

Alliance Without Mandate: Evaluating U.S. Jurisdiction Over NATO Burden Sharing

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ABSTRACT

This paper examines the legal dimensions of NATO burden sharing, focusing on the United States' ability to enforce defense spending commitments among member states. Although NATO's 2% GDP defense spending benchmark established in the 2014 Wales Summit is widely cited, it remains a nonbinding political pledge without formal enforcement mechanisms. The United States, as NATO's largest financial contributor, faces growing frustration over disproportionate funding responsibilities, especially as many member states consistently fall short of the agreed threshold. This study evaluates whether U.S. federal courts possess jurisdiction to adjudicate disputes over NATO funding obligations, analyzing key constitutional doctrines such as standing, justiciability, and the political question doctrine. Drawing on landmark cases including *Medellín v. Texas*, *Raines v. Byrd*, and *Zivotofsky v. Clinton*, the paper argues that absent congressional legislation or treaty modification, judicial review of NATO funding disparities remains limited. Ultimately, the paper recommends statutory reform to establish enforceable standards for equitable burden sharing, thereby strengthening alliance cohesion and fiscal accountability.

Keywords: NATO, Burden-sharing

Dedication

This article is dedicated first to my uncle, whose example as an attorney has long inspired my pursuit of the law. His integrity, discipline, and commitment to justice have shaped my understanding of what it means to serve the public through the legal profession. I also dedicate this work to my wife and children, whose prayers, encouragement, and unwavering belief in my calling sustained me throughout this journey. Their love has been both my anchor and my motivation. To the institutions that shaped my legal education, Liberty University School of Law, the Birmingham School of Law, and the James E Rogers College of Law, I offer my gratitude. Each school contributed uniquely to my intellectual formation and strengthened my commitment to the study and practice of law. Finally, this paper is dedicated to the evolving and essential field of Security Studies of NATO, whose strategic importance and complex legal dimensions continue to inspire rigorous scholarship. May this work contribute in some measure to the understanding and advancement of allied security and international cooperation.

List of Abbreviations

North Atlantic Treaty Organization (NATO)

European Union (EU)

Supreme Court of the United States (SCOTUS)

President of the United States (POTUS)

Gross National Income (GNI)

NATO Security Investment Program (NSIP)

Gross Domestic Product (GDP)

Gross National Product (GNP)

Union of Soviet Socialist Republic (USSR)

I. Introduction

The Roman statesman and lawyer Marcus Tullius Cicero once said, “The sinews of war are infinite money.¹” Since its inception in 1949, the North Atlantic Treaty Organization (NATO) has operated on the foundational principles of collective defense and mutual political commitment under the North Atlantic Treaty.² However, the treaty itself does not establish legally binding defense spending obligations to compliment the desire for mutual defense.² Over the years, the United States’ disproportionate contribution to NATO defense expenditures has sparked debate over the enforceability of political commitments, such as the 2014 Wales Pledge and the 2% GDP defense target.

The United States is the largest contributor to NATO’s defense budget, however, many NATO member states have not committed 2% of their GDP to defense spending.⁴ In 2024, ^{8⁵} of the 32 NATO member states paid less than 2% of their GDP in defense spending, which questions the overall enforceability of the 2% GDP requirement.⁶ The U.S. Ambassador to NATO Matthew Whitaker stated that NATO member states should begin paying their fair share with an increase to 5% of their GDP.⁷ This is a 3% increase from the agreed upon 2% GDP requirement. It is unclear if NATO member states can fund a 5% GDP spending requirement for defense, when 8 member states have failed to fund the 2% GDP requirement.

¹ Michael C. Thomsett and Jean Freestone Thomsett. *War and Conflict Quotations*. A Worldwide Dictionary of Pronouncements from Military Leaders, Politicians, Philosophers, Writers and Others 1 (2015).

² *Id.*

³ Michael C. Thomsett and Jean Freestone Thomsett. *War and Conflict Quotations*. A Worldwide Dictionary of Pronouncements from Military Leaders, Politicians, Philosophers, Writers, and Others 1 (2015).

⁴ World Population Review, *NATO Spending by Country*, Politics/Government (2025), <https://worldpopulationreview.com/country-rankings/nato-spending-by-country>

⁵ Canada 1.37%, Portugal – 1.55%, Italy – 1.49%, Belgium – 1.3%, Slovenia – 1.29%, Luxembourg – 1.29%, Spain – 1.28%, Iceland – 0% (no standing military).

⁶ World Population Review, *NATO Spending by Country*, Politics/Government (2025), <https://worldpopulationreview.com/country-rankings/nato-spending-by-country>.

⁷ Cullen S. Hendrix, *Trump’s Five Percent Doctrine and NATO Defense Spending*, Peterson Inst. for Int’l Econ. (Feb. 5, 2025), <https://www.piie.com/blogs/realtime-economics/2025/trumps-five-percent-doctrine-and-nato-defense-spending>.

NATO's defense spending requirement, urging member states to allocate 2% of their GDP, is a non-binding political commitment rather than a legally enforceable obligation⁸. Member nations, including the United States, retain discretion over compliance without facing formal penalties.⁹ NATO funding is not mandatory, member-states can choose whether to spend 2% of their GDP without penalty¹⁰. However, the legal enforceability of such provisions raises complex questions tied to separation of powers and judicial justiciability, particularly regarding whether domestic courts could or should adjudicate funding disputes. To address these challenges, this paper recommends adopting treaty modifications or enacting Congressional legislation to strengthen the legal framework and facilitate enforceable mechanisms for NATO funding compliance.

