

SECURITY GUARANTEES FOR UKRAINE

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EXECUTIVE SUMMARY

This memorandum addresses the framework, structure, and potential wording of security guarantees to be given to Ukraine that would supplement Ukraine's military capabilities in deterring any further acts of aggression by Russia. The paper begins with a historical analysis of Ukraine's post-USSR security guarantees and then provides a broader review of bilateral and multilateral security guarantees involving other states, notably the US, the EU, and the North Atlantic Treaty Organization (the "NATO") states. The paper further draws on those examples to provide the possible models of bilateral and multilateral security guarantees that could be sought by Ukraine in connection with any negotiated peace with Russia.

This paper begins with a brief overview of Ukraine's security concerns following the dissolution of the Union of Soviet Socialist Republics ("USSR" or the "Soviet Union") and Ukraine's decision to relinquish its nuclear arsenal under the Treaty on the Non-Proliferation of Nuclear Weapons ("Nuclear Weapons Treaty"), to which Ukraine acceded upon receiving security assurances. It explains that the Memorandum on security assurances in connection with Ukraine's accession to the Nuclear Weapons Treaty (the "Budapest Memorandum"), signed by Ukraine, Russia, the US, and the UK shortly after Ukraine's ratification of the Nuclear Weapons Treaty, provided only high-level, ambiguous and non-legally binding assurances of joint consultations within the framework of the United Nations (the "UN") Security Council in the event of Ukraine's invasion. These provisions proved ineffectual following Russia's violations of Ukraine's territorial integrity in 2014 and 2022.

Following the failure of the Budapest Memorandum, Ukraine began developing its own vision of enforceable security guarantees. In 2022, Ukraine proposed a policy document called "Kyiv Security Compact", outlining Ukraine's current view regarding the format and content of such guarantees. In parallel, Ukraine negotiated a number of multilateral and bilateral security agreements with several partner states. While these agreements include tangible military assistance obligations – such as the training of personnel of the Armed Forces of Ukraine, the provision of military aircraft, and the exchange of security information and intelligence – they are (deliberately) executive agreements rather than international treaties. This approach facilitated their adoption by executive order but also rendered these agreements vulnerable to termination if faced with a decline in political will within signatory states. As such, negotiation of enforceable and

effective long-term security guarantees remains Ukraine’s international policy focus in parallel with Ukraine’s pursuit of NATO membership.

The next section of this paper provides several examples of bilateral and multilateral security guarantees which could be used as a basis for potential security guarantees for Ukraine. It explores the US’s security agreements with the Philippines (1951), South Korea (1953), Taiwan (1956), and Japan (1960) negotiated and entered into in the context of the Cold War within the Asia-Pacific region. Each of these treaties requires action only “*in accordance with constitutional processes*”, thereby permitting the US to determine the actual nature and extent of its response to a trigger of the guarantee. These agreements are asymmetric, focused primarily on protection of the US’s allies and lack NATO’s collective decision-making structure and integrated command. While the guarantees contained in these instruments do not amount to the legally binding, automatic mutual defense guarantee enshrined in Article 5 of the North Atlantic Treaty, they nevertheless provide strong security commitments.

In addition to bilateral defense treaties, the paper also considers parallel agreements for the permanent stationing of US military personnel in South Korea and Japan, with the associated costs largely borne by the host states. The US-Philippines military cooperation model differs slightly, in that it provides for joint military training and exercises, with the US bearing the cost of improvements to the Philippine military bases used from time to time by the US personnel. This model represents a particularly attractive option for Ukraine in the absence of consent on the permanent stationing of foreign military forces on its territory.

This section separately explores the US’s current military and security cooperation with Taiwan and Israel. Cooperation with Taiwan is currently conducted pursuant to existing US statutory authorities, including the Taiwan Relations Act 1979, and is therefore subject to applicable US constitutional processes and oversight of the US Congress. This US policy does not contemplate the permanent stationing of US troops in Taiwan. Instead, cooperation remains focused on robust but non-permanent defense and security engagement, including capacity-building and arms sales. The US’s military cooperation with Israel provides a more suitable model for Ukraine. For instance, a memorandum of understanding between the US and Ukraine or Ukraine’s designation (like Israel) as a “Major Non-NATO Ally” under US Law would systematize supplies of military assistance to Ukraine, which are frequently stalled pending political processes in the US.

The paper then turns to multilateral defense treaties signed by the US in the Asia-Pacific in the 1950s. The two examples are the Australia, New Zealand and United States Security Treaty and the Southeast Asia Collective Defense Treaty. They both contain weaker, more subjective security guarantees compared to the NATO Article 5 model. In essence, they require the contracting states only to consult on how to respond to an attack and to act only if the assault on a victim state would endanger their own peace and safety. Any response is therefore ultimately conditioned on the assisting state's constitutional processes and political will; in practice, this means that a state may (lawfully) decide not to provide military assistance. By contrast, the 1947 Inter-American Treaty of Reciprocal Assistance (the "Rio Treaty"), which established a collective self-defense system in the Western Hemisphere, provides a more robust example of a collective security guarantee closer to the NATO model: parties undertake to adopt immediate individual measures in response to an armed attack, while also agreeing to consult on joint collective action. This hybrid approach preserves flexibility for states in determining the form of their collective response and may be more suitable for Ukraine.

Finally, the paper explores the EU security cooperation pillars and separately focuses on the European Defense Community Treaty conceived in the early 1950s as a response to the re-militarization of Germany and the threat posed by Russia during the Cold War. The European Defense Community Treaty represented an early (and ultimately unsuccessful) attempt to establish a supranational European army. It was signed in 1952 by six European states—France, Italy, West Germany, Belgium, the Netherlands, and Luxembourg—however, the project ultimately failed when it was not approved by the French Parliament, and Italy did not complete ratification due to concerns about the encroachment on national sovereignty. Although proposals for deeper European defense integration have re-emerged periodically since then, the current European security framework focuses on cooperation between the member states, governed by various EU treaties and regulations, with NATO remaining the primary cornerstone of collective defense in Europe.

Drawing from the assessment of existing bilateral and multilateral security guarantee models beyond NATO's Article 5, the paper provides recommended drafting for security guarantees for Ukraine, suitable for incorporation into either a bilateral treaty or a multilateral defense agreement. A bilateral security model most suitable for Ukraine can be drawn from existing US defense treaties with South Korea, Japan, and the Philippines. The security guarantee would have, as its trigger, an attack in Europe of a state, which would constitute a common danger

and require an immediate response. Language conditioning assistance on the aiding state's constitutional processes would likely create uncertainties, potential delay to any response or indeed undermine the efficacy of the guarantees altogether. In contrast, the guaranteee would be strengthened by the inclusion of a dedicated clause on the use of Ukrainian facilities by foreign forces, drawing either from the US-Japan treaty model, or from the US-Philippines framework permitting joint exercises and temporary access to agreed military bases. With respect to multilateral arrangements, the Rio Treaty provides a viable precedent. The security guaranteee would stipulate that an attack on one party constitutes a common danger to all, thereby triggering an obligation of immediate collective response under the right of self-defense provisions in the Charter of the United Nations (the "UN Charter"), including the potential use of military measures.

Alternatively, if the EU were to revive the European Defense Community Treaty, Ukraine could potentially accede to it prior to becoming an EU member state. It is not inconceivable that the idea of a supranational European army could be revived in the future, particularly in light of the US's evolving foreign policy posture, increasing expectations for greater European strategic autonomy, and continuing uncertainty regarding NATO's long-term trajectory. In the meantime, however, it remains more realistic that a coalition of willing European states could instead provide Ukraine with a security guarantee, drawing on certain aspects of existing multilateral arrangements between the EU and third states, such as those currently in place with Switzerland. This approach would allow for a flexible, treaty-based framework capable of delivering meaningful security commitments, while operating within the constraints of current EU legal and political realities.

TABLE OF CONTENTS

Statement of Purpose	7
Ukraine's Security Challenges	7
<i>Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons</i>	
7	
<i>The Budapest Memorandum on Security Assurances</i>	
10	
<i>Russia's Breach of the Budapest Memorandum on Security Assurances</i>	
12	
<i>Ukraine's Security Initiatives Post-Russia's 2022 Invasion of Ukraine</i>	
16	
Istanbul Peace Talks	16
Kyiv Security Compact	17
Ukraine's Military Partnership Agreements and Security Initiatives	18
Existing Models of Security Guarantees and Military Cooperation	22
<i>US Bilateral Defense Treaties</i>	
22	
Security Guarantees in Collective Defense Treaties	23
Deployment and Permanent Stationing of Foreign Troops	27
Joint Military Exercises and Provision of Military Equipment	29
<i>US-Israel Security Cooperation Model</i>	
30	
Security Cooperation Agreements	31
Soft Law Instruments	32
<i>Collective Defense Agreements</i>	
34	
The Rio Treaty	35
The Australia, New Zealand and United States Security Treaty	37
The Southeast Asia Collective Defense Treaty	39
The European Security Framework	40
The European Defense Community	40
The EU Defense Treaties	42
Models of Security Guarantees for Ukraine	44
<i>Bilateral Model</i>	
45	
<i>Multilateral Model</i>	
47	
Universal Model	47
European Collective Model	50
Eastern European Regional Model	51

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Statement of Purpose

This memorandum addresses the framework, structure, and potential wording of security guarantees to be given to Ukraine that would supplement Ukraine's military capabilities in deterring any further acts of aggression by Russia. The paper outlines models of security guarantees that have been developed for different contexts and analyzes their suitability for the context in Ukraine. The paper also provides a discussion of the most suitable models for Ukraine and, based on these models, proposes draft language to consider for a security treaty between Ukraine and its international partners.

Ukraine's Security Challenges

Ukraine's need for robust security guarantees has developed in the context of threats presented by Russia's full-scale invasion in February 2022. However, the root causes of threats to Ukraine's sovereignty and independence, and Ukraine's lack of military capabilities to withstand an act of aggression are commonly recognized to be linked to the country's decision to give up its nuclear arsenal shortly after the dissolution of the USSR in the 1990s.

To contextualize Ukraine's request for robust and enforceable security guarantees, this section delves into the historical background of Ukraine's security concerns and discusses Ukraine's decision to give up its nuclear arsenal in exchange for security assurances by the signatories to the Budapest Memorandum signed at the Conference on Security and Co-operation in Europe (the "CSCE") in Budapest, Hungary, on 5 December 1994, relating to the accession of Belarus, Kazakhstan, and Ukraine to the Nuclear Weapons Treaty. This section then summarizes security threats posed by Russia's invasion of Ukraine in 2014 and Russia's full-scale invasion of Ukraine, launched in February 2022.

Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons

In 1991, the dissolution of the Soviet Union raised serious concerns about nuclear proliferation, with the Soviet nuclear arsenal divided between its

independent successor states.¹ Proliferation of nuclear states that had just gained their independence undermined the objectives of the Nuclear Weapons Treaty to prevent the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy, and to work towards nuclear disarmament.²

For Ukraine, which inherited a large part of the Soviet Union's nuclear arsenal, making it the third largest nuclear power in the world,³ accession to the Nuclear Weapons Treaty as a non-nuclear-weapon state presented an opportunity “*to create conditions for broad international recognition of Ukraine's independent statehood*”.⁴ With that political objective in mind, Ukraine adopted a non-nuclear status declaration in 1991.⁵

Concerned that relinquishing its nuclear arsenal would create a significant gap in its national defense capabilities amid ongoing disputes with Russia, Ukraine faced substantial security challenges.⁶ These challenges were compounded by unresolved and contentious negotiations with Russia over the division of the former Soviet military, including the allocation of the Black Sea Fleet stationed in the Crimean peninsula and the status of strategic military units located in Ukrainian territory.⁷ With senior military command often aligned with Russian interests, Ukraine struggled to establish its own armed forces, simultaneously, Russia interpreted further Ukraine's actions aimed at setting up its independent military

¹ Mariana Budjeryn & Matthew Bunn, *Budapest Memorandum at 25: Between Past and Future*, Managing the Atom Project, Belfer Center (Mar. 2020), available at <https://www.belfercenter.org/publication/budapest-memorandum-25-between-past-and-future> (last visited Jan. 6, 26); see also ArmsControl Association, *The Lisbon Protocol At a Glance* (Dec. 2020), available at <https://www.armscontrol.org/factsheets/lisbon-protocol-glance> (last visited Jan. 6, 26).

² John Simpson, *The Nuclear Non-Proliferation Regime: Back to the Future?*, UNIDIR DISARMAMENT FORUM, 2004/1, at 6.

³ Robert Lawless, *Ukraine Symposium – The Budapest Memorandum's History and Role in the Conflict* (Jan. 15, 2025), Lieber Institute: West Point, available at <https://ieber.westpoint.edu/budapest-memorandums-history-role-conflict/> (last visited Jan. 6, 26).

⁴ Verkhovna Rada of Ukraine, *Declaration of State Sovereignty of Ukraine* (July 16, 1990), available at https://static.rada.gov.ua/site/postanova_eng/Declaration_of_State_Sovereignty_of_Ukraine_rev1.htm (last visited Jan. 6, 26); Olha Katsan, *Nuclear Inheritance: Why Did Ukraine Give Up the World's Third Largest Arsenal, and Did It Have Other Options?* (Feb. 22, 2024), available at <https://svidomi.in.ua/en/page/nuclear-inheritance-why-did-ukraine-give-up-the-worlds-third-largest-arsenal-and-did-it-have-other-options> (last visited Jan. 6, 26).

⁵ Verkhovna Rada of Ukraine, *Declaration on the Non-Nuclear Status of Ukraine*, No. 1697-XII (Oct. 24, 1991), available in Ukrainian at <https://zakon.rada.gov.ua/go/1697-12> (last visited Jan. 6, 26).

⁶ Polina Sinovets & Mariana Budjeryn, *Interpreting the Bomb: Ownership and Deterrence in Ukraine's Nuclear Discourse*, NPIHP Working Paper No. 12 (Dec. 13, 2017), at 12 et seqq., available at <https://www.wilsoncenter.org/publication/interpreting-the-bomb-ownership-and-deterrence-ukraines-nuclear-discourse> (last visited Jan. 6, 26).

⁷ Polina Sinovets & Mariana Budjeryn, *Interpreting the Bomb: Ownership and Deterrence in Ukraine's Nuclear Discourse*, NPIHP Working Paper No. 12 (Dec. 13, 2017), at 7 et seqq.

force as attempts to retain nuclear weapons and subsequently ordered the subordination of the entire Black Sea Fleet to the Russian Federation.⁸ In response, the Parliament of Ukraine reaffirmed Ukraine's intention to become a non-nuclear state, expressly envisioning "*that the destruction of nuclear weapons stationed on the territory of Ukraine shall only be carried out subject to guarantees ensuring Ukraine's national security*".⁹

Despite Russia's reluctance to recognize Ukraine's sovereignty, the question of Ukraine's succession of arms was partially addressed in May 1992, with the signing of the Lisbon protocol¹⁰ to the Strategic Arms Reduction Treaty I ("START I").¹¹ Originally concluded by the US and the USSR, START I was an arms control treaty. It required the reduction and limitation of strategic offensive arms within a specified timeframe.¹² Pursuant to Article I of the Lisbon Protocol, Ukraine (along with Belarus, Kazakhstan, and Russia) was recognized as a successor state to the USSR in terms of START I, thereby assuming the treaty responsibilities of the former USSR. The successor states were further required to undertake a binding commitment to accede to the Nuclear Weapons Treaty as non-nuclear-weapon states.¹³

In 1993, the Parliament of Ukraine ratified START I and the Lisbon Protocol but conditioned the elimination of Ukraine's nuclear arsenal on the receipt of enforceable security guarantees.¹⁴

⁸ Polina Sinovets & Mariana Budjeryn, *Interpreting the Bomb: Ownership and Deterrence in Ukraine's Nuclear Discourse*, NPIHP Working Paper No. 12 (Dec. 13, 2017), at 9 et seq., 15.

