



## Original Article

### Can A President's Statement be A Treaty Violation? A Case Study on Trump's Statement on 2% Defence Spending

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#### Abstrak:

Donald Trump, The President of the United States, stated that his country would not defend any NATO members that do not spend 2% of their Gross Domestic Product to defense spending. His statement has raised concerns about the credibility of the collective defense mechanism outlined in Article 5 of the North Atlantic Treaty, signed in 1949. This article examines whether Trump's statement as a head of state would constitute an internationally wrongful act under the articles on the responsibility of states for internationally wrongful acts. Using juridical normative method, it analyses treaty text, legal doctrine, and state practice. The study found that Article 5 of the NATO Treaty is flexible and allows each member to decide how to respond to an attack against other members. Thus, Trump's statement alone cannot be classified as a breach of international law unless it is accompanied by specific acts of refusal of support towards NATO Members.

**Keywords:** Donald Trump, NATO, Internationally Wrongful Act, Unilateral Act

#### Introduction

Article 5 of the *North Atlantic Treaty* (NAT) is the cornerstone of North Atlantic Treaty Organization (NATO).<sup>1</sup> This provision states that an attack on one member will be considered an attack on all members. Based on this article, an attack against one of NATO's member states will involve the other member states, which will take immediate action individually or collectively, including the use of armed forces to restore and maintain security.

However, Donald Trump as the President of the United States of America (USA), repeatedly stated both in 2018<sup>2</sup> & 2025<sup>3</sup> during his presidency and



<https://jurnal.usk.ac.id/riwayat>

<sup>1</sup> Anika Binnendijk and Miranda Priebe, *An Attack Against Them All?* (Santa Monica: RAND Corporation, 2019). Page 3

<sup>2</sup> "Donald Trump Tells NATO Allies to Spend 4% of GDP on Defence," *The Guardian*, last modified 2018, <https://www.theguardian.com/world/2018/jul/11/donald-trump-tells-nato-allies-to-spend-4-of-gdp-on-defence>.

presidential campaign that the USA would only defend NATO members who allocate 2%<sup>4</sup> and even proposed increasing the allocation to 5%<sup>5</sup> of their Gross Domestic Product (GDP) to defense spending. His statement triggered the turmoil and debate in the world of politics and law, whether his statement was an official statement or in a written document, can be considered as an act of state that it meets the criteria of an internationally wrongful act.

Previous study done by Erlen Serendahl on unilateral acts in the social media era focused on the question could Donald Trump statement as the President of the United States through tweet (now called X), was considered as a unilateral act.<sup>6</sup> The distinction between the previous studies and this article is that, this article going to focus on the topic could Donald Trump statement on defense spending could be an unilateral act that violate the North Atlantic Treaty.

## Research Methods

This article employs normative juridical methods to analyze various legal sources including treaties, the jurisprudence of the International Court of Justice (ICJ), the Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) as well as other secondary sources *e.g* journal articles, to ascertain the state of article 5 and existing scholarly debate. This article will examine the issue in depth from an international legal perspective using the framework in the *Vienna Convention on the Law of Treaties* (VCLT) and *Article on Responsibility of States for Internationally Wrongful Act* (ARSIWA). Including reviewing the relevant international court decisions and previous research. The purpose of this article is to find out whether a statement from the Head of State (*in casu*, The President, is the Head of the Executive Branch i.e. the govt) from the perspective of public international law, in refusing to aid NATO members according to certain criteria can be considered as an internationally wrongful act based on ARSIWA.

## Results

### Sub 1 Head of State Statement as a Unilateral Act

Unilateral acts are defined as an expression of will from a state or states that create legal effects in international law.<sup>7</sup> This act, which could legally bind a state to an obligation or rights, may take the form of a formal declaration or informal conduct.<sup>8</sup> International law does not lay down a specific requirement to the form of unilateral act,<sup>9</sup> however it is explained on ICJ Judgement on *Nuclear Test Case* that it was not important whether a unilateral act of will is manifested by the state

<sup>3</sup> Courtney Kube, Carol E Lee, and Julie Tsirkin, "Trump Considering Major NATO Policy Shift," *NBC News*, last modified 2025, <https://www.nbcnews.com/politics/national-security/trump-considering-major-nato-policy-shift-rcna195089>.