This paper looks at the legal aspects of NATO burden-sharing, focusing on whether the U.S. can use federal courts to ensure NATO burden sharing commitments are enforced. The three main legal issues are: (1) whether U.S. law allows for disputes over NATO funding to be heard in federal court; (2) who, if anyone, has the standing to challenge NATO funding in federal court; and (3) whether the political question doctrine stops courts from hearing NATO funding cases in federal court. This paper uses case law from *Medellín v. Texas* (2008), *Raines v. Byrd* (1997), and *Zivotofsky v. Clinton* (2012) to analyze NATO funding commitments. Although current NATO funding commitments, including the 2% GDP defense spending target, lack binding legal authority, limited opportunities for judicial review may emerge if Congress imposes enforceable funding conditions through legislation. Ultimately, addressing burden-

⁸ Wukki Kima and Todd Sandler. *NATO Security Burden Sharing, 1991–2020*, 35. Def. Peace Econ. 265, 265 (2024).

⁹ *Id.*

¹⁰ Wukki Kima and Todd Sandler. *NATO Security Burden Sharing, 1991–2020*, 35. Def. Peace Econ. 265, 265 (2024).

sharing disparities within the alliance will require statutory reform or treaty modifications to ensure uniform compliance among member states.

II. Background

NATO was founded in the wake of World War II as a safeguard against future global conflict, particularly in response to growing threats from Eastern Europe and Soviet military expansion.¹¹ As Western Europe embarked on a path of recovery, NATO offered both military protections primarily under the aegis of the United States and a unified political stance against Soviet aggression. Throughout the Cold War, NATO's central mission involved countering Soviet influence and maintaining a balance of power across Europe, with the United States playing a dominant role in shaping military expenditures and strategic initiatives.¹²

NATO was described as the most successful military alliance in modern history.¹³ NATO has 12 original member states and has since expanded to 32.¹⁴ NATO entered a major enlargement period between 1999 to 2023 when the number of member states increased from 16 to 32 with three additions in 1999 (Poland, Hungary, and Czech Republic) and another 7 other nations in 2004 (Slovenia, Slovakia, Romania, Lithuania, Latvia, Estonia, and Bulgaria) including.¹⁵ Croatia and Albania were accepted into NATO in 2009, in addition to Montenegro, North Macedonia, and Finland joining in 2017, 2020, and 2023, respectively.¹⁶ Sweden officially

¹¹ *Id.*

¹² Vergun, D. (2025, June 25). *NATO Leaders Pledge to Increase Defense Spending*. U.S. Department of Defense. <https://www.defense.gov/News/News-Stories/Article/Article/4226009/nato-leaders-pledge-to-increase-defense-spending/>

¹³ Wukki Kima and Todd Sandler. *NATO Security Burden Sharing, 1991–2020*, 35. Def. Peace Econ. 265, 265 (2024).

¹⁴ *Id.* at 265.

¹⁵ Wukki Kima and Todd Sandler. *NATO Security Burden Sharing, 1991–2020*, 35. Def. Peace Econ. 265, 265 (2024).

¹⁶ *Id* at 265.

became NATO's 32nd member state in 2024.¹⁷ Consequently, numerous European nations recognize that NATO membership offers a strategic shield of collective security and defense coordination.¹⁸

NATO's foundational objective was to establish a collective security framework that assured protection for member states against aggression, particularly from external powers like the Soviet Union.¹⁹ Recognized at the time as an emerging superpower with expansionist aims, the Soviet Union posed a significant threat to western Europe. In response, the signing of the Washington Treaty on April 4, 1949, formally launched NATO, setting the groundwork for coordinated military defense and cooperation among its members. Central to this alliance was Article 5, which enshrined the principle that an armed attack against one member would be considered an attack against all.²⁰

With the dissolution of the Soviet Union in 1991, NATO's strategic focus evolved from deterring a single dominant adversary to addressing a spectrum of emerging global threats. NATO's allowance of former Soviet nations into NATO further aggravated Russia and increased security concerns for the alliance, culminating in conflict between Russia and Ukraine in 2022.²¹ NATO Secretary General Mark Rutte pledged 43 billion dollars to Ukraine in 2023, however, many questions remain unanswered, such as how will NATO fund its financial pledge to Ukraine, when some member states are failing to pay their required 2% GDP.²²

¹⁷ Adnan Seyaz, *Change and Continuity in North European Security: Finland and Sweden's Membership in NATO*, Marmara Univ. J. Polit. Sci. 129, 137 (2024), <https://dergipark.org.tr/tr/download/article-file/3704983>.

¹⁸ The North Atlantic Treaty. art. 5, https://www.nato.int/cps/en/natohq/official_texts_17120.htm

¹⁹ *Id.*

²⁰ Athina Economou and Christos Kollias, *In NATO We Trust: The Russian Invasion of Ukraine and EU27 Citizens' Trust in NATO*, 29 Peace Economics, Peace Science and Public Policy 129 (2023).

²¹ NATO, What We Do, Funding NATO (last visited June 14, 2025),

https://www.nato.int/cps/en/natohq/topics_67655.htm.

