



HOFSTRA UNIVERSITY
MAURICE A. DEANE SCHOOL OF LAW

Collective Defense Treaties

Obligations Abroad, Authority at Home

Treaties and the Rule of Law | Seventh Circuit Bar Foundation Symposium
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How do treaties shape the law of war?

BEFORE WAR

UN Charter: limits on resort to force.

DURING WAR

Geneva Conventions: rules governing military operations.

ENDING WAR

Peace agreements: legal terms for ending conflicts.

Collective-defense treaties raise a different question:

When a treaty promises military assistance, who has authority to fight?



Russia attacks Estonia. What does the U.S. as a NATO member do?

THE OPENING PUZZLE

MAY the U.S. defend Estonia?

UN Charter Article 51

MUST the U.S. assist Estonia?

NATO Article 5

WHAT assistance is required?

Treaty discretion

WHO may authorize hostilities?

President? Congress?

Article 51 permits; Article 5 commits

INTERNATIONAL LAW

UN CHARTER ARTICLE 51

Nothing in the present Charter shall impair **the inherent right of individual or collective self-defence if an armed attack** occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security

NATO ARTICLE 5

The Parties agree that **an armed attack** against one or more of them in Europe or North America shall be considered **an attack against them all** and consequently they agree that, if such an armed attack occurs, each of them, **in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist** the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, **such action as it deems necessary, including the use of armed force**, to restore and maintain the security of the North Atlantic area.

Before NATO: the same constitutional puzzle

HISTORICAL ORIGINS

1919 | LEAGUE COVENANT

Wilson insisted Congress retained the war decision. Opponents feared collective-security obligations could predetermine military action.

1947 | RIO TREATY

Article 3 established collective-defense commitments. Article 20 protected each state against being required to use armed force without consent.

1949: Acheson reassures the Senate

NATO RATIFICATION



“Article 5 ... does not enlarge, nor does it decrease, nor does it change in any way, the relative constitutional position of the President and the Congress.”

Dean Acheson | Senate NATO ratification hearings (1949)

Article 11: This Treaty shall be ratified and ”its provisions carried out by the Parties in accordance with their respective constitutional processes.”

1950–1964: Executive war powers in practice

KOREA, NATO DEPLOYMENTS, VIETNAM

1950 | KOREA

Truman intervened without a new AUMF; Acheson defended independent presidential authority.

1951 | GREAT DEBATE

Acheson defended broad authority to deploy troops to Europe while implementing NATO.

1964 | SEATO

State Department lawyers cited SEATO alongside Article II as support for U.S. combat deployments.



Can a defense treaty function as an AUMF?

MODERN CONSTITUTIONAL DEBATE

M. GLENNON

Treaty obligations do not substitute for congressional authorization to initiate war.

S. ANDERSON

A treaty may strengthen the Article II case for limited defensive action.

J. THORLIN

A ratified mutual-defense treaty may itself supply domestic authorization to use force.

50 U.S.C. § 1547(a)(2): No inference of authority from treaties absent specified legislation.

Two dimensions of the rule of law

CONCLUSION

INTERNATIONAL

Honor binding commitments to allies.

DOMESTIC

Use military force through constitutionally authorized institutions.

Does a promise to defend an ally also authorize the President to go to war?