<sup>4</sup> "Donald Trump Tells NATO Allies to Spend 4% of GDP on Defence."

<sup>5</sup> Kube, Lee, and Tsirkin, "Trump Considering Major NATO Policy Shift."

<sup>6</sup> Erlen Serendahl, "Unilateral Acts in the Age of Social Media," *Scandinavian University Press* 5, no. 3 (2018): 126–146. Page 1

<sup>7</sup> Rodríguez Cedeño Víctor and Torres Cazorla Maria Isabel, "Unilateral Acts of States in International Law," *Max Planck Encyclopedia of Public International Law*, no. October (2017). Page 1

<sup>8</sup> Zewdu Mengesha, "Unratified Treaties, Unilateral Declarations and Modus" 35, no. 3 (1969). Page 190

<sup>9</sup> Jan Kolasa, "The Legal Character of a Unilateral State Act," *The Nature of Source in International Legal Order* 1 (2017): 11–87. Page 32

orally or in writing.<sup>10</sup> The provisions in ICJ Judgement is supported by the guiding principles established by International Law Commission (ILC) which stated in paragraph 5.<sup>11</sup> Given there is a wide spectrum of acts defined as unilateral creates difficulties in identifying an act as a unilateral act which delimits the definition of unilateral acts.<sup>12</sup>

The making of unilateral act was held by the state representative which has the competence to act on behalf of a State.<sup>13</sup> The binding nature of such act only applies if they are formulated by The Head of State, Heads of Government, Minister for foreign affairs, or the people representing the State in specified area.<sup>14</sup> President was an Head of States which constitutes to formulate unilateral act through executive orders by the State.<sup>15</sup>

The binding nature of unilateral act can be legally binding if that is the intention of the formulating state based on the principle of *pacta sunt servanda*.<sup>16</sup> For the unilateral act binds the formulating state, it needs to be stated in clear and specific terms.<sup>17</sup> Practically the persons who represent the State at the highest level (Head of State and Head of Government) have the capacity to bind their State by means of unilateral act.<sup>18</sup>

The binding nature of unilateral act could be seen in ICJ Judgement in France v Australia (*Nuclear Test Case*), paragraphs 48-51 mention that the legal implications of the unilateral act by the heads of state were recognized as having binding legal effect, which must be deduced and clearly addressed towards the international community.<sup>19</sup> The unilateral act that the Court elaborates as a legally binding commitment includes a series of communiques, messages, and press interviews with the President of France, the French Foreign Minister, and the Minister of Defense as the authorized state representatives.<sup>20</sup>

## Sub 2 Legal Framework of U.S Obligations in VCLT & North Atlantic Treaty

The Article 26 of VCLT establishes that “*Every treaty in force is binding upon the parties to it and must be performed by them in good faith*”<sup>21</sup> this provision is commonly understood as the “*pacta sunt servanda*”. It obliges each state party to comply in good faith the treaties they agreed to, based on their consent to be

<sup>10</sup> *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 253. Paragraph 45

<sup>11</sup> International Law Commission, “Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations,” last modified 2006, accessed October 14, 2025, [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_9\\_2006.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_9_2006.pdf).

<sup>12</sup> Eva Kassoti, *Interpretation of Unilateral Acts in International Law*, *Netherlands International Law Review*, vol. 69 (Springer International Publishing, 2022). Page 299

<sup>13</sup> Erzsebet Csatos, “The Legal Regime of Unilateral Act of States,” *Miskolc Journal of International Law*, no. 7 (2010): 33–60, . Page 40

<sup>14</sup> Commission, “Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations.”

<sup>15</sup> Louis Fisher, “Presidential Unilateral Actions: Constitutional and Political Checks,” *Congress and the Presidency* 42, no. 3 (2015): 293–316. Page 303

<sup>16</sup> Csatos, “The Legal Regime of Unilateral Act of States.” Page 44-45

<sup>17</sup> *Ibid.* Page 46

<sup>18</sup> Víctor Rodríguez Cedeño, *UNILATERAL ACTS OF STATES [ Agenda Item 6 ] Ninth Report on Unilateral Acts of States*, vol. 1, 2006.

