sup> B. van den Berg, E. Stijnman, *What the Russian drone incursion into Poland means for NATO: testing the threshold*, Netherlands Institute of International Relations, 23.09.2025, <https://www.clingendael.org/publication/what-russian-drone-incursion-poland-means-nato> (accessed: 6.10.2025).

<sup>38</sup> M. Halas, *Violations of NATO airspace: how to restore deterrence*, European Leadership Network, 22.10.2025, <https://europeanleadershipnetwork.org/commentary/violations-of-nato-airspace-how-to-restore-deterrence/> (accessed: 26.10.2025).

<sup>39</sup> F. Farrell, *Russia’s drone incursion into Poland skirted the line of NATO’s escalation policy*, Kyiv Independent, 16.09.2025, <https://kyivindependent.com/how-russias-drone-incursion-into-poland-skirted-the-line-of-natos-escalation-policy/> (accessed: 17.09.2025) (quoting Andras Racz, senior fellow at the German Council for Foreign Relations).

<sup>40</sup> Ibidem.

Concerning a modern state practice, the analysis is limited to the cases of the Islamic Republic of Iran and the Republic of Korea. Tehran formally protested at least four significant drone-related sovereignty violations involving the U.S. and Israel between 2005 and 2019, condemning “unlawful acts” against the “sanctity of the sovereignty and territorial integrity of States”, which were “tantamount to acts of hostility and of aggression against the Islamic Republic” and also “threatened regional peace and security”<sup>41</sup>. In response, Iran, while reserving “its inherent right, under Article 51 of the Charter of the United Nations, to take all appropriate necessary measures against any hostile act violating its territory”<sup>42</sup>, actually used force against intruding drones, “acting under Article 51 of the UN Charter” and destroying the intruding aircraft in the absence of an armed attack within the meaning of Article 51 (of the UN Charter)<sup>43</sup>.

Similarly, the Republic of Korea sent its own drones across the inter-Korean border in response to the Democratic People’s Republic of Korea’s “provocations”<sup>44</sup> – as a “corresponding measure undertaken as part of our right to self-defence in responding appropriately to clearly hostile acts”<sup>45</sup>.

Turning to the relevant literature sources – there are no court decisions on the cross-border use of drones – Joshua Cornthwaite noted in 2019 that state responses to modern drone intrusions generally support a conclusion that any unauthorised drone entry into another state’s airspace violates that state’s territorial integrity and sovereignty, and at the same time, it does not constitute a prohibited use of force<sup>46</sup>. Nevertheless, he did not refer to multiple

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<sup>41</sup> J.L. Cornthwaite, *Can we shoot down that drone? An examination of international law issues associated with the use of territorially intrusive aerial and maritime surveillance drones in peacetime*, „Cornell International Law Journal” 2019, No. 52(3), pp. 486–491.

<sup>42</sup> *Letter dated 20 June 2019 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General*, UN Doc S/2019/512, 20 June 2019, [https://www.justsecurity.org/wp-content/uploads/2019/07/Iran-UNSC-Letter-S\\_2019\\_512\\_E.pdf](https://www.justsecurity.org/wp-content/uploads/2019/07/Iran-UNSC-Letter-S_2019_512_E.pdf) (accessed: 11.01.2026).

<sup>43</sup> *Ibidem* (denouncing the drone intrusion as a „clear spying operation”).

<sup>44</sup> On 26 December 2022, North Korea dispatched five drones – „too small and primitive to conduct full reconnaissance missions, but large enough to carry a weapon or disrupt aviation activity” – across the demilitarised zone into South Korean territory. See: A. Horton et al., *South Korea will be vulnerable to North’s drones for years, leak warns*, Washington Post, 11.05.2023, <https://www.washingtonpost.com/national-security/2023/05/10/south-korea-drone-defense-leaked-documents/> (accessed: 29.08.2023); *Why are North Korea’s drones spooking the South?*, Al Jazeera, 27.12.2022, <https://www.aljazeera.com/news/2022/12/27/why-are-north-koreas-drones-spooking-the-south> (accessed: 31.10.2025).

