

BOFAXE

Legal Consequences of a Potential US Attack on Greenland

On the Applicability of Art. 5 of the North Atlantic Treaty to Cases of “Internal Attacks”

— In the immediate aftermath of the illegal US strikes against Venezuela, US officials again ramped up their aggressive rhetoric towards Greenland (see, e.g., [here](#) and [here](#), though the most recent [statements](#) have been more conciliatory). Greenland, though self-governed, is an autonomous territory of Denmark and falls within the territorial scope of the [North Atlantic Treaty](#) (“NAT”) as described in its Art. 6. Politically, this would [likely](#) be the end of NATO. What, however, would be the legal consequences of a US Attack on Greenland? So far, there appears to be no settled answer to this question; some [reports suggest](#) that the legal consequences are unclear, while [others argue against](#) and [some for](#) the applicability of the NAT to such cases of “internal” attacks.

After briefly revisiting the relationship of the general law of treaties and the founding documents of international organisations, this post analyses the applicability of the NAT and, in particular, its Art. 5 to internal attacks. Concluding that Art. 5 NAT applies to such attacks, the post briefly examines the legal consequences such an attack would have, including for the membership (rights) of the US within NATO.

Founding Documents of International Organizations and the Law of Treaties

A brief preliminary note: The somewhat ambiguously worded Art. 5 of the [Vienna Convention on the Law of Treaties](#) (“VCLT”) indicates that the VCLT provides the general international law of treaties, whereas treaties establishing international organisations – like the NAT – generally provide the more specialised rules, which prevail in cases of conflict (see [Schmalenbach](#), commentary to Art. 5). The NAT, however, contains neither specific rules for its interpretation nor concerning the loss or suspension of membership rights. In keeping with the jurisprudence of the International Court of Justice ([Certain Expenses](#), p. 157; [Nuclear Weapons in Armed Conflict](#), para. 19), the following analysis will thus apply the customary international law on treaties, as largely codified in the VCLT, while still taking the peculiarities of the NAT into account.

Does Art. 5 NAT Apply to “Internal” Attacks?

A US attack on Greenland would uncontroversially violate the prohibition on the use of force enshrined in Art. 2(4) UN Charter and also incorporated in Art. 1 NAT. The more difficult question is whether also Art. 5 of the NAT applies, which famously provides that an attack on one organization member “shall be considered an attack against them all” and obliges all other states to support the victim of the attack. To examine its applicability to cases of internal attacks, let us interpret the Article in accordance with customary international law as codified in Art. 31 and 32 of the VCLT.

Nothing in the wording of Art. 5 of the NAT suggests that it is not applicable to attacks by one organization member. The default position should thus be that it applies to *all* attacks on one of the organization members, including those emanating from within the organization. (Granted, the consequence that the attack “shall be considered an attack against them all” leads to the illogical conclusion that the aggressor would simultaneously be regarded the victim of the armed attack, if taken literally; this would be a rather legalistic reason for excluding the applicability of Art. 5 to cases of internal attacks, however, and can potentially be solved by expelling the member in question, but more on that below.) This is further supported by systematic considerations: Art. 1 NAT translates the Charter prohibition on the use of force also for members of NATO, who must “refrain in their international relations from the threat or use of force”.

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The most natural reading of this Article is that the prohibition is re-emphasised specifically for NATO members amongst themselves; “their international relations” are or at least include their relations with each other. This is also in line with the organization’s object and purpose: The primary objective of NATO is to provide for the collective security of its member states. This is mainly achieved by deterring attacks on member states and by organizing a joint response to such attacks. Member states are just as much in need of collective security against an attack by one of the organization’s members and they are also just as worthy of protection. (If anything, such an internal attack is morally even more reprehensible than an attack from outside the organization, given that NATO members pledged to “unite their efforts for collective defence and for the preservation of peace and security” (NAT, preamble)). Moreover, also the legal consequence of Art. 5 NAT argue for its application to cases of internal attacks: Art. 5 NAT requires any other state to “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.” Essentially, what this requires other states to do is: something. Art. 5 NAT gives considerable discretion to the other organization members; while an attack is considered an attack on all of them, they are just as free as before to resort to armed force in collective self-defense pursuant to Art. 51 UN Charter. Finally, state practice, while sparse, also seems to suggest that the NAT would apply to cases of internal attacks (e.g. [here](#), [here](#) and [here](#)).