⁹ Verkhovna Rada of Ukraine, *Resolution on Additional Measures for Ensuring Ukraine's Attainment of Non-Nuclear Status*, No. 2267-XII (Apr. 9, 1992), available in Ukrainian at <https://zakon.rada.gov.ua/laws/show/2267-12> (last visited Jan. 6, 26).

¹⁰ *Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms*, May 23, 1992, Lisbon, U.N. Doc. CD/1192 (1992) (entered into force Dec. 5, 1994) available at <https://2009-2017.state.gov/documents/organization/27389.pdf>.

¹¹ *Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms*, U.S.-U.S.S.R., July 31, 1991, 31 I.L.M. 1410 (1991), available at <https://2009-2017.state.gov/documents/organization/140035.pdf> (last visited Jan. 6, 26).

¹² *Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms*, art. II, IV, U.S.-U.S.S.R., July 31, 1991, 31 I.L.M. 1410 (1991).

¹³ Article V of the Lisbon Protocol requires the signatories to join the Nuclear Weapons Treaty "at the earliest possible date as non-nuclear-weapon states and [to] immediately take all necessary measures to this end in accordance with their constitutional practices".

¹⁴ Verkhovna Rada of Ukraine, *Declaration of Ratification of the Agreement on Ukraine's Attainment of Non-Nuclear Status*, No. 3624-XII (Nov. 18, 1993), ¶ 5, available in Ukrainian at <https://zakon.rada.gov.ua/laws/show/3624-12> (last visited Jan. 6, 26). Paragraph 5 of the Declaration provides: "Ukraine, as a state possessing nuclear weapons, shall move toward a non-nuclear status and shall gradually eliminate the nuclear weapons stationed on its territory, on the condition of receiving reliable guarantees for its national security, under which nuclear states undertake never to use nuclear weapons against Ukraine, not to use conventional armed forces against it and not to resort to the threat of force, to respect Ukraine's territorial integrity and the inviolability of its borders, and to refrain from economic pressure aimed at resolving any disputes"

A year later, in the Trilateral Statement of January 1994, the Presidents of the US, Russia, and Ukraine agreed that Ukraine would transfer its nuclear warheads to Russia for elimination, and that security assurances would be provided to Ukraine once it acceded to the Nuclear Weapons Treaty as a non-nuclear-weapon state.¹⁵ The Annex to the Trilateral Statement sets out specific initial steps: the parties agreed, *inter alia*, that all nuclear warheads would be removed from Ukraine and transported to Russia “*in the shortest possible time*”, and that Ukraine would ensure the elimination of all nuclear weapons within a seven-year period, as provided for by START I.¹⁶ Ukraine and Russia subsequently agreed on a specific schedule for warhead transfers, to be completed by June 1996.¹⁷

In November 1994, the Ukrainian Parliament ratified Ukraine’s accession to the Nuclear Weapons Treaty as a non-nuclear weapon state with the reservation that the relevant law would only become effective – and, thus, Ukraine would only become bound by the Nuclear Weapons Treaty – once Ukraine had received security guarantees.¹⁸

(emphasis added). Paragraph 2 states that Ukraine does not consider Article V of the Lisbon Protocol – obligating it to join the Nuclear Weapons Treaty as a non-nuclear weapons state – to be binding on itself (*see Protocol to the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms*, art. V). Furthermore, Ukraine interpreted its obligation under START I as requiring only the proportional reduction (not complete elimination) of 42 % of the nuclear warheads and 36 % of launchers deployed on its territory (¶ 6 of the Declaration). The exchange of the instruments of ratification was conditioned on fulfillment of, *inter alia*, paragraphs 5 and 6 (closing remarks of the Declaration).

¹⁵ *Trilateral Statement by the Presidents of the United States, the Russian Federation, and Ukraine* (Jan. 14, 1994), ¶ 3-4, available at <https://nsarchive.gwu.edu/sites/default/files/documents/Doc-10-1994.01.14-Trilateral-Statement.pdf> (last visited Jan. 6, 26).

¹⁶ *See Annex to the Trilateral Statement by the Presidents of the United States, the Russian Federation, and Ukraine* (Jan. 14, 1994), available at <https://nsarchive.gwu.edu/sites/default/files/documents/Doc-10-1994.01.14-Trilateral-Statement.pdf> (last visited Jan. 6, 26).

¹⁷ *Appendix to the Agreement between the Government of Ukraine and the Government of the Russian Federation on the Implementation of the Trilateral Agreements between the Presidents of Ukraine, Russia, and the United States* art. 1, (Jan. 14, 1994) available in Ukrainian at https://zakon.rada.gov.ua/laws/show/643_406#Text (last visited Jan. 6, 26).

¹⁸ Verkhovna Rada of Ukraine, *Law of Ukraine on Ukraine’s Accession to the Treaty on the Non-Proliferation of Nuclear Weapons*, No. 248/94-BP (Nov. 16, 1994), ¶ 6, available in Ukrainian at <https://zakon.rada.gov.ua/laws/show/en/248/94-%D0%BD%D1%80#Text> (last visited Jan. 6, 26). Paragraph 6 of the Law states that it “*enter[s] into force after Ukraine receives security guarantees from nuclear states, formalized through the signing of the corresponding international legal instrument*”.

The Budapest Memorandum on Security Assurances

A month after Ukraine's conditional ratification of the Nuclear Weapons Treaty, in December 1994, the US, the UK and Russia signed the Budapest Memorandum. Ukraine considered this Memorandum to be the formal security assurance it needed.¹⁹ With the signing, the law ratifying the Nuclear Weapons Treaty entered into force for Ukraine, and Ukraine assumed the legal obligations of a non-nuclear-weapon state under the Nuclear Weapons Treaty.²⁰

Under the Budapest Memorandum, Russia, the US, and the UK pledged to:²¹

- respect Ukraine's independence and sovereignty within its existing borders (Article 1);
- refrain from the threat or use of force against Ukraine (Article 2);
- request the UN Security Council to act should Ukraine become a victim of aggression (Article 4),²² and
- organize and carry out consultations with participation of the UN Security Council "*in the event a situation arises that raises questions concerning the [parties'] commitments*" (Article 6).

¹⁹ During the signing ceremony, President Kuchma delivered Ukraine's instrument of accession to the Nuclear Weapons Treaty, confirming its non-nuclear status, to President Clinton, President Yeltsin, and Prime Minister Major, while the parties also exchanged documents to bring START I into force (Steven Pifer, *The Trilateral Process: The United States, Ukraine, Russia and Nuclear Weapons*, BROOKINGS ARMS CONTRAL SERIES, Paper 6 (May 9, 2011), at 28, available at https://www.brookings.edu/wp-content/uploads/2016/06/05_trilateral_process_pifer.pdf (last visited Nov. 14, 25)). Although the Ukrainian Parliament did not take any further legal steps or issue an official statement recognizing the Budapest Memorandum as a sufficient security guarantee, according to official information published on the website of the Parliament of Ukraine, the Law ratifying Ukraine's accession to the Nuclear Weapons Treaty entered into force for Ukraine on December 5, 1994 – the date on which the Budapest Memorandum was signed. See "*History of the document*" available in Ukrainian at <https://zakon.rada.gov.ua/laws/card/248/94-%D0%B2%D1%80> (last visited Jan. 6, 26).

²⁰ Verkhovna Rada of Ukraine, *Law of Ukraine on Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons*, No. 248/94-BP (Nov. 16, 1994), ¶ 6, available in Ukrainian at <https://zakon.rada.gov.ua/laws/show/en/248/94-%D0%B2%D1%80#Text> (last visited Jan. 6, 26).

²¹ *Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons*, Dec. 5, 1994, 3007 U.N.T.S. 167 (1994), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%203007/Part/volume-3007-I-52241.pdf> (last visited Jan. 6, 26).

²² Under Article 4 of the Budapest Memorandum, the signatory states "*reaffirm their commitment to seek immediate United Nations Security Council action to provide assistance to Ukraine, as a non-nuclear-weapon state party to the Treaty on the Non-Proliferation of Nuclear Weapons, if Ukraine should become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used*".

As the language of the Budapest Memorandum in relation to security assurances is purposively vague, the commitments in the Budapest Memorandum constitute political declarations rather than enforceable obligations.²³ Indeed, the spokeswoman for the Russian Ministry of Foreign Affairs recently noted that the Budapest Memorandum is “*not an international treaty*”, but rather a “*package of political agreements*”.²⁴ There are notable discrepancies between the English version of the Budapest Memorandum, which refers to security “*assurances*”, and the Ukrainian and Russian texts, both of which contain the stronger term, “*guarantees*”.²⁵ All three language versions are equally authoritative.²⁶

The Article 6 joint consultations mechanism within the framework of the UN Security Council has also proved to be ineffective given the absence of any obligation as to the result of these consultations.²⁷ Since Russia is a permanent member of the UN Security Council, it has a veto power to block all Ukraine-related UN Security Council resolutions and intervene in any consultations relating to Ukraine.²⁸

Russia’s Breach of the Budapest Memorandum on Security Assurances

Following Russia’s invasion of the Crimean peninsula and the Eastern territory of Ukraine in 2014, Ukraine appealed to the UK and the US, the signatories of the Budapest Memorandum, to uphold their security assurances

²³ Roman Goncharenko, *Ukraine’s Forgotten Security Guarantee*, DW (May 12, 2014), available at <https://www.dw.com/en/ukraines-forgotten-security-guarantee/a-17611994> (last visited Jan. 6, 26).

²⁴ Robert Lawless, *Ukraine Symposium – The Budapest Memorandum’s History and Role in The Conflict*, Lieber Institute West Point (Jan. 15, 2025), available at <https://ieber.westpoint.edu/budapest-memorandums-history-role-conflict/> (last visited Jan. 6, 26).

²⁵ See *Memorandum on Security Assurances in Connection with Ukraine’s Accession to the Treaty on the Non-Proliferation of Nuclear Weapons*, Dec. 5, 1994, 3007 U.N.T.S. 167 (1994), available in Ukrainian, Russian, and English at <https://treaties.un.org/doc/Publication/UNTS/Volume%203007/Part/volume-3007-I-52241.pdf> (last visited Jan. 6, 26).

²⁶ *Memorandum on Security Assurances in Connection with Ukraine’s Accession to the Treaty on the Non-Proliferation of Nuclear Weapons*, last closing remark, Dec. 5, 1994, 3007 U.N.T.S. 167 (1994), available in Ukrainian, Russian, and English at <https://treaties.un.org/doc/Publication/UNTS/Volume%203007/Part/volume-3007-I-52241.pdf> (last visited Jan. 6, 26).

²⁷ Thomas Grant, *The Budapest Memorandum and Beyond: Have the Western Parties Breached a Legal Obligation?* (Feb. 18, 2015), available at <https://www.ejiltalk.org/the-budapest-memorandum-and-beyond-have-the-western-parties-breached-a-legal-obligation/> (last visited Jan. 6, 26).

²⁸ The power of veto originates in Article 27 of the UN Charter (U.N. Charter art. 27, June 26, 1945, 1 U.N.T.S. 16 (1945), available at <https://legal.un.org/repertory/art27.shtml> (last visited Jan. 6, 26).

under the Budapest Memorandum.²⁹ Both the US and the UK attempted to launch consultations under Article 6 of the Budapest Memorandum but Russia refused to participate.³⁰ Russia has been exercising its power as a permanent member of the UN Security Council to block the UN resolutions declaring both Russia's 2014 invasion of Ukraine³¹ and the referendum on accession of Crimea to the Russian Federation, held in March 2014, illegal.³²

The 2014 invasion reportedly claimed more than 5,300 lives and displaced 1.5 million people, but Ukraine received only limited training and capacity building assistance from the UK and the US at the time.³³

After the failure of diplomatic enforcement of assurances under the Budapest Memorandum, Ukraine started focusing on bilateral and multilateral defense cooperation that delivered practical outcomes, such as training, arms, intelligence, and sanctions support from a number of states in the EU, the UK, and the US.³⁴ Ukraine also started strengthening its military capabilities, as reflected in Ukraine's 2015 National Security Strategy.³⁵

Ukraine's 2015 National Security Strategy, further updated in 2020, was built on three main principles: (i) developing defense and security capabilities to deter armed aggression; (ii) enhancing the resilience of society and the state; and (iii) building “*strategic relations with key foreign partners, primarily the European*

²⁹ *Address by the Parliament of Ukraine to the Guarantor States of the Security of Ukraine* (Mar. 11, 2014), available at <https://zakon.rada.gov.ua/laws/show/1149-vii> (last visited Jan. 6, 26).

³⁰ Ksenia Krykun, Danylo Kramarenko, Liliana Oleniak, *Illusion of security: Why Budapest Memorandum failed to protect Ukraine from war*, RBC-UKRAINE (Dec. 5, 2024), available at <https://newsukraine.rbc.ua/analytics/illusion-of-security-why-budapest-memorandum-1733384303.html> (last visited Jan. 6, 26).

³¹ UN News, *Russia Vetoed Security Council Resolution Condemning Attempted Annexation of Ukraine Regions* (Sept. 30, 2022), available at <https://news.un.org/en/story/2022/09/1129102> (last visited Jan. 6, 26).

³² Draft Security Council Resolution, U.N. Doc. S/2014/189 (Mar. 15, 2014), available at <https://docs.un.org/en/S/2014/189> (last visited Jan. 6, 26).

³³ Ulrich Speck, *3 Elements of the Western Response*, in *The West's Response to the Ukraine Conflict: A Transatlantic Success Story 7* (German Marshall Fund of the United States 2016), available at https://www.gmfus.org/sites/default/files/Speck_WestResponseUkraine_Apr16_web.pdf; see also Claire Mills, *Military Assistance to Ukraine 2014-2021*, House of Commons Research Briefing (Mar. 4, 2022), available at <https://researchbriefings.files.parliament.uk/documents/SN07135/SN07135.pdf> (last visited Jan. 6, 26).

³⁴ Cf. Taras Kuzio, *The Long and Arduous Road: Ukraine Updates Its National Security Strategy*, RUSI (Oct. 16, 2020), available at <https://www.rusi.org/explore-our-research/publications/commentary/long-and-arduous-road-ukraine-updates-its-national-security-strategy> (last visited Jan. 6, 26).

³⁵ Decree of the President of Ukraine No. 287/2015, *Про рішення Ради національної безпеки і оборони України від 6 травня 2015 року «Про Стратегію національної безпеки України»* (On the Decision of the National Security and Defense Council of Ukraine of May 6, 2015, ‘On the National Security Strategy of Ukraine’) (May 26, 2015), available in Ukrainian at <https://www.president.gov.ua/documents/2872015-19070> (last visited Jan. 6, 26).