²² *Id.*

NATO's financial structure is complicated and split into direct and indirect contributions. Direct funding is the money that NATO's headquarters manages in centralized budgets. This money goes towards things such as infrastructure projects, command structures, administrative costs, and collective operations. The civil budget pays for administrative costs, the military budget pays for the Integrated Command Structure and military operations, and the NATO Security Investment Program (NSIP) pays for big infrastructure projects like airfields, fuel pipelines, and communication systems. The North Atlantic Council must approve the cost-sharing formula for contributions to these budgets each year. The formula is based on each member's Gross National Income (GNI).²³

Indirect funding makes up the majority of NATO's budget. Each member state's national defense spending, which pays for their military forces, procurement programs, training, and defense research, is included in this category. The Treaty does not officially cover these costs, but they are politically guided by what the alliance expects, such as the benchmark set by the 2014 Wales Summit Declaration, where each member pledges to spend at least 2% of their GDP on defense spending.²⁴

NATO's Funding Scheme

NATO “funding is enforced through a combination of agreed financial commitments and political pressure among member states.²⁵” A cost-sharing formula agreed by the members and based on National Gross Income (NGI) is what determines the funding shares of member

²³ NATO, Funding NATO, https://www.nato.int/cps/en/natohq/topics_67655.htm.

²⁴ NATO, Wales Summit Declaration, Sept. 5, 2014, https://www.nato.int/cps/en/natohq/official_texts_112964.htm.

²⁵ NATO, *What We Do*, Funding NATO (last visited June 14, 2025), https://www.nato.int/cps/en/natohq/topics_67655.htm.

states.²⁶ Other sources confirm GNP as central to the cost-share formula.²⁷ More specifically, there is NATO Security Investment Program (NSIP), which applies to the resources required for the administration and construction of strategically essential military installations, such as pipelines.²⁸ The budget ceiling established in 2017, stands at €655 million. Amounting to €193 million, the civil budget approved by the NATO Council funds the operating and personnel costs of NATO headquarters.²⁹

The military budget estimated at €1.3 billion in 2017, covers the maintenance and operation of Supreme Headquarters Allied Powers in Europe (SHAPE), which is the military headquarters.³⁰ In addition to primary allocations, funding extends to approximately 50 supplementary institutions such as the standardization office and the defense college, which underscores the alliance's commitment to comprehensive operational and strategic support.³¹ Budgetary estimates fluctuate yearly, driven by inflation and evolving geopolitical dynamics that influence member contributions. According to NATO disclosures, the projected budget for 2025 amounts to €4.6 billion.³²

A further by-country breakdown of the NGI for the operational period of 2018-2019 shows that the US covers 22.13% of costs.³³ Smaller shares of 14.76%, 10.49%, 10.45%, and

²⁶ Ian Davis, *NATO's Direct Funding Arrangements: Who Decides and Who Pays?* SIPRI (June 7, 2024, 15:32 PM), <https://www.sipri.org/commentary/topical-backgrounder/2024/natos-direct-funding-arrangements-who-decides-and-who-pays>.

²⁷ *Id.*

²⁸ Ian Davis, *NATO's Direct Funding Arrangements: Who Decides and Who Pays?* SIPRI (June 7, 2024, 15:35 PM), <https://www.sipri.org/commentary/topical-backgrounder/2024/natos-direct-funding-arrangements-who-decides-and-who-pays>.

²⁹ *Id.*

³⁰ Ian Davis, *NATO's Direct Funding Arrangements: Who Decides and Who Pays?* SIPRI (June 7, 2024, 15:38 PM), <https://www.sipri.org/commentary/topical-backgrounder/2024/natos-direct-funding-arrangements-who-decides-and-who-pays>.

³¹ *Id.*

³² NATO, *Funding NATO*, NATO (June 26, 2025, 16:18 PM), https://www.nato.int/cps/en/natohq/topics_67655.htm

³³ Ian Davis, *NATO's Direct Funding Arrangements: Who Decides and Who Pays?* SIPRI (June 7, 2024, 15:39 PM), <https://www.sipri.org/commentary/topical-backgrounder/2024/natos-direct-funding-arrangements-who-decides-and-who-pays>.

8.14% were the responsibility of Germany, France, the UK, and Italy, respectively.³⁴ Canada, Spain, the Netherlands, Poland, and Belgium accounted for 6.37%, 5.55%, 3.19%, 2.76%, and 1.95%, respectively.³⁵ A further comparative analysis shows that 4 greatest European states fill 43% of the collective budget, with the US the biggest contributor.³⁶ While the 10 biggest funders meet 85.79% of budgetary needs, 19 members cover only 15%.³⁷

NATO's Funding Pledge

The 2014 Wales Pledge was a written commitment, issued as part of the Wales Summit Declaration on September 5, 2014, by all North Atlantic Treaty Organization (NATO) member-states to contribute 2% of their GDP towards the NATO budget³⁸. This was important because many NATO member-states had declining military budgets³⁹. Despite the pledge to allocate at least 2% of their GDP to defense spending, many member-states failed to meet this threshold, placing undue strain on other member states. The 2014 Wales Pledge did not include formal enforcement mechanisms, which means there were no legally binding penalties for non-compliance with the 2% GDP requirement.⁴⁰ As such, NATO must rely on peer pressure and public debate to ensure compliance.⁴¹

The US Ambassador to NATO recommended a standard of 5% GDP military spending for NATO members. The 5% spending formula contains three expenditures, such as 1.5%

³⁴ *Id.*

³⁵ Ian Davis, *NATO's Direct Funding Arrangements: Who Decides and Who Pays?* SIPRI (June 7, 2024, 15:39 PM), <https://www.sipri.org/commentary/topical-backgrounder/2024/natos-direct-funding-arrangements-who-decides-and-who-pays>.