<sup>45</sup> *Yoon threatens to send drones ‘deep’ into North Korea*, Korea JoongAng Daily, 9.01.2023, <https://koreajoongangdaily.joins.com/2023/01/09/national/northKorea/Korea-North-Korea-drone/20230109173611196.html> (accessed: 29.08.2023) (quoting a written statement of Defence Ministry sent to reporters on 8 January 2023).

<sup>46</sup> J.L. Cornthwaite, *op. cit.*, p. 525.

drone airspace breaches, which could “cause human casualties”<sup>47</sup>. A more contemporary author has stated that “an attack with a large number of drones that the attacked state is capable of intercepting can constitute an armed attack, even if no damage is caused”<sup>48</sup>. Similarly, Michael Schmitt denounced “the extensive intrusions into Polish airspace by combat-capable drones, as well as decoy drones designed to confuse air defenses” as “an armed attack under Article 51 of the UN Charter”<sup>49</sup>. Another commentator has stated that “sending armed drones into Polish territory” has been “an act of aggression contradicting the prohibition on the use of force set out in Article 2(4) of the UN Charter”<sup>50</sup>.

The aforementioned views of legal commentators, characterising the 9/10 September drone intrusion of as an armed attack<sup>51</sup>, are contradicted by the formal request to invoke Article 4 of the North Atlantic Treaty, lodged by Poland on 10 September 2025.

Under Article 4 of NATO’s founding treaty, any member state can bring an issue to the attention of the principal political decision-making body – the North Atlantic Council (the ‘NAC’) and discuss it with Allies<sup>52</sup>. Article 4 mandates allied consultations when a member perceives a threat to its territorial integrity or security, but it does not require collective military action. The first Secretary General of NATO, Lord Ismay, emphasised Article 4 consultation as a deterrence measure before an armed attack: “This Article provides for consultation before an armed attack has taken place. It applies

<sup>47</sup> C. York et al., *Is NATO already at war with Russia? It depends who you ask*, Kyiv Independent, 23.09.2025, <https://kyivindependent.com/is-nato-already-at-war-with-russia-it-depends-who-you-ask/> (accessed: 24.09.2025) (quoting a statement of Lithuania’s Defence Ministry).

<sup>48</sup> C. Marxsen, *Armed attack*, Max Planck Encyclopedia of Public International Law online edition, May 2025, para. 15, <https://opil.ouplaw.com/display/10.1093/law/epil/9780199231690/law-9780199231690-e241> (accessed: 7.01.2026).

<sup>49</sup> M.N. Schmitt, *Legally available options in response to Russia’s penetrations of NATO airspace*, Just Security, 29.09.2025, <https://www.justsecurity.org/121527/russia-nato-airspace/> (accessed: 2.10.2025).

<sup>50</sup> *Stanford’s Allen Weiner on U.S. and Russian military actions and the erosion of international law*, Stanford Law School, 15.09.2025, <https://law.stanford.edu/2025/09/15/stanfords-allen-weiner-on-u-s-and-russian-military-actions-from-venezuela-to-poland-and-the-erosion-of-international-law/> (accessed: 5.01.2026).

<sup>51</sup> See: *Virginia–Georgetown manual concerning the use of force under international law: rules and commentaries on jus ad bellum*, West Point 2024, p. 82 (defining an ‘armed attack’ as „at a minimum, acts of aggression [a term used in Article 39 of the Charter], as defined in the 1974 *Definition of Aggression* resolution”). For a contrary view, see: International Law Association, *Sydney conference (2018): final report on aggression and the use of force*, August 2018, pp. 26–27, [https://www.ila-hq.org/en\\_GB/documents/conference-report-sydney-2018-7](https://www.ila-hq.org/en_GB/documents/conference-report-sydney-2018-7) (accessed: 14.01.2026) (pointing out that the „relationship in the Charter between aggression and armed attack is not clear” and the Definition of Aggression adopted by the General Assembly in 1974 was „expressly not intended to define the concept of ‘armed attack’”).