*Union and NATO and their member states, the United States of America”*³⁶. Comprehensive cooperation with the US, UK, Canada, Germany, and France was defined as “*a strategic priority for Ukraine*”, aimed at strengthening guarantees of independence and sovereignty.³⁷ Ukraine also reaffirmed its commitment to pursuing NATO membership,³⁸ designating it as a key objective of its foreign and security policy, as enshrined in the Constitutional Amendment passed in 2019.³⁹

Post-2014-invasion by Russia, Ukraine’s foreign policy also focused on revitalizing regional security cooperation formats, such as:

- The Lithuanian-Polish-Ukrainian Brigade, a multinational military unit created in 2014 consisting of soldiers from Lithuania, Poland, and Ukraine stationed within their respective territories.⁴⁰ The regional battalions of this brigade are kept on standby in their home countries and are only deployed if a decision is made to activate the brigade or any of its elements. Following a revision of the brigade’s mission in 2017, the command and units of the brigade, by unanimous consent of the parties, shall be ready to participate in international operations consistent with the international law provisions.⁴¹ The previous

³⁶ Decree of the President of Ukraine No. 392/2020, *Про рішення Ради національної безпеки і оборони України від 14 вересня 2020 року «Про Статеметію національної безпеки України»* (On the Decision of the Council of National Security and Defense of Ukraine of September 14, 2020, “On the National Security Strategy of Ukraine”), pt. 4 of the Strategy, available in Ukrainian at <https://www.president.gov.ua/documents/3922020-35037> (last visited Jan. 6, 26).

³⁷ Decree of the President of Ukraine No. 392/2020, *Про рішення Ради національної безпеки і оборони України від 14 вересня 2020 року «Про Статеметію національної безпеки України»* (On the Decision of the Council of National Security and Defense of Ukraine of September 14, 2020, “On the National Security Strategy of Ukraine”), pt. 35 of the Strategy, available in Ukrainian at <https://www.president.gov.ua/documents/3922020-35037> (last visited Jan. 6, 26).

³⁸ See both *National Security Strategies of Ukraine* for 2015 and 2020.

³⁹ NATO, *Relations with Ukraine*, (last updated Jun. 25, 2025), available at https://www.nato.int/cps/en/natohq/topics_37750.htm (last visited Jan. 6, 26); see also Viktoriia Lapa & Justin Frosini, *Would Ukraine Breach its Own Constitution if it Dropped its NATO Bid?*, VERFASSUNGSBLOG (Feb. 18, 2022), available at <https://verfassungsblog.de/would-ukraine-breach-its-own-constitution-if-it-dropped-its-nato-bid/> (last visited Jan. 6, 26).

⁴⁰ *Agreement Between the Government of the Republic of Lithuania, the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine Concerning the Establishment of a Common Military Unit* art. 1 (Sept. 19, 2014), 3080 U.N.T.S. 217 (2014), available at

<https://treaties.un.org/doc/Publication/UNTS/Volume%203080/v3080.pdf> (last visited Jan. 6, 26). See also art. 3.3 (“*All national components shall remain within structures of the armed forces of their States at all times. An appropriate level of command and control shall be nationally delegated under the power of transfer of authority to the Brigade’s Command*”) and art. 3.4 (“*National components affiliated to the Brigade during the Brigade’s training and preparation for the Operations shall be determined by the Executive Institutions*”).

⁴¹ *Agreement Between the Government of the Republic of Lithuania, the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine Amending the Agreement Between the Government of the Republic of Lithuania, the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine Concerning the Establishment of a Common Military Unit* (Oct. 5, 2017), available in Ukrainian at

requirement for a UN Security Council mandate for international operations was removed.⁴² The brigade's main purpose was revisited to increase Ukraine's involvement in cooperation among Central and Eastern European states and to help Ukraine meet NATO membership criteria, with a focus on peacekeeping and stabilization operations.⁴³ The existing founding agreement is open to accession by any other state, provided all signatories extend a joint invitation.⁴⁴

- The Bucharest Nine or the Bucharest Format (“B9”), an organization founded in 2015 by nine Central and Eastern European NATO member states including Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, and Slovakia.⁴⁵ Its formation was mainly a result of a perceived aggressive attitude from Russia following its annexation of Crimea and its posterior intervention in eastern Ukraine, both in 2014.⁴⁶ The B9 platform is used to coordinate defense positions on NATO’s eastern flank.⁴⁷ Ukraine actively cooperates with this initiative, with B9 members

https://zakon.rada.gov.ua/laws/show/440_003-17#n2 (last visited Jan. 6, 26); *see also* art. 2.1 (“*The Parties shall establish the Grand Hetman Kostiantyn Ostrogski Lithuanian-Polish-Ukrainian command military unit of a brigade size, hereinafter referred to as ‘the Brigade’*”).

⁴² Cf. *Agreement Between the Government of the Republic of Lithuania, the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine Concerning the Establishment of a Common Military Unit* art. 1 (Sept. 19, 2014), 3080 U.N.T.S. 217 (2014), available at

<https://treaties.un.org/doc/Publication/UNTS/Volume%203080/v3080.pdf> (last visited Jan. 6, 26).

⁴³ DEFENCE24, *Lithuanian-Polish-Ukrainian Brigade Is Being Born. Relevant Memorandum Concluded* (July 26, 2015), available at <https://defence24.com/geopolitics/lithuanian-polish-ukrainian-brigade-is-being-born-relevant-memorandum-concluded> (last visited Jan. 6, 26).

⁴⁴ *Agreement Between the Government of the Republic of Lithuania, the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine Concerning the Establishment of a Common Military Unit* art. 15.8 (Sept. 19, 2014), 3080 U.N.T.S. 217 (2014), available at

<https://treaties.un.org/doc/Publication/UNTS/Volume%203080/v3080.pdf> (last visited Jan. 6, 26).

⁴⁵ Tomáš A. Nagy, *The Bucharest Nine: Enhancing Security on NATO’s Eastern Flank*, GMF (Mar. 18, 2024), available at <https://www.gmfus.org/news/bucharest-nine-enhancing-security-natos-eastern-flank> (last visited Jan. 6, 26).

⁴⁶ Tomáš A. Nagy, *The Bucharest Nine: Enhancing Security on NATO’s Eastern Flank*, GMF (Mar. 18, 2024), available at <https://www.gmfus.org/news/bucharest-nine-enhancing-security-natos-eastern-flank> (last visited Jan. 6, 26); NATO, *Secretary General Underlines B9 Countries’ Crucial Role in Strengthening NATO’s Deterrence and Defense* (June 11, 2024), available at <https://www.nato.int/en/news-and-events/articles/news/2024/06/11/secretary-general-underlines-b9-countries-crucial-role-in-strengthening-natos-deterrence-and-defence> (last visited Jan. 6, 26).

⁴⁷ NATO, *Secretary General Underlines B9 Countries’ Crucial Role in Strengthening NATO’s Deterrence and Defense* (June 11, 2024), available at <https://www.nato.int/en/news-and-events/articles/news/2024/06/11/secretary-general-underlines-b9-countries-crucial-role-in-strengthening-natos-deterrence-and-defence> (last visited Jan. 6, 26).

consistently calling for military, political, and financial support for Ukraine within NATO and the EU.⁴⁸

- The Lublin Triangle (“Lublin Triangle”), a trilateral alliance between Poland, Lithuania, and Ukraine, formed in 2020 to strengthen cooperation in politics, security, infrastructure, and culture. Its goals also include supporting Ukraine’s integration into the EU and NATO.⁴⁹

Ukraine’s Security Initiatives Post-Russia’s 2022 Invasion of Ukraine

Following Russia’s full-scale invasion of Ukraine in February 2022, Ukrainian and Russian officials held talks in Istanbul concerning security guarantees for Ukraine, but as explained below, those negotiations failed. Ukraine and international partners developed a proposed framework of long-term security guarantees for Ukraine called “Kyiv Security Compact”, intended to provide security until Ukraine joins NATO. In parallel, Ukraine continued pursuing bilateral and multilateral security talks and progressed in negotiating military partnership agreements with several countries.

Istanbul Peace Talks

From February to April 2022, Russia and Ukraine participated in several rounds of peace talks in Istanbul to end the war and agree on security guarantees for Ukraine (“Istanbul Peace Talks”).⁵⁰

Under the Draft Treaty on Permanent Neutrality and Security Guarantees for Ukraine or the Istanbul Communiqué developed during the Istanbul Peace Talks, Ukraine was called on to accept permanent neutrality, which would entail refraining from joining military alliances and from engaging in activities

⁴⁸ Sergiy Gerasymchuk, *Bucharest Nine: Looking for Cooperation on NATO’s Eastern Flank?* at 8 et seqq., Friedrich Ebert Stiftung (July 2019), available at <https://library.fes.de/pdf-files/bueros/ukraine/15574.pdf> (last visited Jan. 6, 26); TVP World, *Poland and eastern flank states back Ukraine’s NATO bid* (June 2, 2025), available at <https://tvworld.com/87052928/poland-and-eastern-flank-states-back-ukraines-nato-bid> (last visited Jan. 6, 26).

⁴⁹ *Joint Declaration of Foreign Ministers of the Republic of Poland, the Republic of Lithuania, and Ukraine on Establishing Lublin Triangle* (July 28, 2020), available at <https://www.urm.lt/en/news/928/joint-declaration-of-foreign-ministers-of-the-republic-of-poland-the-republic-of-lithuania-and-ukraine-on-establishing-lublin-triangle%3A34251> (last visited Jan. 6, 26).

⁵⁰ Anton Troianovski, Adam Entous & Michael Schwirtz, *Ukraine-Russia Peace Is as Elusive as Ever. But in 2022 They Were Talking*, NEW YORK TIMES (June 15, 2024), available at <https://www.nytimes.com/interactive/2024/06/15/world/europe/ukraine-russia-ceasefire-deal.html#documents> (last visited Jan. 6, 26).

inconsistent with the international legal status of neutrality.⁵¹ In turn, guarantor states would hold urgent consultations to decide on taking “*individual or joint action as may be necessary, including closing airspace over Ukraine, providing necessary weapons, using armed force in order to restore and subsequently maintain the security of Ukraine as a permanently neutral state*”.⁵²

Russia objected to several key provisions of the Istanbul Communiqué, such as closing Ukrainian airspace and the supply of weapons by the guarantor states.⁵³ Russia also insisted that any decision to provide assistance to Ukraine would require unanimous consent among all guarantor states, including Russia.⁵⁴ Given Ukraine’s concern that Russia could veto any military assistance or intervention, the Draft Treaty on Permanent Neutrality and Security Guarantees for Ukraine was never finalized.⁵⁵

Kyiv Security Compact

In September 2022, Ukraine published the Kyiv Security Compact, a proposed framework of long-term security guarantees for Ukraine, intended to provide security until Ukraine joins NATO.⁵⁶

Kyiv Security Compact calls for a network of bilateral and multilateral agreements that include modern military aid, defense investment, intelligence sharing, training, and joint exercises, with the aim of deterring future Russian

⁵¹ *Istanbul Communiqué, following consultations on March 28-30, 2022, available at* <https://static01.nyt.com/newsgraphics/documenttools/ba6c7377883d7829/f5aff231-full.pdf> (last visited Jan. 6, 26).

⁵² *Istanbul Communiqué, following consultations on March 28-30, 2022, art. 5, available at* <https://static01.nyt.com/newsgraphics/documenttools/ba6c7377883d7829/f5aff231-full.pdf> (last visited Jan. 6, 26).

⁵³ Cf. *Draft Treaty on Permanent Neutrality and Security Guarantees for Ukraine, Draft as of April 15, 2022, art. 5, available at* <https://static01.nyt.com/newsgraphics/documenttools/a456d6dd8e27e830/e279a252-full.pdf> (last visited Jan. 6, 26). The red text in bold shows the position of the Ukrainian Side, not agreed upon by the Russian Federation.

⁵⁴ Anton Troianovski, Adam Entous & Michael Schwirtz, *Ukraine-Russia Peace Is as Elusive as Ever. But in 2022 They Were Talking*, NEW YORK TIMES (June 15, 2024), available at <https://www.nytimes.com/interactive/2024/06/15/world/europe/ukraine-russia-ceasefire-deal.html#documents> (last visited Jan. 6, 26).

⁵⁵ Anton Troianovski, Adam Entous & Michael Schwirtz, *Ukraine-Russia Peace Is as Elusive as Ever. But in 2022 They Were Talking*, NEW YORK TIMES (June 15, 2024), available at <https://www.nytimes.com/interactive/2024/06/15/world/europe/ukraine-russia-ceasefire-deal.html#documents> (last visited Jan. 6, 26); Institute for the Study of War, *Fact Sheet: Istanbul Protocol Draft Agreement of April 15, 2022* (Feb. 24, 2025), available at <https://understandingwar.org/wp-content/uploads/2025/04/Fact20Sheet20IstanbulProtocolDraft20Agreement20of20April20152C2020222028129.pdf> (last visited Jan. 6, 26).

⁵⁶ *The Kyiv Security Compact. International Security Guarantees for Ukraine: Recommendations*, 4 (Sept. 13, 2022), available at https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e_1663050954.pdf (last visited Jan. 6, 26).

aggression.⁵⁷ The bilateral agreements would include binding security guarantees that would help Ukraine “*defend itself against an aggressor under the UN Charter’s article 51*”. The framework may also be supplemented by additional agreements addressing specific issues, such as arrangements with countries producing anti-aircraft and anti-missile defense systems.⁵⁸

The Kyiv Security Compact stipulates that effective security guarantees must be both “*legally and politically binding*” and should be formalized at both the executive and legislative levels.⁵⁹ Guarantors are expected to explicitly commit to supporting Ukraine’s self-defense, without excluding any form of assistance.⁶⁰

In the event of aggression, the bilateral or multilateral agreement should require guarantors to use all elements of their national and collective power to help Ukraine repel aggression and restore its sovereignty, with guarantees applying throughout Ukraine’s internationally recognized borders.⁶¹ Also, extended security guarantees should be activated at Ukraine’s request, with decisions made through collective consultation and implemented by a coalition of the guarantor states. The mechanism for triggering and implementing these guarantees is to be clearly defined in bilateral or multilateral security partnership agreements.⁶²

⁵⁷ *The Kyiv Security Compact. International Security Guarantees for Ukraine: Recommendations* 2, 4 et seq. (Sept. 13, 2022), available at https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e_1663050954.pdf (last visited Jan. 6, 26).

⁵⁸ *The Kyiv Security Compact. International Security Guarantees for Ukraine: Recommendations*, 3 (Sept. 13, 2022), available at https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e_1663050954.pdf (last visited Jan. 6, 26).

⁵⁹ *The Kyiv Security Compact. International Security Guarantees for Ukraine: Recommendations*, 6 et seq. (Sept. 13, 2022), available at https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e_1663050954.pdf (last visited Jan. 6, 26).

⁶⁰ *The Kyiv Security Compact. International Security Guarantees for Ukraine: Recommendations*, 7, first paragraph (Sept. 13, 2022), available at https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e_1663050954.pdf (last visited Jan. 6, 26).

⁶¹ *The Kyiv Security Compact. International Security Guarantees for Ukraine: Recommendations*, 7 (Sept. 13, 2022), available at https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e_1663050954.pdf (last visited Jan. 6, 26).