³⁶ *Id.*

³⁷ Ian Davis, *NATO's Direct Funding Arrangements: Who Decides and Who Pays?* SIPRI (June 7, 2024, 15:39 PM), <https://www.sipri.org/commentary/topical-backgrounder/2024/natos-direct-funding-arrangements-who-decides-and-who-pays>.

³⁸ NATO, *Wales Summit Declaration*, NATO Heads of State and Government Press Release (Sept. 5, 2014) https://www.nato.int/cps/en/natohq/official_texts.

³⁹ *Id.*

⁴⁰ NATO, *Wales Summit Declaration*, NATO Heads of State and Government Press Release (Sept. 5, 2014) https://www.nato.int/cps/en/natohq/official_texts.

⁴¹ *Id.*

allocated to defense-associated items, such as cybersecurity and critical infrastructure measures, while 3.5% goes to defense.⁴² NATOs funding has fluctuated throughout the years, starting in 1960, when NATO funding was at 6% of GDP.⁴³ In 970, NATO funding fell below 6%.⁴⁴ Between 1980 to 1990, NATO funding dropped below 5% and continued to decline to less than 2.5% in 2000.⁴⁵ Funding continued to decline for NATO until it reached of 2.5% in 2020.⁴⁶ Spain spends 1.28% of its gross domestic product on its defense, unlike 4.12% spent by Poland,⁴⁷ a weaker economy with a GDP of 809 \$billion, which is half as big as Spain's, which can cause frustration in member states.⁴⁸

The failure of certain NATO member states to meet defense spending benchmarks despite having the economic capacity to do so partly explains why Senator Dan Sullivan led a bipartisan coalition of 35 senators in urging President Biden, via a 2023 letter, to enforce the 2% GDP defense spending threshold originally established in 2006. Their appeal reflects a persistent congressional commitment to equitable burden-sharing within the alliance.⁴⁹ Notably, Spain's relatively low contribution, at 1.28% of GDP as of 2024, may stem from a perceived insulation

⁴² Kristen Taylor and Zak Schneider, *NATO Defense Spending Tracker*, Atlantic Council (2025), <https://www.atlanticcouncil.org/commentary/trackers-and-data-visualizations/nato-defense-spending-tracker/#:~:text=Heads%20of%20state%20and%20government%20of%20NATO,as%20critical%20infrastructure%2C%20cybersecurity%2C%20and%20resilience%20measures>.

⁴³ David Vergun, *NATO Leaders Pledge to Increase Defense Spending*, US Department of Defense (June 25, 2025), <https://www.defense.gov/News/News-Stories/Article/4226009/nato-leaders-pledge-to-increase-defense-spending/>

⁴⁴ Carl Tannenbaum, *NATO by the Numbers*, Northern Trust (March 15, 2024, 10:04 PM), <https://www.northerntrust.com/canada/insights-research/2024/weekly-economic-commentary/nato-by-the-numbers>.

⁴⁵ *Id.*

⁴⁶ Carl Tannenbaum, *NATO by the Numbers*, Northern Trust (March 15, 2024, 10:04 PM), <https://www.northerntrust.com/canada/insights-research/2024/weekly-economic-commentary/nato-by-the-numbers>.

⁴⁷ Kristen Taylor and Zak Schneider, *NATO Defense Spending Tracker*, Atlantic Council (2025), <https://www.atlanticcouncil.org/commentary/trackers-and-data-visualizations/nato-defense-spending-tracker/#:~:text=Heads%20of%20state%20and%20government%20of%20NATO>.

⁴⁸ WorldData.info, *Country Comparison*, WorldData.info (2025), <https://www.worlddata.info/country-comparison.php?country1=ESP&country2=ITA>.

⁴⁹ Dan Sullivan, *Ahead of NATO Summit, Sullivan Leads 35 Senate Colleagues in Urging Biden to Ensure NATO Countries Meet Defense Spending Commitments*, Press Releases (July 7, 2023, 07:56 PM), <https://www.sullivan.senate.gov/newsroom/press-releases/ahead-of-nato-summit-sullivan-leads-35-senate-colleagues-in-urging-biden-to-ensure-nato-countries-meet-defense-spending-commitments>.

from immediate regional threats.⁵⁰ Spain has consistently fallen short of NATO's defense spending benchmark of 2% of GDP, contributing only 1.28%. In contrast, nations like Poland exceed the target, allocating 4.12%. The United States, bearing the largest share, has repeatedly expressed concern over the disproportionate burden among NATO members. This enduring imbalance underscores the tension between NATO's strategic ambitions and the practical viability of its financial expectations.

I. Analysis

The North Atlantic Treaty, signed on April 4, 1949, consists of 14 articles that form the legal foundation of NATO's authority⁵¹. Article 11 states:

This Treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes. The instruments of ratification shall be deposited as soon as possible with the Government of the United States of America, which will notify all the other signatories of each deposit. The Treaty shall enter into force between the States which have ratified it as soon as the ratifications of the majority of the signatories, including the ratifications of Belgium, Canada, France, Luxembourg, the Netherlands, the United Kingdom and the United States, have been deposited and shall come into effect with respect to other States on the date of the deposit of their ratifications⁵².