<sup>52</sup> NATO Treaty, Art. 4.

if the security of one or more of the NATO countries is threatened”<sup>53</sup>. In other words, Article 4’s procedure is “a means to collectively consider threats other than an armed attack”<sup>54</sup>.

Since the Alliance’s creation in 1949, Article 4 has been invoked nine times, including situations involving the use of lethal force against territory or armed forces of member states<sup>55</sup>. The Article 4 procedure does not provide for the use of armed force. It is a political consultation procedure, emphasising the political dimension of NATO’s dual nature – as a political and military alliance. Subsequently, Article 4 is a mechanism to discuss ‘threats’, while Article 5 addresses an ‘armed attack’.

The situation concerning the drone intrusion into Poland differs, however, from the above incidents in that the Alliance already responded with armed force to an armed attack and/or a kinetic violation of a Polish and NATO territory before the starting process of political consultation under Article 4.

Furthermore, the invocation of Article 4 of the North Atlantic Treaty on 10 September 2025 was followed by an indirect invocation of the right to collective self-defence in the UN Security Council two days later<sup>56</sup>. According to the Polish statement at the Security Council, “Poland, together with allied Dutch, German and Italian military forces, acted calmly, professionally and decisively, executing its right to defend its territorial integrity. The drones that threatened Polish citizens and critical infrastructure were shot down pre-emptively”<sup>57</sup>. The use of the phrase concerning “a pre-emptive downing of drones” refers to a specific mode of anticipatory self-defence where force is used to neutralise a threat before it has fully materialised into an actual armed attack<sup>58</sup>. Pre-emptive (or interceptive)<sup>59</sup> self-defence is directed against

<sup>53</sup> S.L. Bumgardner, *Article 4 of the North Atlantic Treaty*, „Emory International Law Review” 2019, No. 34, pp. 79–80.

<sup>54</sup> *Ibidem*, p. 72.

<sup>55</sup> On 22 June 2012, Türkiye requested a NAC meeting under Article 4 after one of its fighter jets was shot down by Syrian air defence forces. On 3 October 2012, Türkiye requested Article 4 NAC consultations when five Turkish civilians were killed by Syrian shells. Following these incidents, on 21 November 2012, Türkiye requested the deployment of Patriot missiles. On 28 February 2020, Türkiye requested consultations following the death of 33 Turkish soldiers in air strikes by the Syrian regime and the Russian Federation in the Syrian Idlib province.

<sup>56</sup> Latvia was the second country to invoke, this time explicitly, the right of self-defence against „the violation of European airspace and international borders”. Security Council Provisional Records, 80th year: 9995th meeting, 12 September 2025, S/PV.9995, p. 18, <https://docs.un.org/en/S/PV.9995> (accessed: 13.01.2026).

<sup>57</sup> *Ibidem*, p. 17. See also: *Poland downs drones after its airspace is violated*, Reuters, 10.09.2025, <https://www.reuters.com/business/aerospace-defense/poland-downs-drones-after-its-airspace-is-violated-2025-09-10/> (accessed: 17.01.2026) (quoting a Polish Prime Minister Donald Tusk stating that „drones that posed a direct threat were shot down”).

<sup>58</sup> International Law Association, *Sydney conference (2018): final report...*, pp. 13–14.

<sup>59</sup> Y. Dinstein, *War, aggression and self-defence*, Cambridge 2003, p. 172.

an attack which has not yet been launched, but which is “imminent”<sup>60</sup>, “practically ‘unavoidable’”<sup>61</sup>, “started occurring”<sup>62</sup>, or “already underway”<sup>63</sup> – since “imminent threats are fully covered by Article 51”<sup>64</sup> and “States may engage in measures to defend themselves in order to prevent the attack”<sup>65</sup>.