⁶² *The Kyiv Security Compact. International Security Guarantees for Ukraine: Recommendations*, 7 et seq. (Sept. 13, 2022), available at https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e_1663050954.pdf (last visited Jan. 6, 26).

Ukraine's Military Partnership Agreements and Security Initiatives

Since February 2022, Ukraine has entered into a range of security and defense arrangements with the G7 and other states.

For example, under the July 2023 G7 Joint Declaration of Support for Ukraine or the G7 Vilnius Declaration, the G7 states undertook to:⁶³

[...] work with Ukraine on specific, bilateral, long-term security commitments and arrangements towards [...] [e]nsuring a sustainable force capable of defending Ukraine now and deterring Russian aggression in the future, through the continued provision of: security assistance and modern military equipment, across land, air, and sea domains – prioritizing air defense, artillery and long-range fires, armored vehicles, and other key capabilities, such as combat air, and by promoting increased interoperability with Euro-Atlantic partners; support to further develop Ukraine's defense industrial base; training and training exercises for Ukrainian forces; intelligence sharing and cooperation; support for cyber defense, security, and resilience initiatives, including to address hybrid threats.

During the Vilnius Summit of July 2023, 11 states including Denmark, the Netherlands, Belgium, Canada, Luxembourg, Norway, Poland, Portugal, Romania, Sweden, and the United Kingdom, as well as Ukraine formed the “F-16 Training Coalition”, an international coalition with the task of training F-16 jet fighter pilots, technicians, and support personnel for the Ukrainian Air Force.⁶⁴

The G7 Vilnius Declaration resulted in the Ukraine Compact, a document signed by the leaders of 23 countries on 11 July 2024 in Washington DC at the 33rd NATO Summit.⁶⁵ This new version of the Kyiv Security Compact aims to

⁶³ European Council, Press Release, *G7 Joint Declaration of Support for Ukraine* (July 12, 2023), available at <https://www.consilium.europa.eu/en/press/press-releases/2023/07/12/g7-joint-declaration-of-support-for-ukraine/> (last visited Jan. 6, 26).

⁶⁴ Margarete Klein & Claudia Major, *Ensuring Ukraine's security. From ad hoc support to long-term security guarantees as NATO member*, SWP Comment 2023/C 46 (Aug. 4, 2023) available at <https://www.swp-berlin.org/10.18449/2023C46/> (last visited Jan. 6, 26).

⁶⁵ *Ukraine Compact* (July 12, 2024), available at https://enlargement.ec.europa.eu/news/ukraine-compact-2024-07-12_en (last visited Jan. 6, 26).

coordinate and accelerate collective efforts to address Ukraine's comprehensive security needs, in line with the G7 Vilnius Declaration.⁶⁶

In 2024, Ukraine entered into a series of bilateral security agreements with its key partners, including the US,⁶⁷ France,⁶⁸ Germany,⁶⁹ Italy,⁷⁰ Canada,⁷¹ Japan,⁷² and the UK.⁷³ These bilateral agreements are designed to enhance Ukraine's security through a range of initiatives such as intelligence-sharing, sanctions, military training programs, joint military exercises, and the transfer of military equipment to Ukraine.⁷⁴ These agreements however do not contain binding commitments for future military intervention or defense. Instead, they generally include a broad obligation to provide "security assistance to Ukraine",⁷⁵ without specifying the type or the timing of assistance.

For instance, Part VIII of the UK-Ukraine Agreement on Security Cooperation provides that if there is a future Russian armed attack against Ukraine, either Ukraine or the UK may request consultations, which must take place within 24 hours, to determine the measures needed to counter or deter the act of

⁶⁶ *Ukraine Compact*, 2 (July 12, 2024), available at https://enlargement.ec.europa.eu/news/ukraine-compact-2024-07-12_en (last visited Jan. 6, 26).

⁶⁷ *Bilateral Security Agreement Between the United States of America and Ukraine* (June 13, 2024), available at <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/06/13/bilateral-security-agreement-between-the-united-states-of-america-and-ukraine/> (last visited Nov. 14, 2025)

⁶⁸ *Agreement on Security Cooperation Between Ukraine and France* (Feb. 16, 2024), available at <https://www.elysee.fr/en/emmanuel-macron/2024/02/16/agreement-on-security-cooperation-between-france-and-ukraine> (last visited Jan. 6, 26).

⁶⁹ *Agreement on Security Cooperation and Long-Term Support Between the Federal Republic of Germany and Ukraine* (Feb. 16, 2024), available at <https://www.bundesregierung.de/resource/blob/975196/2260158/d84fa168bdd3747913c4e8618bd196af/2024-02-16-ukraine-sicherheitsvereinbarung-eng-data.pdf> (last visited Jan. 6, 26).

⁷⁰ *Agreement on Security Cooperation Between Ukraine and Italy* (Feb. 24, 2024), available at <https://www.president.gov.ua/en/news/ugoda-pro-spivrobitnictvo-u-sferi-bezpeki-mizh-ukrayinoyu-ta-89245> (last visited Jan. 6, 26).

⁷¹ *Agreement on Security Cooperation between Canada and Ukraine* (Feb. 24, 2024), available at <https://www.president.gov.ua/en/news/volodimir-zelenskij-i-dzhastin-tryudo-u-kiyevi-pidpisali-ugo-89237> (last visited Jan. 6, 26).

⁷² *Accord on Support for Ukraine and Cooperation between the Government of Japan and Ukraine* (June 13, 2024), available at <https://www.president.gov.ua/en/news/ugoda-pro-pidtrimku-ukrayini-ta-spivrobitnictvo-mizh-ukrayin-91481> (last visited Nov. 3, 2025).

⁷³ *One Hundred Year Partnership Agreement Between the United Kingdom of Great Britain and Northern Ireland and Ukraine* (Jan. 16, 2025), available at <https://www.gov.uk/government/news/one-hundred-year-partnership-agreement-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-ukraine> (last visited Jan. 6, 26); and *Agreement on Security Co-operation between the United Kingdom of Great Britain & Northern Ireland and Ukraine* (Jan. 12, 2024), available at <https://www.president.gov.ua/en/news/ugoda-pro-spivrobitnictvo-u-sferi-bezpeki-mizh-ukrayinoyu-ta-88277> (last visited Jan. 6, 26).

⁷⁴ See e.g., *Bilateral Security Agreement Between the United States of America and Ukraine* art. II.

⁷⁵ See e.g., *Annex to the Bilateral Security Agreement Between the United States of America and Ukraine*, ¶4.

aggression.⁷⁶ The UK would “*provide Ukraine with swift and sustained security assistance, modern military equipment across all domains as necessary, and economic assistance; impose economic and other costs on Russia; and consult with Ukraine on its needs as it exercises its right to self-defense enshrined in Article 51 of the UN Charter*”.⁷⁷ Similar language is contained in the agreements with France,⁷⁸ Norway,⁷⁹ and Japan.⁸⁰

While these agreements provide for rapid consultations and a broad commitment to security assistance, they stop short of offering an explicit and automatic defense guarantee. It should also be noted that these agreements do not have the status of international treaties. Rather, they are political agreements, like the Budapest Memorandum. This was intentional, as it allowed for a more rapid negotiation and signing process given the urgency, while reducing the risk of domestic opposition blocking their adoption.⁸¹ At the same time, the agreements are more susceptible to revocation or repudiation by future administrations, potentially undermining their significance long-term.⁸²

⁷⁶ *Agreement on Security Co-operation between the United Kingdom of Great Britain & Northern Ireland and Ukraine* Part VIII, art. 2, (Jan. 12, 2024), available at https://assets.publishing.service.gov.uk/media/65a14a6ae96df50014f845d2/UK-Ukraine_Agreement_on_Security_Co-operation.pdf (last visited Jan. 6, 26).

⁷⁷ *Agreement on Security Co-operation between the United Kingdom of Great Britain & Northern Ireland and Ukraine* Part VIII, art. 3, (Jan. 12, 2024), available at https://assets.publishing.service.gov.uk/media/65a14a6ae96df50014f845d2/UK-Ukraine_Agreement_on_Security_Co-operation.pdf (last visited Jan. 6, 26).

⁷⁸ *Agreement on Security Cooperation Between Ukraine and France* Part III (Feb. 16, 2024), available at <https://www.elysee.fr/en/emmanuel-macron/2024/02/16/agreement-on-security-cooperation-between-france-and-ukraine> (last visited Jan. 6, 26).

⁷⁹ *Agreement on Security Cooperation and Long-Term Support Between the Kingdom of Norway and Ukraine* Part VIII (May 31, 2024), available at <https://www.regjeringen.no/globalassets/departementene/smk/nyheter2024/vedlegg/agreement-on-security-cooperation-and-long-time-support-no-ukr.pdf> (last visited Jan. 6, 26).

⁸⁰ *Accord on Support for Ukraine and Cooperation between Ukraine and the Government of Japan* Part III (June 13, 2024), available at <https://www.president.gov.ua/en/news/ugoda-pro-pidtrimku-ukrayini-ta-spivrobitnictvo-mizh-ukrayin-91481> (last visited Jan. 6, 26).

⁸¹ Hanna Shelest, *From Budapest Memorandum to Ukraine Compact: A Conundrum of Guarantees*, RUSI (Jan. 20, 2025), available at <https://www.rusi.org/explore-our-research/publications/commentary/budapest-memorandum-ukraine-compact-conundrum-guarantees> (last visited Jan. 6, 26).

⁸² Hanna Shelest, *From Budapest Memorandum to Ukraine Compact: A Conundrum of Guarantees*, RUSI (Jan. 20, 2025), available at <https://www.rusi.org/explore-our-research/publications/commentary/budapest-memorandum-ukraine-compact-conundrum-guarantees> (last visited Jan. 6, 26).

Existing Models of Security Guarantees and Military Cooperation

International law defines security guarantees as commitments undertaken to protect a state from threats to its security.⁸³ They can be positive or negative.⁸⁴ Positive security guarantees are undertakings to assist a state in the event its security is imperiled, such as the obligation under Article 5 of the North Atlantic Treaty to provide assistance to a NATO member state that has suffered an armed attack.⁸⁵ Negative security guarantees are undertakings to refrain from acts that may imperil the security of a state, such as the prohibition of the use of force in Article 2(4) of the UN Charter.⁸⁶

This section explores examples of positive security guarantees contained in the bilateral Mutual Defense Treaties and other military cooperation agreements concluded between the US and Japan, South Korea, Taiwan, and the Philippines. It also discusses the guarantees that form part of the US-Israel security cooperation model, and refers to examples of security guarantees contained in collective defense agreements, such as the Australia, New Zealand and United States Security Treaty; the Southeast Asia Collective Defense Treaty signed between the US, Australia, France, New Zealand, Pakistan, the Philippines, Thailand, and the UK; the Rio Treaty concluded between the states from the American continent; and the EU security cooperation treaties and regulations.

US Bilateral Defense Treaties

In the early Cold War when the US was building its network of security alliances in Asia to contain communism in the Pacific, the US government negotiated its multilateral and bilateral defense treaties with the Philippines, Japan, Taiwan, and South Korea. The US-Philippines mutual defense treaty (1951) was concluded after the Philippines' independence in 1946. At the time, the US gained access to military bases in the Philippines, though these were later closed in the 1990s. The US also entered into a mutual defense treaty with Japan in 1951 and revised it in 1960, requiring prior consultation before deployment of US troops

⁸³ Marco Sassòli, 'The Concept of Security in International Law Relating to Armed Conflict' in Bailliet, Cecilia M. (ed.). *Security, A Multidisciplinary Approach* (Nijhoff, 2009) pp. 7-8, available at <https://archive-ouverte.unige.ch/unige:45924> (last visited Jan. 6, 26).

⁸⁴ Bruno Tertrais, *What security guarantees for Ukraine*, FONDATION POUR LA RECHERCHE STRATEGIQUE (Jun. 19, 2023), available at <https://www.frstrategie.org/publications/notes/what-security-guarantees-ukraine-2023> (last visited Jan. 6, 26).

⁸⁵ North Atlantic Treaty, art. 5, Apr. 4, 1949, 34 U.N.T.S. 243 (1949), available at https://www.nato.int/cps/en/natohq/official_texts_17120.html.

⁸⁶ Charter of the United Nations, art. 2(4), Jun. 26 1945, 1 U.N.T.S. XVI (1945), available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

overseas. The treaty with South Korea was negotiated in 1953, after the end of the Korean War (1950-1953), to deter another North Korean or Chinese attack. Like the Japan mutual defense treaty, the treaty enabled the US's continuous troop presence in South Korea. The first formal mutual defense treaty with Taiwan – the Sino-American mutual defense treaty – was signed in 1954 and entered into force in 1955. It was later terminated in 1979 as part of the revision of the US's policy following the recognition of the People's Republic of China, after which the Taiwan Relations Act (1979) established a new statutory basis for US-Taiwan security cooperation.

As discussed below, the US's mutual defense treaties with South Korea, Taiwan, Japan, and the Philippines all contain robust security guarantees. In addition to the mutual defense treaties, South Korea, Japan, and the Philippines have also entered into Status of Forces Agreements with the US to increase military cooperation and facilitate the deployment of US troops in their territory. The US routinely conducts joint military exercises with these states and regularly provides them with military equipment. All these forms of cooperation act as effective deterrents to military aggression and could potentially be explored and adopted for Ukraine.

Security Guarantees in Collective Defense Treaties

The key feature of the US bilateral mutual defense treaties with South Korea, Japan, and the Philippines is the collective defense clause.⁸⁷ An example of this clause is contained in Article V of the US-Japan mutual defense treaty:

Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes.⁸⁸

⁸⁷ Mutual Defense Treaty between the United States of America and Korea, art. III, Oct. 1, 1953, 238 U.N.T.S. 199 (1953), *available at* https://www.usfk.mil/portals/105/documents/sofa/h_mutual%20defense%20treaty_1953.pdf; Mutual Defense Treaty between the United States of America and the Philippines, art. V, Aug. 30, 1951, 177 U.N.T.S. 133 (1951), *available at*

<https://treaties.un.org/doc/Publication/UNTS/Volume%20177/volume-177-I-2315-English.pdf>.

⁸⁸ Treaty of Mutual Cooperation and Security between the United States of America and Japan, art. V, Jan. 19, 1960, 373 U.N.T.S. 179 (1960), *available at* <https://www.cia.gov/readingroom/docs/CIA-RDP07-00469R000100950001-2.pdf>.

There are notable similarities between this clause and Article 5 of the North Atlantic Treaty providing.⁸⁹

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-defense recognized 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.

Despite some textual differences, in practice, the mutual defense treaties provide near-NATO Article 5 levels of protection, specifically:

- The first part of Article 5 of the North Atlantic Treaty states that “[t]he 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*”.⁹⁰ In comparison, the US-Japan mutual defense treaty “*recognizes* that an armed attack against either Party in the territories under the administration of Japan *would be dangerous to its peace and safety*”.⁹¹ Therefore, while an armed attack against a NATO state in Europe or North America would constitute an armed attack against the US and every other NATO state – and thus immediately triggering their right to collective self-defense under the UN Charter⁹² – an armed attack against Japan would be “*dangerous to [the US’s] peace and safety*”. However, it would not *immediately* trigger a right to self-defense. Practically, Japan, South Korea, or the Philippines must all request the US’s assistance to trigger such a right.⁹³

⁸⁹ North Atlantic Treaty, art. 5, Apr. 4, 1949, 34 U.N.T.S. 243 (1949), *available at* https://www.nato.int/cps/en/natohq/official_texts_17120.htm.