Article 11 of the North Atlantic Treaty, states that "This Treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes."⁵³ Based on Article 11, NATO has no independent enforceability within itself.⁵⁴ As such, member states must ratify each treaty domestically and any issue in funding must be litigated based on the domestic law of the respective nation.⁵⁵ Article 3 of the North Atlantic

⁵⁰ *Id.*

⁵¹ North Atlantic Treaty, Apr. 4, 1949, T.I.A.S. No. 1964, 34 U.N.T.S. 243, available at https://www.nato.int/nato_static_fl2014/assets/pdf/.

⁵² *Id* at 2.

⁵³ NATO, *North Atlantic Treaty*, art. 11, Apr. 4, 1949, T.I.A.S. No. 1964, 34 U.N.T.S. 243.

⁵⁴ *Id.*

⁵⁵ NATO, *North Atlantic Treaty*, Apr. 4, 1949, T.I.A.S. No. 1964, 34 U.N.T.S. 243, available at https://www.nato.int/nato_static_fl2014/assets/pdf/.

Treaty, states that “In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.^{56”} Article 3 implies the funding aspect of the Treaty, suggesting that the parties to the Treaty are expected to have the “means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.⁵⁷ This clause does not explicitly mention funding or an obligation to comply with NATO funding quotas.

NATO has consistently labeled the 2% GDP requirement agreed upon by all member states at the 2014 Wales Summit, as a target rather than a requirement or law.⁵⁸ This specific wording renders the 2% GDP requirement legally unenforceable. This creates a problem because nations such as the USA and UK consistently pay more than 2% of GDP.⁵⁹ NATO has yet to introduce statutory mandates enforceable by courts that would remove the voluntary language from spending targets. In turn, NATO continues to use political pressure to enforce its funding mandates. Political pressure remains ineffective in the long run as member states tend to spend less on defense of their geographic location and proximity to conflict. In 2024, Spain, Canada, and Italy spent less than 1.5% of their GDP on spending.⁶⁰ Spain, Canada, and Italy are countries without significant external military threats, which may contribute to their lower probability of allocating 2% of their GDP to military expenditures.⁶¹ Additionally, political efforts have not resulted in these nations meeting the 2% GDP target.

⁵⁶ *Id.*

⁵⁷ NATO, *The North Atlantic Treaty art. 3, Official Texts* (Oct 19, 2023, 18:02 PM)
https://www.nato.int/cps/en/natohq/official_texts_17120.htm

⁵⁸ NATO, *Defence Expenditures and NATO’s 2% Guideline*, NATO (June 27, 2025, 10:09 PM),
https://www.nato.int/cps/en/natohq/topics_49198.htm

⁵⁹ *Id.*

⁶⁰ NATO, *What We Do, Funding NATO* (June 14, 2025), https://www.nato.int/cps/en/natohq/topics_67655.htm.

⁶¹ *Id.*

Implementing cost-sharing formulas with defined requirements will make NATO funding legally enforceable and apply consequences for non-compliance. Whether a foreign nation has standing in U.S. courts to enforce NATO funding is unlikely. The central issue regarding the enforceability of NATO funding commitments in U.S. courts concerns whether such cases meet the criteria established by Article III of the U.S. Constitution, which limits federal courts to adjudicating cases and controversies.⁶² Doctrines such as standing, ripeness, mootness, and the political question doctrine define the scope of judicial authority.

Justiciable Question

The Supreme Court of the United States explained in *Baker v. Carr* (1962), when a question is justiciable.⁶³ A question is justiciable when it solves a legal question and not a political question.⁶⁴ Although, political questions are not beyond judicial review, some questions are nonjusticiable, because it falls under the plenary power of another branch of government.⁶⁵ In the case of *Baker v. Carr* (1962), Justice Brennan detailed a six-part test to determine if a question is justiciable under the political question doctrine:

- (1) A textually demonstrable constitutional commitment of the issue to a coordinate political department; or
- (2) A lack of judicially discoverable and manageable standards for resolving it; or
- (3) The impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or
- (4) The impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or
- (5) An unusual need for unquestioning adherence to a political decision already made; or
- (6) The potential of embarrassment from multifarious pronouncements by various departments on one question.

⁶² U.S. Const. art. III, § 2.

⁶³ *Baker v. Carr*, 369 U.S. 186 (1962).

⁶⁴ *Id.*

⁶⁵ *Gibbons v. Ogden*, 22 U.S. 1 (1824).

Political Question Doctrine

The court explained in *Baker v. Carr* (1962), that a “textually demonstrable constitutional commitment of the issue to a coordinate political department, means that responsibility of answering the question belongs to another branch of the federal government and not the court. This political question doctrine assists courts in determining when an issue falls outside the scope of the court. When the Constitution explicitly delegates authority over foreign affairs and the termination of treaties to the executive branch, the judiciary will decline to review those cases. This upholds the separation of powers by ensuring that courts do not overreach into matters exclusively held for the executive branch.

Article II, Section 2, Clause 2, of the U.S. Constitution states, “He (President) shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur...⁶⁶” The Constitution gives the executive branch the power to make treaties with the advice and consent of the Senate. In *United States v. Curtiss-Wright Export Corp.* (1936), the Supreme Court recognized that the President possesses “broad, independent authority in matters of foreign affairs, describing the executive as the sole organ of international relations.⁶⁷” This plenary power makes it difficult for plaintiffs to challenge executive decisions related to treaty implementation in court. As a result, disputes over treaty enforcement, such as NATO funding obligations, will often fall outside the scope of judicial review unless Congress clearly legislates enforceable standards that courts can apply.