To conclude, the situation concerning the September 2025 drone intrusion into Poland was more serious than NATO statements indicated. First, the situation was the first case of both such deep penetration of the airspace of a NATO country and a kinetic NATO response to “neutralise the perceived threat”, involving the use of armed force<sup>66</sup>.

Second, the Dutch warplanes targeted those drones that “posed a direct threat”<sup>67</sup> to the NATO strategic assets at the Rzeszów-Jasionka hub<sup>68</sup>. This is of significant importance for the legal assessment of the situation, as if “states typically did not invoke Article 2(4)”<sup>69</sup> concerning an ‘ordinary’ violation of airspace<sup>70</sup>, “even an isolated violation involving an attack on a single vital objective” may constitute “an armed attack”<sup>71</sup>. Furthermore, if an attack is made on critical infrastructure, it “constitutes automatically use of force”<sup>72</sup>, and even an armed attack under Article 51 of the UN Charter<sup>73</sup>.

Finally, over 20 drones not involved in the attempted attack on the Rzeszów-Jasionka hub were a kinetic tool for long-range penetration of NATO territory to undermine Article 5’s guarantee of the inviolability of NATO territory. Thereby, in parallel to the attack on NATO’s tangible military infrastructure, Moscow carried out an attack on a strategic target of an intangible

<sup>60</sup> T. Ruys, ‘Armed attack’ and Article 51..., pp. 253–254.

<sup>61</sup> Y. Dinstein, op. cit., p. 172.

<sup>62</sup> M. Milanovic, *When did the armed attack against Ukraine become ‘imminent’?*, EJIL: Talk, 20.04.2022, <https://www.ejiltalk.org/when-did-the-armed-attack-against-ukraine-become-imminent/> (accessed: 17.01.2026).

<sup>63</sup> C.S. Gray, *The implications of preemptive and preventive war doctrines: a reconsideration*, Carlisle Barracks 2007, pp. 8–9.

<sup>64</sup> *In larger freedom: towards development, security and human rights for all: report of the Secretary-General. UN. Secretary-General*, UN Doc. A/59/2005, 21.03.2005, para. 124, <http://undocs.org/A/59/2005> (accessed: 17.01.2026).

<sup>65</sup> International Law Association, *Sydney conference (2018): final report...*, p. 14.

<sup>66</sup> S/PV.9995, p. 2 (quoting statement of Under-Secretary-General for Political and Peacebuilding Affairs Rosemary DiCarlo).

<sup>67</sup> *Poland downs drones...*

<sup>68</sup> M. Becker et al., op. cit.

<sup>69</sup> T. Ruys, *The meaning of ‘force’ and the boundaries of the jus ad bellum: are ‘minimal’ uses of force excluded from UN Charter Article 2(4)?*, „American Journal of International Law” 2014, No. 108(2), p. 183.

<sup>70</sup> For contrary view, see: *ibidem*, p. 171.

<sup>71</sup> I. Brownlie, *International law and the use of force by states*, Oxford 1963, p. 363.

<sup>72</sup> R. Patterson, *Silencing the call to arms: a shift away from cyber-attacks as warfare*, „Loyola of Los Angeles Law Review” 2015, No. 48, p. 989.

<sup>73</sup> *Tallinn Manual 2.0 on the international law applicable to cyber operations*, Cambridge–New York 2017, p. 343. For contrary view, see: *ibidem*, p. 328.

nature in the form of an external security guarantee for the targeted state, without causing any material side effects (injuries and damages to objects on the ground).