⁹⁰ North Atlantic Treaty, art. 5, Apr. 4, 1949, 34 U.N.T.S. 243 (1949), *available at* https://www.nato.int/cps/en/natohq/official_texts_17120.htm.

⁹¹ Treaty of Mutual Cooperation and Security between the United States of America and Japan, art. V, Jan. 19, 1960, 373 U.N.T.S. 179 (1960), *available at* <https://www.cia.gov/readingroom/docs/CIA-RDP07-00469R000100950001-2.pdf>.

⁹² Charter of the United Nations, art. 51, Jun. 26 1945, 1 U.N.T.S. XVI (1945), *available at* <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

⁹³ *Military and Paramilitary Activities (Nicaragua v. U.S.)*, 1986 I.C.J. 14, para. 199 (June 27), *available at* <https://www.icj-cij.org/sites/default/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>.

- The second part of Article 5 of the North Atlantic Treaty provides that in response to such an armed attack, each NATO state “*will assist the Party or Parties so attacked by taking forthwith [...] such action as it deems necessary, including the use of armed force*”.⁹⁴ In contrast, the second portion of Article V of the US-Japan mutual defense treaty provides that in response to the armed attack, each party “*declares that it would act to meet the common danger in accordance with its constitutional provisions and processes*”.⁹⁵ In practice, both the NATO Article 5 model and the mutual defense treaty model give the assisting states discretion about how to provide assistance to the victim state. The principal difference is that the US-Japan mutual defense treaty does not refer to the assisting state engaging in “*the use of armed force*” to defend the victim state meaning that it may well choose to provide non-military assistance.

In sum, the US is obliged under both the NATO and the mutual defense treaties models to act and protect the victim state in the event of an armed attack. This may include the use of armed force, if the US deems this necessary in accordance with NATO Article 5, or if this is permitted under the US’s constitutional provisions and processes in accordance with mutual defense treaty Article V.

The mutual defense treaties with Japan and South Korea also contain provisions permitting the long-term deployment of foreign troops to deter aggression. For instance, Article VI of the US-Japan mutual defense treaty provides:

For the purpose of contributing to the security of Japan and the maintenance of international peace and security in the Far East, the United States of America is granted the use by its land, air, and naval forces of facilities and areas in Japan.⁹⁶

⁹⁴ North Atlantic Treaty, art. 5, Apr. 4, 1949, 34 U.N.T.S. 243 (1949), *available at* https://www.nato.int/cps/en/natohq/official_texts_17120.htm.

⁹⁵ Treaty of Mutual Cooperation and Security between the United States of America and Japan, art. V, Jan. 19, 1960, 373 U.N.T.S. 179 (1960), *available at* <https://www.cia.gov/readingroom/docs/CIA-RDP07-00469R000100950001-2.pdf>.

⁹⁶ Treaty of Mutual Cooperation and Security between the United States of America and Japan, art. VI, Jan. 19, 1960, 373 U.N.T.S. 179 (1960), *available at* <https://www.cia.gov/readingroom/docs/CIA-RDP07-00469R000100950001-2.pdf>.

The security situation in Ukraine, an ongoing war with Russia, and the need to deter any future acts of aggression present a similar historical context to the one in which the US had negotiated its mutual defense treaty with South Korea in the 1950s. A mutual defense treaty security guarantee based on the text of the US mutual defense treaties with South Korea or Japan is a valid option for Ukraine and would provide Ukraine with protections comparable to Article 5 of the North Atlantic Treaty should Ukraine agree to deployment of foreign troops in return.

Unlike the US-Japan and the US-Philippines mutual defense treaties, the US-Taiwan mutual defense treaty, which remained in force until 1979, extended to the West Pacific Area. Article V of the US-Taiwan mutual defense treaty contained a collective defense clause stating that “[e]ach party recognizes that an armed attack in the West Pacific Area directed against the territories of either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes”.⁹⁷ Article VI defined the West Pacific Area to include the Taiwanese island territories in the West Pacific and any others as may be determined by mutual agreement.⁹⁸ The significance of this treaty lies in the proximity of PRC to Taiwan and the disputed sovereignty claims, which closely resemble the situation Ukraine faces today. However, the treaty was terminated following the US’s shift in diplomatic recognition to the PRC.

The present US-Taiwan security and defense cooperation is governed by the US statute, the Taiwan Relations Act 1979. Unlike NATO’s Article 5 collective defense guarantee and the US’s mutual defense treaties with Japan, South Korea, and the Philippines—which impose clear, binding obligations on the US to respond to an armed attack—US support for Taiwan rests on a more limited and deliberately ambiguous framework. The US’s commitments to Taiwan are framed as statutory policy mandates rather than treaty guarantees, leaving decisions about the use of force to the President and Congress.⁹⁹ For instance, Section 2(b)(5)-(6) state that the US will: “[p]rovide Taiwan with arms of a defensive character; and maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic

⁹⁷ Mutual Defense Treaty Between the United States and the Republic of China, art. V, December 2, 1954, 215 U.N.T.S. 248 (1956), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20248/v248.pdf>.

⁹⁸ Mutual Defense Treaty Between the United States and the Republic of China, art. VI, December 2, 1954, 215 U.N.T.S. 248 (1956), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20248/v248.pdf>.

⁹⁹ *Taiwan Relations Act*, H.R.2479, 96th Congress (1979-1980), sec. 3(b) available at <https://www.congress.gov/bill/96th-congress/house-bill/2479/text>.

system, of the people of Taiwan”.¹⁰⁰ Furthermore, Section 3(a) provides that that the US “will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability”.¹⁰¹

The Taiwan Relations Act 1979 framework falls short of a formal defense treaty and does not legally obligate the US to intervene militarily, in contrast to treaty allies such as Japan, South Korea, and the Philippines, where defense commitments are explicit.

Deployment and Permanent Stationing of Foreign Troops

After signing the mutual defense treaties, the US negotiated a legal framework governing the status, rights, and obligations of US military personnel stationed in South Korea and Japan under the so-called Status of Forces Agreements. In 1960, simultaneously with the revised text of the mutual defense treaty, the US concluded a Status of Forces Agreement with Japan.¹⁰² Six years later, in 1966, the US concluded a Status of Forces Agreement with South Korea, which was revised in 1991, and again in 2001.¹⁰³

Similarly, in 1947, the US concluded the Military Bases Agreement with the Philippines, enabling the US to establish military bases in this region.¹⁰⁴ The

¹⁰⁰ *Taiwan Relations Act*, H.R.2479, 96th Congress (1979-1980), sec. 2(b) available at <https://www.congress.gov/bill/96th-congress/house-bill/2479/text>.

¹⁰¹ *Taiwan Relations Act*, H.R.2479, 96th Congress (1979-1980), sec. 3(a) available at <https://www.congress.gov/bill/96th-congress/house-bill/2479/text>.

¹⁰² Agreement Under Article VI of the Treaty of Mutual Cooperation and Security Between the United States of America and Japan, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan 1960, Jan. 19, 1960, 373 U.N.T.S. 207 (1960), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20373/volume-373-I-5321-English.pdf>.

¹⁰³ Agreement Under Article IV of the Mutual Defense Treaty between the United States of America and the Republic of Korea, Regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea, Jul. 9, 1966, 674 U.N.T.S. 163 (1969), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20674/volume-674-I-9605-English.pdf>;

Understanding on Implementation of the Agreement under Article IV of the Mutual Defense Treaty Between the United States of America and the Republic of Korea Regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea and Related Agreed Minutes, Feb. 1, 1991, available at https://www.usfk.mil/Portals/105/Documents/SOFA/A05_Understandings.on.Implementation.pdf;

Agreement between the United States of America and the Republic of Korea, Amending the Agreement of July 9, 1966, As Amended, Jan. 18, 2001, available at <https://www.state.gov/wp-content/uploads/2019/02/13138-South-Korea-Defense-Status-of-Forces-1.18.2001.pdf>.

¹⁰⁴ Agreement between the Republic of the Philippines and the United States of America Concerning Military Bases, Mar. 14, 1947, art. I, 43 U.N.T.S. 271 (1949), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%2043/volume-43-I-673-English.pdf>.

military bases were eventually closed in 1992,¹⁰⁵ and the US no longer maintains a permanent military presence in the Philippines. However, in 1998, the US and the Philippines entered into the Visiting Forces Agreement governing the legal status of US troops visiting the Philippines.¹⁰⁶ In 2014, the US and the Philippines negotiated the Enhanced Defense Cooperation Agreement governing the scope, location, and logistics of activities of US troops in the Philippines.¹⁰⁷

While the mutual defense treaties are strategic documents, the Status of Forces Agreements with South Korea and Japan and the Enhanced Defense Cooperation Agreement with the Philippines are legal instruments covering customs, taxation and rules for personnel and equipment, base access, labor arrangements, and civil liability rights of US military personnel overseas. These arrangements jointly serve as effective deterrents to hostile acts in the region.

For instance, under the respective Status of Forces Agreements, the US currently has approximately 55,000 troops stationed in Japan, and 28,500 troops stationed in South Korea.¹⁰⁸ While there is no permanent US military presence in the Philippines, the US troops have rotational access to several military bases in the country for joint training and exercises.¹⁰⁹

As to the financing arrangements, both South Korea and Japan bear a portion of the cost required to maintain a permanent US military presence, under the respective Special Measures Agreements entered into with the US.¹¹⁰ In 2026,

¹⁰⁵ Shawn D. Harding, *There and Back and There Again: U.S. Military Bases in the Philippines*, U.S. NAVAL INSTITUTE (May 2024), available at <https://www.usni.org/magazines/proceedings/2024/may/there-and-back-and-there-again-us-military-bases-philippines-s>.

¹⁰⁶ Agreement Between the Government of the United States of America and the Government of the Republic of the Philippines Regarding the Treatment of United States Armed Forces Visiting the Philippines, arts. III-VIII, Feb. 10, 1998, available at <https://www.state.gov/wp-content/uploads/2019/02/12931-Philippines-Defense-Status-of-Forces-10.9.1998.pdf>.

¹⁰⁷ Agreement Between the United States of America and the Republic of the Philippines On Enhanced Defense Cooperation, Apr. 28, 2014, available at <https://www.state.gov/wp-content/uploads/2019/02/14-625-Philippines-Defense-Cooperation.pdf>.

¹⁰⁸ U.S. Security Cooperation with Japan, U.S. DEPARTMENT OF STATE (Jan. 20, 2025), available at <https://www.state.gov/u-s-security-cooperation-with-japan> (last visited Jan. 6, 26); U.S. Security Cooperation with the Republic of Korea (ROK), U.S. DEPARTMENT OF STATE (Jan. 20, 2025), available at <https://www.state.gov/u-s-security-cooperation-with-korea> (last visited Jan. 6, 26).

¹⁰⁹ U.S. DEPARTMENT OF STATE, U.S. Security Cooperation with the Philippines, (Jan. 20, 2025), available at <https://www.state.gov/u-s-security-cooperation-with-the-philippines> (last visited Nov. 18, 25).

¹¹⁰ Agreement Between the United States of America and the Republic of Korea Regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea, art. I, Apr. 8, 2021, available at <https://www.state.gov/wp-content/uploads/2021/10/21-901-Korea-Defense-SMA.pdf>; Agreement Between the United States of America and Japan Concerning New Special Measures Relating to Article XXIV of the Agreement Under Article VI of the Treaty of Mutual Cooperation and Security Between the United States of America and

South Korea will spend approximately USD 1.2 billion under the US-South Korea Special Measures Agreement,¹¹¹ while Japan will likely spend approximately USD 1.4 billion under the US-Japan Special Measures Agreement.¹¹²

On the other hand, the Enhanced Defense Cooperation Agreement with the Philippines provides for costs primarily to be borne by the US government for training and improvement of military base infrastructure in the Philippines.¹¹³

Joint Military Exercises and Provision of Military Equipment

The US regularly conducts joint military exercises with Taiwan, South Korea, Japan, and the Philippines. This type of cooperation has been strengthened by recent agreements signed between the US and these states:

- In August 2023, the US, Japan, and South Korea concluded a trilateral security pact called “Camp David Principles”.¹¹⁴
- In July 2024, the US and the Philippines concluded the Philippines-US Security Sector Assistance Roadmap, a plan to guide defense modernization investments and military cooperation.¹¹⁵
- In May 2025, the US issued the National Defense Authorization Act, which includes provisions to enhance joint training and exercises with Taiwan.¹¹⁶ While these activities are generally conducted on a

Japan, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan, art. I, Jan. 7, 2022, available at <https://www.state.gov/wp-content/uploads/2022/05/22-401.1-Japan-Defense-SMA.pdf>.

¹¹¹ Markus Garlauskas, *The ‘ironclad’ US-South Korea alliance is outdated. A new age requires a ‘titanium’ alliance*, ATLANTIC COUNCIL (Jun. 24, 2025), available at <https://www.atlanticcouncil.org/blogs/new-atlanticist/the-ironclad-us-south-korea-alliance-is-outdated-a-new-age-requires-a-titanium-alliance/> (last visited Jan. 6, 26).

¹¹² *Defense Programs and Budget of Japan*, MINISTRY OF DEFENSE, page 39 (Dec. 2021), available at https://www.mod.go.jp/en/d_act/d_budget/pdf/20220420.pdf.

¹¹³ Agreement Between the United States of America and the Republic of the Philippines On Enhanced Defense Cooperation, art. III, Apr. 28, 2014, available at <https://www.state.gov/wp-content/uploads/2019/02/14-625-Philippines-Defense-Cooperation.pdf>; Carl Thayer, *Analyzing the US-Philippines Enhanced Defense Cooperation Agreement*, The Diplomat (May 2, 2014), available at <https://thediplomat.com/2014/05/analyzing-the-us-philippines-enhanced-defense-cooperation-agreement/>.

¹¹⁴ *Camp David Principles*, U.S. WHITE HOUSE (Aug. 18, 2023), available at <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2023/08/18/camp-david-principles/> (last visited Jan. 6, 26).

¹¹⁵ *Joint Statement on the Philippines-United States Fourth 2+2 Ministerial Dialogue*, U.S. DEPARTMENT OF WAR (Jul. 30, 2024), available at <https://www.war.gov/News/Releases/Release/Article/3854902/joint-statement-on-the-philippines-united-states-fourth-22-ministerial-dialogue/> (last visited Jan. 6, 26).

¹¹⁶ *U.S. National Defense Authorization Act*, U.S. CONGRESS (2023), available at <https://www.congress.gov/committee-report/117th-congress/house-report/397/1> (last visited Jan. 6, 26).

rotational basis and do not constitute a permanent US official military presence in Taiwan, it has been reported that US Army Special Forces have recently been stationed at Taiwanese Army amphibious command centers, which represents the first enduring US military presence on the island in over four decades.¹¹⁷

While US defense transfers to the Philippines, Japan, and South Korea are primarily oriented toward force modernization and capacity building—emphasizing aircraft procurement, maritime security capabilities, selective missile systems, and the development of modernized military infrastructure¹¹⁸—Taiwan’s acquisitions are largely focused on strengthening asymmetric defense capabilities.¹¹⁹ These include long-range precision strike systems, coastal defense weapons, drones, air defense assets, and select advanced aircraft, all specifically aimed at deterring and complicating any potential large-scale military aggression. Most US arms sales to Taiwan are conducted through the US Foreign Military Sales program.¹²⁰ In these cases, Taiwan pays for the weapons, equipment, and associated support under the relevant agreements. The Taiwanese government funds these purchases directly from its defense budget.