In *Goldwater v. Carter* (1979), President Carter unilaterally terminated the Sino-American Mutual Defense Treaty with Taiwan to normalize relations with China.⁶⁸ The issue

⁶⁶ U.S. Const. art. II, § 2, cl. 2.

⁶⁷ *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

⁶⁸ *Id.*

before the court was whether the President had the constitutional authority to terminate a treaty without the consent of the Senate or Congress.⁶⁹ The argument from Senator Barry Goldwater was that if senate approval was required for a treaty to be ratified, then senate approval is required to terminate a treaty.⁷⁰ The Supreme Court declined to rule on the merits of the case, however ruled that the question was non-justiciable.⁷¹ The court found that the Constitution doesn't explicitly assign treaty termination to any branch of government, which allows termination of the treaty to remain in the president's Treaty Clause authority. Justice Powell wrote a concurring opinion citing that although the court did not rule on the merits of the case, the court could have ruled on the case if it was ripe, however, "Congress had not formally opposed the termination of the treaty with legislation, which would have made the question justiciable."⁷²

Congress's Appropriation Powers

While courts have traditionally declined to adjudicate foreign funding disputes under the political question doctrine, a narrow route to justiciability can occur, if Congress enacts specific legislation for NATO funding. Judicial review can address whether the executive is violating a legal duty, rather than assessing political decisions. Courts are more likely to act when there is a clear standard for reviewing executive actions, such as compliance with specific statutory mandates such as funding of NATO, without overstepping into the President's foreign policy authority.

In case of *United States v. Texas* (2023), the Court reaffirmed that institutional plaintiffs are well positioned to assert standing when a branch of government usurps their constitutionally

⁶⁹ *Goldwater v. Carter*, 444 U.S. 996 (1979).

⁷⁰ *Id.*

⁷¹ *Goldwater v. Carter*, 444 U.S. 996 (1979).

⁷² *Id.*

assigned authority.⁷³ The ruling clarified that when the executive branch adopts policies that effectively nullify or bypass statutory mandates enacted by Congress, affected institutions may have standing to challenge such actions. This reinforces the judiciary's role in preserving constitutional boundaries and ensures that no branch operates without checks and balances. As such, Congress may condition Department of Defense funds on meeting NATO burden-sharing requirements. If the Executive branch redirects funds, Congress can argue its tax and spending authority has been violated.

In the case of *Zivotofsky v. Clinton* (2102), the Supreme Court explained that not all foreign affairs questions are political questions.⁷⁴ Chief Justice Roberts explained that courts can decide whether a statute is constitutional, even if it implicates foreign policy.⁷⁵ The political question doctrine, does not always stop courts from reviewing cases that have to do with foreign policy. The Supreme Court said that the idea that all issues related to foreign affairs are automatically nonjusticiable is not true.⁷⁶ The facts of the case required the State Department to put "Israel" as the country of birth on the passports of U.S. citizens who were born in Jerusalem if the passport holder asked for it.⁷⁷ The Court said that the case was not a political question but a straightforward issue of statutory interpretation, even though it involved sensitive issues of foreign affairs. This means that issues involving foreign affairs and treaties can fall within the court's jurisdiction.⁷⁸

⁷³ *United States v. Texas*, 599 U.S. 1 (2023).

⁷⁴ *Zivotofsky et ux. v. Clinton*, 566 U.S. 189 (2012).

⁷⁵ *Id.*

⁷⁶ *Zivotofsky et ux. v. Clinton*, 566 U.S. 189 (2012).

⁷⁷ *Id.*

⁷⁸ *Zivotofsky v. Clinton*, 566 U.S. 189 (2012).

Congressional Standing

Although the Supreme Court ruled in *Goldwater v. Carter* (1979), that the question of the president's ability to terminate a treaty is non-justiciable, the court has not ruled on whether the funding of a treaty is non-justiciable. Article I, Section 8, Clause 1 of the U.S. Constitution gives Congress the power “To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.⁷⁹” Under Congress’s taxing and spending clause, the 2% GDP defense funding requirement of NATO, can be a justiciable question if a disagreement arises between the executive and legislative branches on funding or implementation.

The proper jurisdiction for a NATO funding dispute between the executive branch and Congress is within federal district courts. In the case of *Goldwater v. Carter* (1979), the Supreme Court explained that “Congress could have standing in treaty disputes, only if Congress passed legislation countering the president’s attempt to defund the treaty.⁸⁰” For the court to exercise jurisdiction over NATO funding, Congress should explicitly tie NATO funds to a legislative mandate. If the executive branch violates the funding requirement of that mandate, then the question becomes justiciable for federal courts to intervene. Unless these circumstances occur, federal district courts will not review the case.

Congress can only sue the executive branch under limited circumstances. U.S. courts tend to dismiss cases that are based on diplomatic relations, national security, or foreign aid.⁸¹ Nevertheless, Congress can meet standing requirements if the injury in question comes from a cognizable legal question tied to appropriations violations, rather than a disagreement of policy.⁸²

⁷⁹ U.S. Const. art. I, § 8, cl. 1.