<sup>19</sup> *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 253. Paragraph 48-51

<sup>20</sup> Page 614

<sup>21</sup> Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 33. Article 26

bound (Art 11 VCLT).<sup>22</sup> *Pacta sunt servanda* initiates the entry into force of an agreement including international treaties which bind the parties to the treaty to honor or implement what has been agreed.<sup>23</sup> *Pacta sunt servanda* not only provides rule that impose an obligation but also to refrain the parties to refrain from the acts that could defeat the purpose of a rule.<sup>24</sup> The United States has joined the North Atlantic Treaty on July 25<sup>th</sup> 1949, becoming the 12<sup>th</sup> founding member of NATO after its Senate passed a resolution on July 21<sup>st</sup> 1949.<sup>25</sup>

The adoption of NAT by the U.S. was based on the tendencies to posed an alliance with Western Europe to form a collective defense against the Soviet Union.<sup>26</sup> Article 5 of NAT is a basis for preventing mistakes in the use of violence (armed attack) towards other country with the obligations to respect other country sovereignty.<sup>27</sup> means that U.S. is bound by its obligations provided by the Article 5 NAT, it provides its state parties with obligations to assist the party/parties which are being attacked by taking necessary action, including the use of armed force. The application of Article 5 was limited by the Article 6 which stated that the collective defense can only be applied to armed attacks that occur on the forces, vessels, aircraft, or in the jurisdiction of state parties in the North Atlantic area.<sup>28</sup>

The collective defense as stipulated in Article 5 NAT, does not require any requirement to engage the collective defense except the situation of being in an armed attack. The 2% GDP allocation towards defense spending was stated in paragraph 14 of Wales Summit Declaration on 2014 was merely encouragement for the state parties with no legal consequences for the parties who failed to spend a minimum of 2% of their GDP.<sup>29</sup> Including U.S. was obliged to assist the party/parties of NATO which in an armed attack situation even if they failed to fulfil the allocation of their 2% GDP towards defense spending.

Article 31 (3)-(b) VCLT explains that any subsequent practice in the application of a treaty establishes the agreement of the parties regarding its interpretation.<sup>30</sup> The provisions of Article 5 of the North Atlantic Treaty, which use the phrase “such action as it deems necessary,” gave NATO members a wide margin to determine the form of assistance provided. The assistance mentioned in Article 5 does not necessarily mean military assistance but each member country enjoys a wide margin of discretion to determine how they will contribute to restore and maintain the security of the North Atlantic Area.<sup>31</sup> The wide margin of

<sup>22</sup> Ibid. Article 11

<sup>23</sup> Harry Purwanto, “Keberadaan Asas Pacta Sunt Servanda Dalam Perjanjian Internasional,” *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (2012): 155. Page 168

<sup>24</sup> I.I Lukashuk, “The Principle Pacta Sunt Servanda and the Nature of Obligation Under International Law,” *The American Journal of International Law* 83, no. 3 (1989): 513–518. Page 515

<sup>25</sup> Legal Sidebar, “The North Atlantic Treaty : U.S. Legal Obligations and Congressional Authorities Select Legislation Implementing the North Atlantic Treaty” (2025), [https://www.congress.gov/crs\\_external\\_products/LSB/PDF/LSB11256/LSB11256.4.pdf](https://www.congress.gov/crs_external_products/LSB/PDF/LSB11256/LSB11256.4.pdf). Page 1

<sup>26</sup> C. Grady Broderick, “Article 5 of the North Atlantic Treaty\_ Past Present and Uncert,” *Ga. J. Int’L & Comp. L* 31, no. 167 (2003): 167–198, Page 176.

<sup>27</sup> Michael N Schmitt, “The North Atlantic Alliance and Collective Defense at 70: Confession and Response Revisited,” *Emory International Law Review* 34, no. 0 (2019), Page 100.