US-Israel Security Cooperation Model

The US’s security cooperation framework with Israel dates to the creation of the State of Israel in 1948 (“US-Israel Security Cooperation Model”). Even though the US and Israel do not have a mutual defense treaty that contains a formal security guarantee clause like in the US’s mutual defense treaties with the Philippines, South Korea, and Japan, Israel remains the leading recipient

¹¹⁷ Guy D. McCardle, *U.S. Special Forces Deepen Presence in Taiwan Amid Rising Regional Tensions* (Jul. 12, 2025), available at <https://sofrep.com/news/u-s-special-forces-deepen-presence-in-taiwan-amid-rising-regional-tensions/> (last visited Dec. 18, 25).

¹¹⁸ *U.S. Security Cooperation with Japan*, U.S. DEPARTMENT OF STATE (Jan. 20, 2025), available at <https://www.state.gov/u-s-security-cooperation-with-japan> (last visited Jan. 6, 26); *U.S. Security Cooperation with the Republic of Korea (ROK)*, U.S. DEPARTMENT OF STATE (Jan. 20, 2025), available at <https://www.state.gov/u-s-security-cooperation-with-korea> (last visited Jan. 6, 26); Dzirhan Mahadzir, *Japan Signs Deal for 400 Tomahawk Land Attack Missiles*, U.S. NAVAL INSTITUTE NEWS (Jan. 18, 2024), available at <https://news.usni.org/2024/01/18/japan-signs-deal-for-400-tomahawk-land-attack-missiles>; *U.S. Security Cooperation with the Philippines*, U.S. DEPARTMENT OF STATE (Jan. 20, 2025), available at <https://www.state.gov/u-s-security-cooperation-with-the-philippines> (last visited Jan. 6, 26).

¹¹⁹ *U.S. National Defense Authorization Act*, U.S. CONGRESS (2023) 603-609, available at <https://www.congress.gov/committee-report/117th-congress/house-report/397/1> (last visited Jan. 6, 26).

¹²⁰ CNBC, *China says U.S. will only ‘harm itself’ after Washington approves \$11 billion arms sale to Taiwan* (Dec. 18, 2025) available at <https://www.cnbc.com/2025/12/18/us-taiwan-china-arms-sale-.html> (last visited Jan. 6, 26).

worldwide of US foreign military financing, which acts as a strong barrier against military aggression.

The US-Israel Security Cooperation Model is multi-layered and consists of several layers including formal security corporation agreements and soft law instruments such as the Memorandum of Understanding covering the US's expenditure for improvement of Israel's defense capabilities and a special designation of Israel as a "Major Non-NATO Ally" under US law, which guarantees extensive military cooperation between the two countries.

Security Cooperation Agreements

The US's agreements with Israel cover a vast area of defense and military cooperation.¹²¹ The main agreements include the 1952 Mutual Defense Assistance Agreement, the 1982 Agreement Concerning General Security of Military Information, the 1988 Mutual Support Agreement between the US and Israel, and the 1994 Status of Forces Agreement between the US and Israel:

- The 1952 Mutual Defense Assistance Agreement is the first legal document constituting the legal basis of the current cooperation model between the US and Israel. It was negotiated during the Cold War era, when the US began mobilizing foreign military assistance programs to draw allies and contain the Soviet influence.¹²² It constitutes a diplomatic exchange of notes, where under the US undertook to provide defense assistance to Israel "*to maintain its internal security, its legitimate self-defense, or to permit it to participate in the defense of the area of which it is a part, or in UN collective security arrangements and measures, and that it will not undertake any act of aggression against any other state*".¹²³
- The 1982 Agreement Concerning General Security of Military Information is also an exchange of notes between the US and Israel, which constitutes a framework for the exchange of classified

¹²¹ Jim Zanotti, *Israel: Background and U.S. Relations*, Congressional Research Service Report No. RL33476, (July 1, 2022), available at https://www.congress.gov/crs_external_products/RL/PDF/RL33476/RL33476.95.pdf.

¹²² *Foreign Relations of the United States, 1952–1954, Western Europe and Canada, Vol. VI, Part 1, Doc. No. 263*, Washington, U.S. Department of State (Jun 16, 1952), available at

<https://history.state.gov/historicaldocuments/frus1952-54v06p1/d263> (last visited Jan. 6, 26).

¹²³ *Exchange of Notes Constituting an Agreement Relating to Mutual Defence Assistance*, Tel Aviv, July 1, 1952, and July 23, 1952, 1953 U.N.T.S. 385, available at <http://www.worldlii.org/int/other/treaties/UNTSer/1953/385.pdf>.

information.¹²⁴ It applies to “*all exchanges of classified information between all agencies and authorized officials of our two governments*” and subject to further “*technical arrangements (including an Industrial Security Agreement) as may be necessary between appropriate agencies*” of the two countries.¹²⁵

- The 1988 Mutual Support Agreement formalized “*reciprocal provision of logistic support, supplies, and services*” between the two countries, effectively ensuring constant budgeting and deployment of military aid and assistance.¹²⁶
- The 1994 Status of Forces Agreement established the legal framework governing the operations of US military personnel in Israel and provided US personnel with legal protections while permanently stationed in Israel.¹²⁷

Soft Law Instruments

The soft law instruments concluded between the US and Israel govern and detail practical aspects of deployment of the US’s military aid to Israel.

An example of a soft law instrument programming a budget of military assistance is the Memorandum of Understanding between the US and Israel. The current Memorandum of Understanding was concluded in 2019 and covers the US’s 10-year expenditure of USD 38 billion for the improvement of Israel’s defense capabilities, USD 33 billion in foreign military funding, and USD 5 billion in missile defense assistance to Israel to be deployed by 2028.¹²⁸ This allows an uninterrupted flow of military equipment to Israel.

¹²⁴ *Exchange of Notes Constituting an Agreement Concerning General Security of Military Information*, Tel Aviv, 30 July 1982 and Jerusalem, 10 Dec. 1982, available at <https://www.jewishvirtuallibrary.org/jsource/US-Israel/securityofinfo.pdf>.

¹²⁵ *Exchange of Notes Constituting an Agreement Concerning General Security of Military Information*, Tel Aviv, 30 July 1982 and Jerusalem, 10 Dec. 1982, available at <https://www.jewishvirtuallibrary.org/jsource/US-Israel/securityofinfo.pdf>.

¹²⁶ *Mutual Support Agreement between the United States of America and Israel* art. 1, Stuttgart-Vaihingen, May 10, 1988 and Tel Aviv, May 24, 1988, 2007 U.N.T.S. Vol. 2343, No. 41991, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%202343/v2343.pdf>.

¹²⁷ *U.S. Security Cooperation with Israel*, U.S. Department of State (Apr 25, 2025), available at <https://www.state.gov/u-s-security-cooperation-with-israel> (last visited Jan. 6, 26).

¹²⁸ *Fact Sheet: Memorandum of Understanding Reached with Israel*, U.S. White House (Sept. 14, 2016), available at <https://obamawhitehouse.archives.gov/the-press-office/2016/09/14/fact-sheet-memorandum-understanding-reached-israel> (last visited Jan. 6, 26).

Israel's designation as a "Major Non-NATO Ally" under US law is also key in ensuring the long-term security cooperation between the two countries as it is aimed "*to help Israel [in] its ability to counter and defeat any credible conventional military threat from any individual state or possible coalition of states or from non-state actors*".¹²⁹ There are only 19 countries that have been designated as a "Major Non-NATO Ally" of the US including Argentina, Australia, Bahrain, Brazil, Colombia, Egypt, Israel, Japan, Jordan, Kenya, Kuwait, Morocco, New Zealand, Pakistan, the Philippines, Qatar, South Korea, Thailand, and Tunisia.¹³⁰ While the "Major Non-NATO Ally" status "*does not entail any security commitments to the designated country*",¹³¹ it confers several defense-cooperation privileges under US law:

- Major Non-NATO Allies are "*eligible as a location for U.S.-owned War Reserve Stockpiles to be placed on its territory outside of U.S. military facilities*".¹³²
- Major Non-NATO Allies may participate in joint "*cooperative research and development projects on defense equipment and munitions*".¹³³
- The US Excess Defense Articles Program "*enables the United States to provide [Major Non-NATO Allies] with supplies in excess of U.S. requirements, at either reduced rates or no charge*",¹³⁴ which underpins priority deliveries of US defense materiel to those states.

¹²⁹ *U.S. Security Cooperation with Israel*, U.S. DEPARTMENT OF STATE (Apr. 25, 2025), available at <https://www.state.gov/u-s-security-cooperation-with-israel> (last visited Jan. 6, 26).

¹³⁰ 22 U.S.C. § 2651k, available at <https://www.govinfo.gov/content/pkg/USCODE-2017-title22/html/USCODE-2017-title22-chap32-subchapII-partII-sec2321k.htm>; 10 U.S.C. § 2350a available at <https://www.govinfo.gov/content/pkg/USCODE-2021-title10/html/USCODE-2021-title10-subtitleA-partIV-chap138-subchapII-sec2350a.html>.

¹³¹ *Major Non-NATO Ally Status*, U.S. DEPARTMENT OF STATE (Jan. 20, 2025), available at <https://www.state.gov/major-non-nato-ally-status/#footnote> (last visited Jan. 6, 26).

¹³² *Major Non-NATO Ally Status*, U.S. DEPARTMENT OF STATE (Jan. 30, 2020), available at <https://2017-2021.state.gov/major-non-nato-ally-status/?safe=1> (last visited Jan. 6, 26).

¹³³ 22 U.S.C. § 2321k, *Designation of Major Non-NATO Allies*, U.S. Code, Cornell Law School, available at <https://www.law.cornell.edu/uscode/text/22/2321k>.

¹³⁴ Jeremy M. Sharp, *U.S. Foreign Aid to Israel: Overview and Developments since October 7, 2023*, Congressional Research Service Report No. RL33222, p. 37 (May 28, 2025), available at https://www.congress.gov/crs_external_products/RL/PDF/RL33222/RL33222.53.pdf.

For instance, Israel received at least USD 296 million in Excess Defense Articles Program supplies between 2013 and 2023.¹³⁵

Aside from the “Major Non-NATO Ally” status, Israel enjoys a guarantee of the “qualitative military edge”, through a US foreign policy commitment, codified in US law to ensure that Israel maintains a technological advantage by being provided with more advanced weapons than other regional states receive to deter its numerically superior adversaries.¹³⁶ Qualitative military edge is defined as “*the ability to counter and defeat any credible conventional military threat from any individual state or possible coalition of states or from non-state actors, while sustaining minimal damages and casualties*”.¹³⁷ This principle dates back to the Cold War when the US sought to achieve and maintain a “qualitative edge” in defense systems in response to the Soviet Union’s military advancements.¹³⁸ This policy was then applied by consecutive US governments to Israel to maintain its security and help deter hostilities since the October 1973 war.¹³⁹ While this principle was initially a policy instrument, it was later codified into US law in 2008.¹⁴⁰

Collective Defense Agreements

To respond to the collective security needs of the Inter-American System, articulated under the auspices of the Organization of American States, in 1947, the US and 20 other nations from the American continent signed the Rio Treaty.¹⁴¹ In

¹³⁵ Jeremy M. Sharp, *U.S. Foreign Aid to Israel: Overview and Developments since October 7, 2023*, Congressional Research Service Report No. RL33222, p. 37 (May 28, 2025), available at https://www.congress.gov/crs_external_products/RL/PDF/RL33222/RL33222.53.pdf.

¹³⁶ Jim Zanotti, *Israel: Background and U.S. Relations*, CRS Report No. RL33476 (July 1, 2022), available at https://www.congress.gov/crs_external_products/RL/PDF/RL33476/RL33476.95.pdf.

¹³⁷ 22 U.S.C. § 2776(h)(3), U.S. Code, Cornell Law School, available at https://www.law.cornell.edu/uscode/text/22/2776#h_3.

¹³⁸ National Military Strategy of the United States (January 1992), at 10, available at <https://history.defense.gov/Portals/70/Documents/nms/nms1992.pdf?ver=2014-06-25-123420-723>.

¹³⁹ Jeremy M. Sharp, *U.S. Foreign Aid to Israel: Overview and Developments since October 7, 2023*, Congressional Research Service Report No. RL33222, p. 22 (May 28, 2025), available at https://www.congress.gov/crs_external_products/RL/PDF/RL33222/RL33222.53.pdf.

¹⁴⁰ Jeremy M. Sharp, *U.S. Foreign Aid to Israel: Overview and Developments since October 7, 2023*, Congressional Research Service Report No. RL33222, p. 22 (May 28, 2025), available at https://www.congress.gov/crs_external_products/RL/PDF/RL33222/RL33222.53.pdf. See also *Major Non-NATO Ally Status*, U.S. DEPARTMENT OF STATE (Jan. 30, 2020), available at <https://2017-2021.state.gov/major-non-nato-ally-status/?safe=1> (last visited Jan. 6, 26).

¹⁴¹ Organización de Estados Americanos, Departamento de Derecho Internacional: *Estado de Firmas y Ratificaciones*, available at <https://www.oas.org/juridico/spanish/firmas/b-29.html>; Jean-Michel Arrighi, Inter-American Treaty of Reciprocal Assistance of Rio de Janeiro (1947), MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, (March 2021), available at <https://opil.ouplaw.com/display/10.1093/epil/9780199231690/law-9780199231690-e646> (last visited Jan. 6, 26).

the same period, in addition to bilateral agreements with the Philippines, Japan, and South Korea, concluded in the context of the emerging Cold War, the US signed a series of collective security agreements, such as the 1951 Australia, New Zealand and United States Security Treaty¹⁴² and the 1954 Southeast Asia Collective Defense Treaty with Australia, France, New Zealand, Pakistan, the Philippines, Thailand, and the UK.¹⁴³

The EU collective defense framework currently consists of a number of agreements providing for different forms of military cooperation but does not include the NATO-type mutual defense commitment. However, prior to the establishment of the EU, efforts to create a common European defense structure were pursued through the European Defense Community Treaty, which was not ratified.¹⁴⁴

The Rio Treaty

The Rio Treaty consolidates the principle of solidarity, a base for the obligation to exert collective security on the American continent.¹⁴⁵ Article 3 of the Rio Treaty security guarantees provisions read as follows:¹⁴⁶

1. The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations.
2. On the request of the State or States directly attacked and until the decision of the Organ of Consultation of the

¹⁴² Wifried Holz, ANZUS Pact (1951), MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (November 2007), available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e583> (last visited Jan. 6, 26).

¹⁴³ *Southeast Organization Treaty (SEATO)*, 1954, U.S. DEPARTMENT OF STATE (1953-1960) available at <https://history.state.gov/milestones/1953-1960/seato>.

¹⁴⁴ *Treaty Establishing the European Defense Community*, May 27, 1952 (not in force), available at <https://www.cvce.eu/en/education/unit-content/-/unit/803b2430-7d1c-4e7b-9101-47415702fc8e/a7641383-37b2-40b1-a694-c77769074358/Resources>.