⁸⁰ *Goldwater v. Carter*, 444 U.S. 996 (1979).

⁸¹ *Oetjen v. Central Leather Co.*, 246 U.S. 297 (1918).

⁸² *U.S. House of Representatives v. Azar* (2015).

In the case of *U.S. House of Representatives v. Azar* (2015), Congress sued the U.S. Secretary of Health and Human Services (HHS) Michael Azar II, in U.S. District Court for the District of Columbia (D.D.C.) because the executive branch spent money on “cost-sharing reduction payments under the Affordable Care Act (ACA) without a congressional appropriation.⁸³ This allowed Congress to establish standing to sue the executive branch, because the Secretary of HHS spent federal funds without Congressional authorization.⁸⁴ Congress possesses the authority to initiate legal action against the executive branch to allocate funds that have been earmarked for NATO-related expenditures.

In the case of *Medellín v. Texas* (2008), the court determined that treaties are not enforceable in the United States unless it is self-executing and Congress implements legislation.⁸⁵ The facts of the case involved a Mexican national named Medellin who was convicted of murder in Texas, however argued that his rights were violated because he wasn’t informed that he could contact the Mexican Consulate for support during his trial. Chief Justice Roberts opined that “While the President may negotiate treaties, he cannot unilaterally make them enforceable in domestic courts.⁸⁶” In order to make NATO funding enforceable in domestic courts, Congress needs to pass legislation making NATO funding domestically enforceable.

The Court’s decision in *Medellín* underscores the principle that international obligations, arising from binding treaties, do not automatically create enforceable rights in domestic courts without domestic legislation. This has implications for the separation of powers due to the role of the Senate in implementing international treaties. In the context of NATO funding, even if the United States agrees to financial obligations under NATO treaty provisions, those commitments

⁸³ *United States House of Representatives v. Azar*, No. 16-5202 (D.C. Cir. 2018).

⁸⁴ *Id.*

⁸⁵ *Medellín v. Texas*, 552 U.S. 491 (2008).

⁸⁶ *Id.*

must be codified through domestic legislation by Congress, before it can be judicially enforced. This guarantees that treaty obligations are subject to legislative oversight and enforced in domestic courts.

The goal of spending 2% of GDP on defense, which has been repeated at NATO summits, is a political promise and not a legal requirement. Any NATO member can propose an amendment, which is then presented for consideration by all members.⁸⁷ NATO operates by consensus, which means all member states must agree to the proposed amendment before it can become effective.⁸⁸ Consensus “means that there is no voting at NATO, decisions are made when all members agree.⁸⁹” Under Article 11 of the treaty, each member state is required to domestically approve any amendments through its nation’s ratification process.⁹⁰ In the US this requires a two-thirds vote by the U.S. Senate.⁹¹ Once the treaty is ratified domestically, each NATO member deposits its “instrument of ratification with the United States, which serves as the treaty’s depositary.⁹²”

Solutions for NATO Funding

The first solution to making NATO funding justiciable in federal court is for Congress to pass legislation appropriating money to NATO, which will trigger standing for Congress to sue the executive branch if the funding is not allocated as legislated. This should be duplicated in each NATO member state to ensure domestic enforceability within each jurisdiction. By codifying funding, it mandates executive accountability and ensures the NATO 2% GDP funding

⁸⁷ NATO, *Consensus Decision-Making at NATO*, North Atlantic Treaty Organization (June 30, 2023), https://www.nato.int/cps/en/natohq/topics_49178.htm

⁸⁸ *Id.*

⁸⁹ NATO, *Consensus Decision-Making at NATO*, North Atlantic Treaty Organization (June 30, 2023), https://www.nato.int/cps/en/natohq/topics_49178.htm.

⁹⁰ *Id.*

⁹¹ U.S. Const. art. II, § 2, cl. 2.

⁹² U.S. Department of State, *Treaties for Which the United States is Depositary*, Office of Treaty Affairs (June 30, 2023), <https://www.state.gov/treaties-for-which-the-united-states-is-depositary>.

pledge is enforceable in each court domestically. Codifying NATO funding will ensure that the President's plenary power in making treaties is not triggered. This will make NATO funding subject to judicial review without infringing on separation of powers. Moreover, this approach will ensure the defensibility of NATO by preserving the integrity of treaty obligations.

The second solution to making NATO funding justiciable in federal court is for Congress to pass legislation appropriating money to NATO, which will trigger standing for Congress to sue the executive branch if the funding isn't allocated as legislated. This same model should be followed in each NATO member state to ensure domestic enforceability within each jurisdiction. By codifying funding, it mandates executive accountability and ensures the NATO 2% GDP funding pledge is enforceable in court. This will also ensure that separation of powers is not triggered due to the President's plenary authority in making treaties and within foreign affairs. This will make NATO funding subject to judicial review without infringing upon constitutional separations of power. Moreover, this approach will ensure the defensibility of NATO by preserving the integrity of treaty obligations with domestic law. The U.S. Department of State serves as the depository for NATO treaties, meaning all ratified instruments must be formally submitted there before a treaty change takes effect.

The third solution to making NATO funding justiciable in federal court is to amend the treaty to add an article that codifies a mandatory funding scheme that all member states can agree to in consensus. NATO voting requires unanimous consent, which means every member state must agree on any amendment made to the treaty. After unanimous consent, member states will have to return the amended treaty to their domestic legislatures for ratification. The United States requires a two-thirds vote in the Senate for a treaty to be ratified. In France, treaty ratification requires votes from both chambers of Parliament to become effective. As such, treaty

amendments and domestic ratification serve as one of the most effective ways to codify NATO funding.