<sup>28</sup> *North Atlantic Treaty*, Washington, D.C., 4 April 1949, 34 U.N.T.S. 243. Article 6

<sup>29</sup> NATO, *Wales Summit Declaration*, 5 September 2014, para. 14

<sup>30</sup> Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 33. Article 31

<sup>31</sup> NATO, “Collective Defence and Article 5,” *NATO*, last modified 2023, accessed October 11, 2025, [https://www.nato.int/cps/en/natohq/topics\\_110496.htm](https://www.nato.int/cps/en/natohq/topics_110496.htm).

discretion in the form of assistance given by NATO members could be seen post 9/11 tragedy, where NATO deploys the 24 Airborne Warning and Control System Aircraft (AWACS) with the crew members from Germany, Canada, Belgium, and Italy with the over-flight clearance for military aircraft and increased intelligence sharing.<sup>32</sup>

### Sub 2 Legal Framework of Internationally Wrongful Act

As previously explained, the U.S. was bound by the North Atlantic Treaty. An Internationally Wrongful Act (IWA) is every internationally wrongful act of a state which entails the international responsibility of that state which may consist of one or more actions or omissions or a combination of both.<sup>33</sup> The provisions of Article 2 ARSIWA lays down that the elements of an internationally wrongful act are:<sup>34</sup>

- a. Attributable to the state under international law
- b. Constitutes a breach of international obligations of the State.

By the provisions above it could be understood that internationally wrongful act is an action which consisted of action, omissions, or the combination of both that is attributable to the state under international law and constitutes a breach of international obligations of the state.

Article 4 ARSIWA mentioned that the act of a State could be conducted by any state organ in legislative, executive, judicial, or any other organs of the central government or of a territorial unit of the state.<sup>35</sup> Further explanation shows that governmental organ such as executive & administrative organs, acts of member of armed force, acts of judiciary, and constituent units of general state done a wrongful act then the states would be directly responsible.<sup>36</sup>

The wrongful acts, are determined by an aggregate of conduct and their continuing trait.<sup>37</sup> In the Judgement of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the case of *The Prosecutor v Anton Furundžija* on 10<sup>th</sup> December 1998 ruled that states undertake international obligations through various ways as if treaties of customary rules.<sup>38</sup> In the same paragraph, the judge explained that wrongful act takes place only when there is an administrative or judicial measures are taken.<sup>39</sup> Another judgement from ICJ in Nicaragua, this case explains U.S. actions carrying out “intervention” through supporting military and paramilitary actions in and against Nicaragua.<sup>40</sup> The Court found that such activities may

<sup>32</sup> Michael A Goldberg, “Mirage of Defense : Reexamining Article Five of the North Atlantic Treaty After the Terrorist Attacks on the United States” 26, no. 1 (2003): 77–93. Page 84-85

<sup>33</sup> International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, Yearbook of the International Law Commission, Vol. II (Part Two), 2001. Article 1

<sup>34</sup> Articles on Responsibility of States for Internationally Wrongful Acts, UN Docs A/56/49 (2001). Article 2

<sup>35</sup> Ibid. Article 4

<sup>36</sup> Thanvi, “State Responsibility Under International Law,” *International Journal of Law Management and Humanities* 6, no. 1 (2023): 486–495. Page 490

<sup>37</sup> Jane A Hofbauer, “State Responsibility,” *Public International Law: A Multi-Perspective Approach* (2024): 333–345.

<sup>38</sup> Int. Criminal Tribunal, *Prosecutor v. Anto Furundžija*, *Judicial Reports / Recueils Judiciaires*, 1998. Para. 149

<sup>39</sup> Ibid.

<sup>40</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, I.C.J. Reports 1986, p. 14.

constitute a breach which is a form of conduct and certainly wrongful.<sup>41</sup> The responsibility of a state arises when its conduct caused or contributed to the wrongful act.<sup>42</sup>

Through the legal framework above, can be concluded that to be an internationally wrongful act there is a need for a state or a state organ to do an action, measures, conduct, omission, or the combination of both that is conducted to a state, which constitutes a breach of an international obligation of a state which could arise the responsibility of a state. Without the conduct/measures/action or omission that have been done by the state or its organ which breaches the obligation of a state given by international law, the state or its organ statement could not be categorized as an internationally wrongful act.