¹⁴⁵ Jean-Michel Arrighi, Inter-American Treaty of Reciprocal Assistance of Rio de Janeiro (1947), MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, (March 2021) available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e646>.

¹⁴⁶ Inter-American Treaty of Reciprocal Assistance art. 3(1)-(2), Sept. 2, 1947, 21 U.N.T.S. 77 (1947), available at <https://www.oas.org/juridico/english/treaties/b-29.html>.

Inter-American System, each one of the Contracting Parties may determine the immediate measures which it may individually take in fulfillment of the obligation contained in the preceding paragraph and in accordance with the principle of continental solidarity. The Organ of Consultation shall meet without delay for the purpose of examining those measures and agreeing upon the measures of a collective character that should be taken [...]

The language of Article 3 is analogous to the North Atlantic Treaty's Article 5:

- The first part of Article 3 provides that an armed attack against one party is an armed attack against “*all American States*” and triggering the right of “*individual or collective self-defense recognized by Article 51 of the Charter of the United Nations*”.¹⁴⁷
- The second part of Article 3 provides for individual measures that may be taken as aiding a state’s discretion while the Organ of Consultation convenes to examine the measures and agree upon the ones that should be taken collectively, typically requiring a two-thirds vote.¹⁴⁸ While NATO Article 5 provides for an immediate collective military response, a joint action under the second part of Article 3 of the Rio Treaty is not automatically military and responses can include diplomatic or economic measures such as “*recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; and use of armed force*”.¹⁴⁹

The straightforward and operational nature of the security guarantees contained in Article 3 of the Rio Treaty provides a sound model for a multi-party guarantee for Ukraine. While it embodies a NATO Article 5-style commitment to adopt immediate individual measures, it also enables states to consult on collective

¹⁴⁷ Inter-American Treaty of Reciprocal Assistance art. 3(1), Sept. 2, 1947, 21 U.N.T.S. 77 (1947), available at <https://www.oas.org/juridico/english/treaties/b-29.html>.

¹⁴⁸ Inter-American Treaty of Reciprocal Assistance art. 3(2), Sept. 2, 1947, 21 U.N.T.S. 77 (1947), available at <https://www.oas.org/juridico/english/treaties/b-29.html>.

¹⁴⁹ Inter-American Treaty of Reciprocal Assistance art. 8, Sept. 2, 1947, 21 U.N.T.S. 77 (1947), available at <https://www.oas.org/juridico/english/treaties/b-29.html>.

military and non-military measures to be taken to “*assist*” the victim state, thereby allowing some flexibility in relation to collective response.

The Australia, New Zealand and United States Security Treaty

The Australia, New Zealand and United States Security Treaty was concluded with the primary aim of providing security to Australia and New Zealand against any potential threat from Japan following the Second World War.¹⁵⁰ Articles III and IV of the Australia, New Zealand and United States Security Treaty contain security guarantees and read as follows:¹⁵¹

Article III [...] The Parties will consult together whenever in the opinion of any of them the territorial integrity, political independence or security of any of the Parties is threatened in the Pacific.

Article IV [...] Each Party recognizes that an armed attack in the Pacific Area on any of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes.

Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

Articles III and IV of the Australia, New Zealand and United States Security Treaty establish an obligation to consult and an obligation to respond in the event of a threat or use of force against one of the parties:

- Article III establishes that the “[p]arties will consult together whenever in the opinion of any of them the territorial integrity, political independence or security of any of the Parties is threatened

¹⁵⁰ Wifried Holz, ANZUS Pact (1951), MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (November 2007), available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e583>.

¹⁵¹ Security Treaty Between the United States, Australia, and New Zealand (ANZUS) arts. 3-4, Sept. 1, 1951, 131 U.N.T.S. 83 (1951), available at https://avalon.law.yale.edu/20th_century/usmu002.asp.

in the Pacific”.¹⁵² In practice, the US and Australia could be engaged in consultations under this provision relating to the potential threat of hostilities, specifically if Australian forces stationed in Malaysia were attacked by foreign (implicitly Indonesian, at the time) forces.¹⁵³ This situation was considered during the period of the Indonesian Confrontation in the 1960s, a time when Australian forces were present in Malaysia as part of the British Commonwealth Far East Strategic Reserve. While Australia sought to use these consultations to gain a stronger commitment from the US, the US maintained focus on a general, consultative security relationship.¹⁵⁴

- Article IV states that “[e]ach Party recognizes that an armed attack in the Pacific Area on any of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes” and that any armed attack and the measures taken shall be immediately reported to the UN Security Council.¹⁵⁵ This is a weaker obligation compared to the one contained in Article 5 of North Atlantic Treaty or Article 3 of the Rio Treaty, as it does not equate an armed attack against one party to an armed attack against all, it does not establish an obligation of an immediate individual response or collective consultation unlike Article 3 of the Rio Treaty, and it gives an aiding state freedom to determine whether or how to act in conformity with its “constitutional processes”.¹⁵⁶ Indeed, according to commentators, “[c]onsult is about as clear as any security commitment in [Australia, New Zealand and United States Security Treaty] gets – there is no security guarantee

¹⁵² Security Treaty Between the United States, Australia, and New Zealand (ANZUS) arts. 3-4, Sept. 1, 1951, 131 U.N.T.S. 83 (1951), available at https://avalon.law.yale.edu/20th_century/usmu002.asp.

¹⁵³ Memorandum of Conversation, Office of the Historian, *Foreign Relations of the United States, 1961-1963, Volume XXIII: Southeast Asia, Paper Presented to the Australian Ambassador*, U.S. DEPARTMENT OF STATE (1961), available at <https://history.state.gov/historicaldocuments/frus1961-63v23/d343>.

¹⁵⁴ On 16 October 1963, the US shared a memorandum with Australian Ambassador Howard Beale outlining its interpretation of the obligations arising under the ANZUS Treaty: “[s]ince the Treaty does not define the kind of action the parties must take in the event of an armed attack, the response of the United States would be determined in consultation with the other parties of the Treaty. It was agreed that there was a whole range of measures which might be appropriate including political and diplomatic activities and in an extreme situation, the use of armed force”. See United States Department of State, Office of the Historian: *Memorandum of Conversation, Office of the Historian, Foreign Relations of the United States, 1961-1963, Volume XXIII: Southeast Asia, Paper Presented to the Australian Ambassador* (1961), available at <https://history.state.gov/historicaldocuments/frus1961-63v23/d343> (last visited Jan. 6, 26).

¹⁵⁵ Security Treaty Between the United States, Australia, and New Zealand (ANZUS) art. 4, Sept. 1, 1951, 131 U.N.T.S. 83 (1951), available at https://avalon.law.yale.edu/20th_century/usmu002.asp.

¹⁵⁶ James A. Green, *Collective Self-Defense Treaty Arrangements*, in *COLLECTIVE SELF-DEFENSE IN INTERNATIONAL LAW* 253, 232-275 (James A. Green, 2024).

[...] like that found in Article V of the NATO Treaty that provides for the provision of collective defense".¹⁵⁷

The model of guarantees contained in Articles III and IV is not suitable for Ukraine since it does not provide for collective defense and any response would be contingent on the completion of domestic constitutional processes, which may ultimately prevent some states from acting altogether.

The Southeast Asia Collective Defense Treaty

The Southeast Asia Collective Defense Treaty was concluded to coordinate efforts of collective self-defense “*for the preservation of peace and security*”.¹⁵⁸ Similarly to Articles III and IV of the Australia, New Zealand and United States Security Treaty, Article IV of the Southeast Asia Collective Defense Treaty provides:¹⁵⁹

1. Each Party recognizes that aggression by means of armed attack in the treaty area against any of the Parties or against any State or territory which the Parties by unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations.
2. If, in the opinion of any of the Parties, the inviolability or the integrity of the territory or the sovereignty or political independence of any Party in the treaty area or of any other State or territory to which the provisions of paragraph 1 of this Article from time to time apply is threatened in any way other than by armed attack or is affected or threatened by any fact or situation which might endanger the peace of the area, the

¹⁵⁷ Australian Institute of International Affairs, *ANZUS Invoked: September 11 and Interpreting the Treaty*, (2021) available at <https://www.internationalaffairs.org.au/australianoutlook/anzus-invoked-september-11-and-interpreting-the-treaty/> (last visited Jan. 6, 26).

¹⁵⁸ Southeast Asia Collective Defense Treaty, sixth clause of the preamble, Sept. 8, 1954, 209 U.N.T.S. 23 (1954), available at <https://treaties.un.org/doc/publication/unts/volume%20209/volume-209-i-2819-english.pdf>.

¹⁵⁹ Southeast Asia Collective Defense Treaty art. 4, Sept. 8, 1954, 209 U.N.T.S. 23 (1954), available at <https://treaties.un.org/doc/publication/unts/volume%20209/volume-209-i-2819-english.pdf>.

Parties shall consult immediately in order to agree on the measures which should be taken for the common defense.

3. It is understood that no action on the territory of any State designated by unanimous agreement under paragraph 1 of this Article or on any territory so designated shall be taken except at the invitation or with the consent of the Government concerned.

Unlike the obligation to consult in Article III of the Australia, New Zealand and United States Security Treaty, Article IV(2) requires aiding states to “*consult immediately in order to agree on the measures which should be taken for the common defense*”.¹⁶⁰ But similarly to the Australia, New Zealand and United States Security Treaty Article IV, the Southeast Asia Collective Defense Treaty in Article IV(1) does not establish an obligation to respond in the event of an armed attack but to only recognize that such an attack “*would endanger [the aiding state’s] own peace and safety*”, and, if so, to then “*act to meet the common danger*” subject to the aiding state’s own “*constitutional processes*”.¹⁶¹ While the US expressed that “*the American constitutional position [...] gives all the freedom of action and power to act that is contained in NATO*” and thus pose no obstacle or limitation on actions under Article IV(1) of the Southeast Asia Collective Defense Treaty, the statement ultimately proves that any response by the US would depend on the political will of its government.¹⁶² As such, the Southeast Asia Collective Defense Treaty guarantee model is also not suitable for Ukraine.

The European Security Framework

(A) The European Defense Community

The European Defense Community was an ambitious but ultimately unsuccessful early-1950s attempt to create a unified European military, predating the EU and shaping subsequent defense cooperation. The purpose of the European Defense Community Treaty was to create a common army, funded by a common budget and governed by supranational institutions, as a response to the

¹⁶⁰ Southeast Asia Collective Defense Treaty art. 4(2), Sept. 8, 1954, 209 U.N.T.S. 23 (1954), available at <https://treaties.un.org/doc/publication/unts/volume%20209/volume-209-i-2819-english.pdf>.

¹⁶¹ Southeast Asia Collective Defense Treaty art. 5, Sept. 8, 1954, 209 U.N.T.S. 23 (1954), available at <https://treaties.un.org/doc/publication/unts/volume%20209/volume-209-i-2819-english.pdf>; Suzette V Suarez, Southeast Asia Treaty Organization (SEATO), MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (June 2017) available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e681> (last visited Jan. 6, 26).

¹⁶² Ralph Braibanti, *The Southeast Asia Collective Defense Treaty*, 30 PACIFIC AFFAIRS, 321, 329 (1957).

remilitarization of Germany and the threat posed by Russia during the Cold War.¹⁶³ The US strongly supported the European Defense Community at the time, as it would have reduced the need for permanent US troop deployments, while also anchoring West Germany firmly in the Western bloc. US backing gave the project momentum, and the treaty was signed in 1952 by six states—France, West Germany, Italy, Belgium, the Netherlands, and Luxembourg—and ratified by all except France and Italy, who were driven by a concern that a supranational European army would encroach on national sovereignty.¹⁶⁴

- Article 1 of the European Defense Community Treaty reads: “*By the present Treaty the High Contracting Parties institute among themselves a European Defense Community, supranational in character, consisting of common institutions, common armed forces and a common budget*”.¹⁶⁵
- Article 2(3) adds that: “*Any armed aggression directed against any one of the member States in Europe shall be considered as an attack directed against all of the member States*.¹⁶⁶ This provision should be read in conjunction with Article 120 which clarifies that “[t]he present Treaty is applicable to the European territories of the member states”.¹⁶⁷

As such, the European Defense Community security guarantee and NATO’s Article 5 differ fundamentally in both design and political ambition: the European Defense Community sought to ensure collective defense through the permanent integration of national armed forces into one supranational European command, making mutual defense effectively automatic and limiting any national discretion, whereas Article 5 relies on a mutual assistance commitment that is activated by a political decision and allows each ally to determine the nature and extent of its response. As a result, the European Defense Community implied a far greater transfer of sovereignty but promised a more binding internal guarantee, while

¹⁶³ Frederico Fabbrini, Sylvie Goulard et al, *Getting Serious about Defense Integration: the European Defense Community Precedent*, Dublin European Law Institute, 2 (2025), available at <https://alcideproject.eu/wp-content/uploads/2025/02/ALCIDE-Policy-Brief.pdf>.

¹⁶⁴ Frederico Fabbrini, Sylvie Goulard et al, *Getting Serious about Defense Integration: the European Defense Community Precedent*, Dublin European Law Institute, 5 (2025), available at <https://alcideproject.eu/wp-content/uploads/2025/02/ALCIDE-Policy-Brief.pdf>.

¹⁶⁵ *European Defense Community Treaty*, art. 1, May 27, 1952, 167 available at <https://aei.pitt.edu/5201/1/5201.pdf>.

¹⁶⁶ *European Defense Community Treaty*, art. 2(3), May 27, 1952, 168 available at <https://aei.pitt.edu/5201/1/5201.pdf>.

¹⁶⁷ *European Defense Community Treaty*, art. 120, May 27, 1952, 203 available at <https://aei.pitt.edu/5201/1/5201.pdf>.

NATO preserved national control over forces and gained credibility through the participation of the US, making it politically more acceptable, despite being less automatic in legal terms.

As regards the terms of accession, Article 129 of the European Defense Community provides that “[a]ny European State may request to accede to the present Treaty, after having obtained the opinion of the Commissariat” and upon approval “of terms of accession by unanimous vote”.¹⁶⁸ The term “European State” in the European Defense Community Treaty is deliberately undefined and refers to a political-geographical concept whose meaning must be inferred from the treaty and its context. It reflects the transitional nature of European integration in the early 1950s. For Ukraine, it means that if ever the European Defense Community Treaty were to be revived, Ukraine could accede to it with the unanimous consent of all participating nations, without having to satisfy any EU benchmarks, including the Copenhagen criteria.

While a bill was introduced in Italy in 2025 to ratify the original 1952 European Defense Community Treaty, there is currently no official initiative at the EU level to resurrect it.¹⁶⁹

(B) The EU Defense Treaties

The current EU defense cooperation arrangements do not rest on a single treaty but rather on a set of interlinked frameworks developed over time:

- the Common Security and Defense Policy, launched in 1999 and later embedded in EU law by the Lisbon Treaty (signed 2007, in force 2009), which provides the basis for EU civilian and military missions;¹⁷⁰
- the Lisbon Treaty composed of the two main revised EU Treaties: the Treaty on European Union (“TEU”) and the Treaty establishing the European Community or the Treaty on the Functioning of the EU (“TFEU”) containing defense provisions, notably the mutual

¹⁶⁸ European Defense Community Treaty, art. 129, May 27, 1952, 205 available at <https://aei.pitt.edu/5201/1/5201.pdf>.