Consideration of the drafting history of the NAT neither confirms nor challenges the applicability of Art. 5 NAT to internal attacks. It is not clear whether member states, when they drafted the NAT, envisaged that a threat to collective security might emanate from within the organization; the question was at least not entirely absent from the drafting process, as there was discussion on the question of what would happen if a NATO member turned communist (see [Sari](#)). Moreover, one of the historical models of the NAT – the [Rio Treaty](#) of 1947 – does address the question of internal attacks explicitly in its Art. 7, which would have made this also an obvious consideration for the NAT. The absence of a corresponding provision in the NAT is thus striking, but may just as well be explained by different political dynamics at play in the negotiations of the Rio Treaty and the NAT – certainly, the biggest perceived threat emanated not from within, but from outside the organization, more specifically from the Soviet Union (see, e.g., [here](#)). Ultimately, the drafting history thus yields little for the interpretation of Art. 5 NAT.

The question of the applicability of Art. 5 NAT to cases of internal attacks would only be answered authoritatively by member states in case of such an attack. Until then, the better legal arguments support the view that Art. 5 NAT is applicable to internal attacks.

Consequences for US Membership (Rights) in NATO

Irrespective of the applicability of Art. 5 NAT to cases of internal attacks, the question remains how other states would react to a US attack on Greenland and what legal tools are at their disposal. The NAT does not contain rules regarding the suspension of membership rights or the expulsion of member states in the event of material breaches of the treaty. This differentiates the NATO from other international organizations, e.g., the Council of Europe (cf. Art. 8 of the [Statute of the Council of Europe](#)). Also, general international law provides for a possible suspension of multilateral treaties in response to material breaches, Art. 60 VCLT; in order to apply this general rule, we need to first ascertain that the silence of the NAT on this question is not a conscious choice against this general rule.

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As demonstrated by Sari, the question of a possible suspension of membership (rights) was discussed during the negotiations of the NAT, but ultimately member states could not agree on the inclusion of specific rules; the drafting history does, however, not suggest that this was because member states staunchly opposed the suspension of membership rights or the expulsion of recalcitrant members but rather because they wanted to demonstrate unity (Sari). Given that also the ICJ generally assumes that such a right of termination exists even where it is not expressly provided for (Namibia, para. 96), one should assume that this applies to the NAT as well.

Let us thus turn to the general and customary international law of treaties as codified in Art. 60 VCLT. According to Art. 60(2)(a) VCLT:

- “A material breach of a multilateral treaty by one of the parties entitles:*
(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:
(i) in the relations between themselves and the defaulting State; or
(ii) as between all the parties”.

By unanimous agreement of all other NATO members, the US membership (rights) could thus be suspended in whole or in part. Even if no unanimous agreement could be achieved, at least Denmark as the state specially affected by the breach could suspend its NAT relations with the US (Art. 60(2)(a) VCLT); given that the use of force against another organisation member constitutes a grave breach of Art. 1 of the NAT, the same would arguably be true for all other members (Art. 60(2)(b) and (c) VCLT). The measures thus taken could range from, e.g., a suspension of US voting rights in the North Atlantic Council, which was established by Art. 9 NAT, to the expulsion of the US from the NAT.

Conclusion

Already the US rhetoric against Greenland arguably qualifies as a threat of force and a violation of Art. 1 of the NAT. In any case, the actual use of force against Greenland would constitute a grave violation of Art. 1 of the NAT and would trigger its Art. 5. Notably, this would not oblige NATO members to use armed force in collective self-defense against the US, and this remains a highly unlikely consequence of this (still) hypothetical scenario; they would, however, have every right to do so, both pursuant to Art. 5 NAT and under Art. 51 UN Charter. Furthermore, because of the absence of specific rules within the NAT, the general rules of the law of treaties apply; accordingly, the US membership rights in NATO could be suspended, and it could be expelled from the organization following a decision by the other organization members.

Either way – legally or just politically – a US attack on Greenland would be the end of NATO as we know it.