## Discussion

The U.S. was obliged to assist the party/parties of NATO which being attacked based on the provisions of Article 5 NAT. However, the U.S. President Donald Trump recently said that the U.S. is not going to help NATO members that failed to allocate 2% of their GDP to state defense.<sup>43</sup> Donald Trump the U.S. President, is the executive organ of the U.S. If we refer again to the provisions of Article 4 ARSIWA, if understood briefly, Trump's actions can be categorized as an act of a state. His position as the Head of State gave Trump's competence to formulate unilateral acts.<sup>44</sup>

Trump's statement could also be classified as a unilateral act from the U.S. since his statements on collective defense was stated towards NATO which the U.S. has maintain mutuality and reliance.<sup>45</sup> Those facts supported by the use of head of state or central government organs statement in ICJ Judgement on Nuclear Tests Case (Australia v France) in 1974, in the judgement the Judge use French Prime Minister statement towards nuclear test which will be done by France in the Pacific Ocean which was rejected by Australia and New Zealand. Paragraph 43 states that a unilateral declaration may create a legal obligation that requires the state to follow consistent conduct with the declaration.<sup>46</sup>

If examined further, Trump's actions are limited to his statement not to help other NATO members, which classified as a unilateral statement seems to be incompatible with the collective defense stated in Article 5 of the NAT. However to be deemed as a wrongful act based on ARSIWA there is need for the breach of an international obligations of a state in this case the obligations of the U.S. based on Article 5 of the NAT. Beside Trump's statement that refuse to assist the NATO

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<sup>41</sup> Ibid.

<sup>42</sup> James A Green, *Collective Self Defense in International Law* (Cambridge University Press, 2016). Page 130

<sup>43</sup> Jill Colvin, "Trump Says He Once Told a NATO Ally to Pay Its Share or He'd 'Encourage' Russia to Do What It Wanted," *AP News*, last modified 2024, accessed October 11, 2025, <https://apnews.com/article/trump-nato-foreign-aid-russia-2b8054a9fe185e34c2c541cece655d>.

<sup>44</sup> Serendahl, "Unilateral Acts in the Age of Social Media." Page 134

<sup>45</sup> Thomas M. Franck, "Word Made Law: The Decision of the ICJ in the Nuclear Test Cases," *American Journal of International Law* 69, no. 3 (1975): 612–620. Page 617

<sup>46</sup> *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 253. Paragraph 43

members who failed to allocate 2% of their GDP on state defence, there has not any action taken by the U.S. after his statement.

In the Judgement of Furundžija in the case of The Prosecutor v Anton Furundžija in 10<sup>th</sup> December 1998 have been stated in Paragraph's 149 as follows:

*Let us consider these two aspects separately. Normally States, when they undertake international obligations through treaties or customary rules, adopt all the legislative and administrative measures necessary for implementing such obligations. However, subject to obvious exceptions, failure to pass the required implementing legislation has only a potential effect: the wrongful fact occurs only when administrative or judicial measures are taken which, being contrary to international rules due to the lack of implementing legislation, generate State responsibility.*

In the paragraph above, it has been stated that wrongful acts occur when there administrative or judicial measures have been taken. Even though Trump's statement regarding the refusal of the collective defense of NATO Members was not in line with the regulations of Article 5 NAT, his statement was not a wrongful act. In Article 2 (b) ARSIWA states that the element of an internationally wrongful act constitutes a breach of international obligations of the state, even if Trump's unilateral act fulfills the element in Article 2 (a) ARSIWA as an act of a state, there has not been a real action or measures that constitute towards a breach of the U.S. obligation based on Article 5 NAT.

## Conclusions

The conclusion of this article is Donald Trump's statement regarding the refusal to assist the NATO Members on collective defense stated in Article 5 of the North Atlantic Treaty was a unilateral act which binds the United States since Trump's was a head of state which given the competence to formulate unilateral act by the constitution. However, since no action or steps were taken by the United States in an effort to implement the unilateral act of trump which led to a violation of the collective defense obligation provided by Article 5 of the NAT, his unilateral act on the refusal of collective defense towards the NATO Members could not be considered as a wrongful act done by the U.S

## Suggestion

International Law should introduce greater nuances to this to the unilateral act concept to provide a better legal framework. To truly understand unilateral act regarding the formation, interpretation, and the use of unilateral act to enhance the legal certainty of the unilateral act. By clarifying the formation, interpretation, and the use of unilateral act will distinct the legally binding unilateral act and political declarations towards a more efficient global diplomacy.

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