In response to the Russian drone attacks on Poland in September 2025, 4 NATO member states responsible for the defence of the logistics hub Rzeszów-Jasionka used force against intruding drones<sup>74</sup>. The use of force was limited to the destruction of drones threatening critical NATO infrastructure at the Rzeszów-Jasionka logistics centre. Consequently, it is reasonable to state that NATO member states responsible for the defence of the NATO logistics hub Rzeszów-Jasionka exercised their right to collective self-defence under Article 5 without invoking this provision. The non-invocation of Article 5 may have been caused by reserving the Article 5 procedure for “aggressions of a more formidable character (...) threatening independence and integrity” of the targeted state<sup>75</sup>.

## Conclusions

The aim of the aforementioned analysis is to verify the legal nature of the September 2025 drone violation of the Polish airspace as an armed attack and to define the legal basis for the Alliance’s kinetic response to these actions.

In September 2025, Poland experienced an unprecedented drone intrusion that triggered Article 4 of the NATO Treaty consultations and forced the alliance to confront a long-anticipated but previously avoided challenge: physical violation of sovereign airspace with military assets.

The violation of Polish airspace on the night of 9–10 September 2025, consisted of two parallel military operations: a deployment of a swarm of unarmed combat drones against critical NATO military infrastructure in the Rzeszów-Jasionka logistics hub (protected by NATO forces); and the long-distance penetration of airspace by unarmed combat drones and decoys, intended to undermine the guarantee of the inviolability of NATO territory contained in Article 5 of the North Atlantic Treaty.

The quoted in the study views of legal commentators, characterising the 9/10 September drone intrusion of as an armed attack, are contradicted by the formal request to invoke Article 4. Article 4, meant to “collectively consider threats other than an armed attack”, mandates allied consultations when a member perceives a threat to its territorial integrity or security, but

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<sup>74</sup> See footnote 69 and accompanying text.

<sup>75</sup> W. Rech, *op. cit.*, pp. 41–42 (stating a July 1949 statement of Senator Tom Connally, chairman of the U.S. Senate Foreign Relations Committee).

it does not require collective military action. The situation concerning the drone intrusion into Poland differs, however, from the standard implementation of Article 4's procedure in that the Alliance already responded with armed force to an armed attack and/or a kinetic violation of a Polish and NATO territory before the starting process of political consultation under Article 4.

Furthermore, the invocation of Article 4 of the North Atlantic Treaty was followed by an indirect invocation of the right to collective self-defence in the UN Security Council. According to the Polish statement at the Security Council, "the drones that threatened Polish citizens and critical infrastructure were shot down pre-emptively".

In result, it is reasonable to state that the attempted attack on the Rzeszów-Jasionka hub constituted a use of force and an armed attack under Article 51 of the UN Charter (the concept of 'armed attack' has no autonomous meaning under Article 5 of the NATO Treaty but carries the same connotations as in Article 51 of the Charter). In parallel to the attack on NATO tangible military infrastructure, Moscow carried out an attack on a strategic target of an intangible nature in the form of an external security guarantee for the targeted state, without causing any material side effects (injuries and damages to objects on the ground). In response to the Russian drone attacks, 4 NATO member states responsible for the defence of the logistics hub Rzeszów-Jasionka used force against intruding drones. The use of force was limited to the destruction of drones threatening critical NATO infrastructure at the Rzeszów-Jasionka logistics centre. Consequently, it is reasonable to state that 4 NATO member states exercised their right to collective self-defence under Article 5 without invoking this provision. The non-invocation of Article 5 may have been caused by reserving the Article 5 procedure for "aggressions of a more formidable character (...) threatening independence and integrity" of the targeted state".