In addition to ratification, successful implementation of NATO treaty amendments requires robust enforcement mechanisms, and oversight committees. This could include the establishment of a NATO Funding Committee tasked with monitoring members' contributions, issuing compliance reports, and recommending corrective actions. NATO could operate in tandem with domestic legislative audits, ensuring transparency and accountability across jurisdictions. In the U.S., Congress could mandate annual reporting on treaty-based defense expenditures, linking appropriations to compliance reports. These safeguards will reinforce the legal enforceability of NATO funding obligations and foster trust among member states, thereby strengthening the alliance.

The fourth solution to making NATO funding justiciable in federal court is for the executive branch to sign a self-executing treaty for NATO funding. The difference between the self-executing and non-self-executing treaties is essential in establishing the ability to enforce the financial responsibilities upon the signing of NATO directly in the American courts. A self-executing treaty, by definition, comes into effect when ratified without any further legislative action. In contrast, a non-self-executing treaty requires further action to be executed.

To render U.S. defense funding obligations to NATO legally enforceable, the NATO treaty would require amendment to transform the aspirational 2% GDP defense spending guideline into a binding legal provision. If such an amendment explicitly articulates concrete and actionable financial commitments, it may qualify as a self-executing treaty immediately effective upon ratification without necessitating further Congressional legislation. In this case, the

judiciary could exercise review authority to ensure compliance with the treaty's financial stipulations, thereby converting a moral obligation into a justiciable legal requirement.

Alternatively, in the absence of a self-executing treaty, Congress retains the ability to codify NATO defense funding obligations into binding domestic law. By enacting legislation that specifically authorizes and mandates U.S. financial contributions to NATO's defense efforts, Congress can establish a statutory framework for internal enforcement. Such legislation would enable judicial review in cases where the Executive Branch fails to comply, reinforcing U.S. commitment to its NATO obligations and pressuring allied member states to adhere more equitably to their own financial responsibilities.

VI. Conclusion

To further explore the potential implications of NATO treaty amendments on burden sharing and jurisdictional implications in US Courts, it is essential to examine the potential benefits and challenges of such reforms. NATO defense funding has policy-based guidelines rather than enforceable legal obligations.⁹³ If NATO members seek treaty amendments to establish defense funding commitments that are legally enforceable, these provisions would be subject to domestic legal processes. In the United States, Article VI of the Constitution affirms that ratified treaties constitute the "supreme law of the land," obligating all courts to uphold the treaties.⁹⁴ Treaty revisions remain one of the most viable paths to making NATO funding legally enforceable, because it bypasses the litigation which is which is inconsistent with NATO's diplomatic culture of consensus voting. Member states typically avoid judicial confrontation, recognizing that the alliance's strength lies in unity, and adversarial proceedings could

⁹³ NATO, *Consensus Decision-Making at NATO*, North Atlantic Treaty Organization (June 30, 2023), https://www.nato.int/cps/en/natohq/topics_49178.htm.

⁹⁴ U.S. Const. art. 6.

undermine strategic cohesion.” As such, there should be a consensus among NATO member states as to how they will enforce no compliance with burden sharing commitments

While treaty amendments could transform NATO funding into a legally enforceable obligation, NATO obligations must also navigate the constitutional constraints of domestic implementation. As clarified in *Medellín v. Texas*, even binding international agreements require congressional legislation to be judicially enforceable in the United States.⁹⁵ This means that any NATO treaty amendment establishing mandatory funding would not automatically confer rights or obligations in U.S. courts unless Congress passes corresponding statutes.⁹⁶ This reflects the balance between honoring alliance commitments and preserving constitutional safeguards.

Congressional enactment of statutory spending tied to NATO treaty obligations and supported by legislative oversight will render NATO defense funding subject to judicial review. Absent such legal frameworks, disputes over NATO funding remain outside the purview of courts and are instead resolved through diplomatic channels and political bargaining. Amending the NATO Treaty to include enforceable mechanisms would enhance compliance accountability, enabling punitive measures against non-adherent members. These reforms will bolster equitable burden-sharing by reinforcing NATO’s funding obligations.

Congressional enactment of statutory spending connected to NATO treaty obligations, combined with legislative oversight, would subject NATO defense funding to judicial review. Without such legal frameworks, disagreements over NATO funding remain outside the jurisdiction of courts and are typically addressed through diplomatic methods and political negotiation. Amending the NATO Treaty to include enforceable mechanisms will introduce compliance accountability and permits measures against members that do not adhere to the

⁹⁵ *Medellín v. Texas*, 552 U.S. 491 (2008).

⁹⁶ *Id.*

commitments. Amending the NATO Treaty for enforceable compliance mechanisms would allow punitive measures for non-compliance and promote fairer burden-sharing among members.

In conclusion, amending the NATO Treaty to include enforceable mechanisms for defense funding commitments could significantly enhance burden sharing and accountability within the alliance. However, such reforms would require careful consideration of the potential benefits and challenges, as well as the complex interplay between international law, domestic politics, and alliance dynamics. By exploring these issues in more depth, policymakers and scholars can better understand the implications of treaty reform and work towards a more effective and equitable NATO.