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## Summary

### Armed attack under Article 5 – legal justification for the NATO response to drone incursion into Poland in 2025

**Keywords:** right to self-defence, Article 5 of the NATO Treaty, armed attack, drones, airspace violations.

The violation of Polish airspace on the night of 9–10 September 2025, consisted of two parallel military operations: a deployment of a swarm of unarmed combat drones against critical NATO military infrastructure in the Rzeszów-Jasionka logistics hub (protected by NATO forces); and a long-distance penetration of airspace by unarmed combat drones and decoys, intended to undermine the guarantee of the inviolability of NATO territory contained in Article 5 of the North Atlantic Treaty. In response, NATO used military force against the Russian assets for the first time since the Alliance’s founding in 1949, despite the failure to trigger the Article 5 procedure. The use of force was limited to the destruction of drones threatening critical NATO infrastructure in the Rzeszów-Jasionka logistics centre. The purpose of the analysis is to verify the legal nature of the drone violation of Polish airspace in September 2025 as an armed attack and to determine the legal

basis for the Alliance's kinetic response to these actions. The analysis of the use of force indicates that the four member states responsible for the defence of the NATO logistics hub Rzeszów-Jasionka exercised their right to collective self-defence under Article 5 without invoking this provision. The lack of confirmation of the use of armed force and an armed attack by the Russian Federation in the formal assessment of the airspace violation may be questioned from the perspective of the law of the use of force in international relations, as the Russian Federation attacked: a) a tangible strategic target (NATO critical military infrastructure); b) a intangible strategic target in the form of an external security guarantee for Poland (NATO Article 5), without causing material collateral damage (injury or damage to ground facilities).

## Streszczenie

### **Atak zbrojny w rozumieniu artykułu 5 – uzasadnienie prawne odpowiedzi NATO na wtargnięcie dronów do Polski w 2025 r.**

**Słowa kluczowe:** prawo do samoobrony, artykuł 5 Traktatu NATO, zbrojny atak, drony, naruszenia przestrzeni powietrznej państwa.

Naruszenie przestrzeni powietrznej Rzeczypospolitej Polskiej w nocy z 9 na 10 września 2025 r. składało się z dwóch równoległych operacji wojskowych: skierowania roju nieuzbrojonych dronów bojowych na wojskową infrastrukturę krytyczną NATO na terenie hubu logistycznego Rzeszów-Jasionka, chronionego przez siły NATO, oraz długodystansowej penetracji przestrzeni powietrznej przez nieuzbrojone drony bojowe i wabiki w celu podważenia gwarancji nienaruszalności terytorium NATO zawartej w art. 5 Traktatu Północnoatlantyckiego. W odpowiedzi NATO użyło po raz pierwszy siły zbrojnej w sytuacji naruszenia przestrzeni powietrznej od powstania Sojuszu w 1949 r., mimo braku uruchomienia procedury art. 5. Użycie siły ograniczyło się do zniszczenia dronów zagrażających infrastrukturze krytycznej NATO na terenie centrum logistycznego Rzeszów-Jasionka.

Celem analizy prawnej jest weryfikacja charakteru prawnego naruszenia polskiej przestrzeni powietrznej przez drony we wrześniu 2025 r. jako ataku zbrojnego oraz określenie podstaw prawnych kinetycznej odpowiedzi Sojuszu na te działania. Analiza użycia siły wskazuje na to, że cztery państwa członkowskie odpowiedzialne za obronę hubu logistycznego NATO Rzeszów-Jasionka skorzystały z prawa do zbiorowej samoobrony na mocy art. 5, nie powołując się na ten przepis.

Brak potwierdzenia użycia siły zbrojnej oraz ataku zbrojnego przez Federację Rosyjskiej w formalnej ocenie naruszenia przestrzeni powietrznej

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może być kwestionowany z perspektywy prawa użycia siły w relacjach międzynarodowych, gdyż Federacja Rosyjska dokonała ataku na: a) strategiczny cel o charakterze materialnym (wojskowa infrastruktura krytyczna NATO); b) strategiczny cel o charakterze niematerialnym w postaci zewnętrznej gwarancji bezpieczeństwa dla Polski (art. 5 NATO), nie powodując materialnych skutków ubocznych (obrażeń ciała i uszkodzeń obiektów naziemnych).