¹⁶⁹ Senato della Repubblica, Chamber of Deputies Act No. 2342, April 3, 2025, available at <https://www.senato.it/leggi-e-documenti/disegni-di-legge/scheda-ddl?did=59054>.

¹⁷⁰ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007 O.J. (C 306) 1 (entered into force Dec. 1, 2009).

assistance clause (Article 42(7) TEU) and the solidarity clause (Article 222 TFEU), both effective from 2009;¹⁷¹

- Permanent Structured Cooperation facility (“PESCO”), established in 2017 to enable deeper capability cooperation among participating member states¹⁷² and the Coordinated Annual Review on Defense, launched in 2017 to align national member state defense planning;¹⁷³ and
- the European Defense Fund, created in 2017 and operational from 2021, to support joint defense research and capability development¹⁷⁴ and the European Peace Facility, established in 2021 to finance military assistance to partner countries (including Ukraine).¹⁷⁵

Collectively, these instruments enhance EU defense cooperation while stopping short of a fully integrated or treaty-based collective defense model comparable to NATO.

For instance, the EU’s mutual defense clause located in Article 42.7 of TEU states:¹⁷⁶

If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of *aid and assistance by all the means in their power*, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defense policy of certain Member States. *Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organization*, which, for those States which are members of it, remains the foundation of their collective defense and the forum for its implementation.

¹⁷¹ Consolidated Version of the Treaty on European Union, Oct. 26, 2012, 2012 O.J. (C 326) 13 and 47.

¹⁷² Council Decision (CFSP) 2017/2315 of 11 December 2017 Establishing Permanent Structured Cooperation (PESCO) and Determining the List of Participating Member States, 2017 O.J. (L 331) 57.

¹⁷³ Council Conclusions on the Launch of the Coordinated Annual Review on Defense (CARD), Nov. 14, 2017, 2017 O.J. (C 375) 1.

¹⁷⁴ Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 Establishing the European Defense Fund and Amending Regulation (EU) 2018/1092, 2021 O.J. (L 170) 149.

¹⁷⁵ Council Decision (CFSP) 2021/509 of 22 March 2021 Establishing a European Peace Facility, 2021 O.J. (L 102) 14.

¹⁷⁶ Consolidated Version of the Treaty on European Union, Oct. 26, 2012, 2012 O.J. (C 326) 42(7).

TEU's Article 42(7) materially differs from NATO's Article 5 in both its legal structure and practical effect. While Article 42(7) obliges EU member states to provide "*aid and assistance by all the means in their power*" in the event of armed aggression, it lacks the defining elements that give Article 5 its deterrent strength. Unlike NATO Article 5, Article 42(7) does not characterize an attack on one state as an attack on all, nor does it contemplate collective action through a standing military command, instead it contains explicit qualifications preserving the neutrality policies of certain member states and recognizes NATO as the primary framework for collective defense for its members. Assistance under Article 42(7) is therefore determined on a bilateral and discretionary basis, rather than through an integrated alliance response, and carries no presumption of military force.

There is no precedent for the EU providing a security guarantee to a third state equivalent to NATO's Article 5, as collective defense remains outside the EU's constitutional and budgetary framework. However, there are precedents for deep, binding cooperation with non-member states in sensitive policy areas, particularly in trade, mobility, and market access, which demonstrate the EU member states' capacity to construct robust obligations through international agreements rather than supranational integration as under the European Defense Community Treaty. The EU-Switzerland Bilaterals I package¹⁷⁷ is a key example: a set of linked sectoral treaties, including free movement of persons and transport, concluded outside EU membership and enforced through joint institutions, ensuring mutual commitment while preserving sovereignty. This model illustrates how the EU member states can create credible, collectively managed frameworks with third countries without treaty change, offering a potential legal template—though not a direct security analogue—for structured security commitments to Ukraine.

Models of Security Guarantees for Ukraine

As discussed below, the most suitable model of bilateral security guarantee for Ukraine should be developed on the language of security clauses in mutual defense treaties concluded by the US with Japan, South Korea, and the Philippines, containing a collective defense provision and a separate provision facilitating the stationing or rotation of foreign troops in Ukraine. A multilateral security

¹⁷⁷ *Bilateral Agreements between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other*, June 21, 1999, 2002 O.J. (L 114) 6.

guarantee clause proposed below is based on the adjusted language of the Rio Treaty and, alternatively, on the EU treaties and regional agreements combining an immediate individual action and collective assistance.

Bilateral Model

Ukraine should further develop and build upon established military cooperation with partner states, as discussed above. The next step could be a mutual defense treaty with allied states based largely on the language of the US's mutual defense treaties with Japan, South Korea, and the Philippines. Bilateral mutual defense treaties are easier to negotiate with the relevant states that already provide substantial military assistance to Ukraine.

A template security guarantee clause in a bilateral mutual defense treaty could read as follows:

Each Party recognizes that an armed attack in Europe on either of the Parties would be dangerous to its own peace and safety and declares that it would act immediately to meet the common dangers.

This clause is restricted to attacks in Europe to ensure that it is not triggered when a victim state is attacked outside Europe, such as during operations in the Middle East or Africa. This therefore limits Ukraine's exposure, while nonetheless obliging an assisting state to aid Ukraine if it is attacked. The proposed security guarantee should be accompanied by an interpretative declaration addressing practicalities, *e.g.*, what the parties consider to be Europe.

The clause permits allied states to determine how they wish to respond to an armed attack in Ukraine. As explained above, the mutual defense treaties concluded by the US with the Asia-Pacific states condition any response on the assisting state's "*constitutional processes*". While this provision adds some flexibility, it also ultimately provides an assisting state with a way not to engage or refrain from providing military aid. Since Ukraine is seeking enforceable security guarantees focused on the provision of military assistance, ideally it would negotiate a clause that excludes the reference to the assisting state's "*constitutional processes*", which would impose domestic legal limitations in practice and could slow down the process of approval of an eventual response to an armed attack.

In addition to a treaty containing a collective defense clause, Ukraine should consider an arrangement like the US-Japan Status of Forces Agreement, which enables allied air, sea, and land forces to use facilities in Ukraine, including all Ukrainian seaports and airports, and to transit without tolls or charges amongst such facilities. Similar to the US-Japan mutual defense treaty, such a clause could provide:

For the purpose of contributing to the security of Ukraine and the maintenance of international peace and security in Europe, [the allied State] is granted the use by its land, air, and naval forces of facilities and areas in Ukraine.

The use of these facilities and areas as well as the status of armed forces of [the allied State] shall be governed by a separate agreement, and by such other arrangements as may be agreed upon.

A long-term or a permanent deployment of foreign troops to Ukraine would be a powerful deterrent to future acts of aggression if Ukraine is able to reach an agreement on conditions thereof with partner states.

Alternatively, Ukraine may consider an arrangement similar to Article 1 of the Enhanced Defense Cooperation Agreement between the US and the Philippines that would provide for joint military exercises and rotation of troops with financial support and investment into improvement and rehabilitation of Ukraine's military infrastructure:

1. This Agreement deepens defense cooperation between the Parties and maintains and develops their individual and collective capacities, in furtherance of [Article of the mutual defense treaty]. This includes: (a) Supporting the Parties' shared goal of improving interoperability of the Parties' forces, and for the Armed Forces of Ukraine, addressing short-term capabilities gaps, promoting long-term modernization, and helping maintain and develop additional maritime security, maritime domain awareness, and humanitarian assistance and disaster relief capabilities; and (b) Authorizing access to [Agreed Locations] in the territory of Ukraine by [the allied State] on a rotational basis, as mutually determined by the Parties.

2. In furtherance of the mutual defense treaty, the Parties mutually agree that this Agreement provides the principal provisions and necessary authorizations with respect to [Agreed Locations].

3. The Parties agree that [the allied State] may undertake the following types of activities in the territory of Ukraine in relation to its access to and use of Agreed Locations: security cooperation exercises; joint and combined training activities; humanitarian assistance and disaster relief activities; and such other activities as may be agreed upon by the Parties.

Finally, in addition to a possible mutual defense treaty with allied states, Ukraine could consider negotiating a memorandum of understanding with the US, like the one concluded between the US and Israel discussed above. This would enable long-term planning and consistent provision of defense and military equipment. Ukraine obtaining a “Major Non-NATO Ally” designation from the US President would also be valuable, as it would provide certain defense trade privileges, cooperative research opportunities, and security benefits consistent with the US “Major Non-NATO Ally” status.

Multilateral Model

As explained below, the strongest model for a multilateral security guarantee for Ukraine could be developed by analogy with Article 3 of the Rio Treaty, which establishes a collective response mechanism to armed aggression. Within the European context, EU member states could potentially offer a collective security guarantee through an innovative legal framework drawing on elements of existing EU agreements with third countries, such as the treaties on free trade and free movement concluded with Switzerland. Alternatively, Ukraine may consider further strengthening regional military cooperation within Eastern Europe, building on existing frameworks that may prove politically more feasible and less legally complex to operationalize in the near term.

Universal Model

An optimal model of a multilateral security guarantee for Ukraine could be developed based on Article 3 of the Rio Treaty with some adjustments based on Article 5 of the North Atlantic Treaty:¹⁷⁸

The Parties agree that an armed attack by any State against Ukraine 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-defense recognized by Article 51 of the Charter of the United Nations, will immediately assist Ukraine, individually and in concert with the other Parties, and take such action as it deems necessary, including but not limited to, the use of armed force, to restore and maintain the security of Ukraine. Self-defense measures shall be terminated upon agreement after consultations between the Parties.

There are two main obligations embedded in the security guarantee clause proposed above:

- a) An obligation to “*immediately assist*” Ukraine, as an assisting party “*deems necessary*”, in the event of an armed attack, is an obligation of result and also constitutes a right of individual or collective self-defense recognized by Article 51 of the UN Charter. Some means of assistance such as sending weapons, exchanging security information, sending aircraft and naval vessels, or providing humanitarian assistance are already contemplated in some bilateral agreements concluded between Ukraine and the US, UK, France, Japan, Italy, Germany, and Canada discussed above. As such, these states may be amenable to this increased commitment.
- b) An obligation to “*terminate*” the protective measures when the parties deem necessary is more flexible compared to both the North Atlantic Treaty’s Article 5 and Rio Treaty’s Article 3 that condition the termination of protective measures on the moment when “*the [UN] Security Council has taken the measures necessary to restore and*

¹⁷⁸ North Atlantic Treaty art. 5, Apr. 4, 1949, 34 U.N.T.S. 243 (1949), available at https://www.nato.int/cps/en/natohq/official_texts_17120.htm (“*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-defense recognized 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*”).

maintain international peace and security".¹⁷⁹ Instead of conditioning the termination of self-defense measures on actions or decisions of the UN Security Council, which could be subject to a Russian veto, it is more appropriate in the Ukrainian context to leave it to the parties who should conduct consultations and reach an agreement on termination.

The Rio Treaty and the Southeast Asia Collective Defense Treaty contain an obligation to consult to agree on measures to respond to aggressions that are not armed attacks, but that affect the territorial integrity or sovereignty of a victim state.¹⁸⁰ A similar consultation provision could be an additional security guarantee for Ukraine:

If, in the opinion of any of the Parties, the inviolability or the integrity of the territory or the sovereignty or political independence of Ukraine is threatened in any way other than by armed attack or is affected or threatened by any fact or situation which might endanger peace in its territory, the Parties shall consult immediately in order to agree on the measures which should be taken for the common defense. Depending on the nature and extent of the threat, the Parties shall discuss the activation of measures such as, but not limited to:

- a. deployment of troops in land and/or sea;
- b. exchange of intelligence information;
- c. military and security assistance;
- d. provision of weapons and ammunition

In taking these measures, the Parties shall act in accordance with other applicable obligations in international law.

¹⁷⁹ North Atlantic Treaty art. 5, Apr. 4, 1949, 34 U.N.T.S. 243 (1949), available at https://www.nato.int/cps/en/natohq/official_texts_17120.html.

¹⁸⁰ *Inter-American Treaty of Reciprocal Assistance*, Sept. 2, 1947, 21 U.N.T.S. 77 (1947), available at <https://www.oas.org/juridico/english/treaties/b-29.html>; Southeast Asia Collective Defence Treaty, art. 3, Sept. 8, 1954, 209 U.N.T.S. 23 (1954), available at <https://treaties.un.org/doc/publication/unts/volume%20209/volume-209-i-2819-english.pdf> (last visited Jan. 6, 26).

European Collective Model

An alternative collective security guarantee for Ukraine could be modeled on the EU-Switzerland bilateral agreements. While the existing agreements by the EU member states with third parties do not address defense, the Agreement on the Free Movement of Persons from the Bilaterals I package provides a useful template for structuring objectives, territorial scope, mutual obligations, and ratification.¹⁸¹ The Agreement on the Free Movement of Persons language can be combined with substantive defense commitments in Article 5 of the NATO Treaty and Article 2(4) of the UN Charter, both of which address collective defense and the prohibition of force:

The objective of this Agreement, for the benefit of nationals of the Member States of the European Community [list the Participating Member States] and Ukraine is: to accord Ukraine with a collective security and defense guarantee from [the said Member States]. In pursuit of this objective, [the said Member States] will provide Ukraine with arms of a defensive character and maintain the capacity of the European Union [or the Participating Member States] to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of Ukraine.¹⁸²

Each [Participating Member State] recognizes that an armed attack in Europe directed against the territories of either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger or other resort to force or coercion directed against the territory, sovereignty, or political or economic independence of either Party that would threaten the peace and security of Europe.¹⁸³

¹⁸¹ *Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other; on the Free Movement of Persons, EU-Switz.*, June 21, 1999, 2002 O.J. (L 114) 6.

¹⁸² This proposed language is based on Article 1(a) of AFMP and adjusted based on Article 5 of the NATO Treaty and Article 2(4) of the UN Charter. See *Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other; on the Free Movement of Persons, EU-Switz.*, art. 1(a), June 21, 1999, 2002 O.J. (L 114) 6; North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243; U.N. Charter art. 2, 4, June 26, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153.

¹⁸³ This language is proposed based on Article 5 of the North Atlantic Treaty (NATO Treaty), Article 4 of the Brussels Treaty (Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defense, 1948) and UN Charter, Article 51; see North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243; Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defense (Brussels Treaty) art. 4, Mar. 17, 1948, 19 U.N.T.S. 51; U.N. Charter art. 51, June 26, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153.

A clause defining the territorial scope of the guarantee can be modeled on Article 24 of the Agreement on the Free Movement of Persons:

This Agreement shall apply, on the one hand, to the territory of Ukraine and, on the other hand, to the territories of [the Participating Member States] in which the Treaty Establishing the European Community is applicable and under the conditions laid down by that Treaty.¹⁸⁴

To avoid any conflict with Article 42(7) TEU and an interpretation that this instrument constitutes a defense guarantee, triggering a unanimous European Council decision under Article 42(2) TEU, the parties should be defined as Ukraine and the Participating Member States, so as to keep the instrument outside EU institutional competence. A provision outlining ratification and approval would mirror the Agreement on the Free Movement of Persons: “*This Agreement shall be ratified or approved by the Contracting Parties in accordance with their own procedures*”.¹⁸⁵ Allowing each aiding party to ratify the agreement in accordance with its own legal and constitutional procedures, rather than requiring unanimous approval, ensures that the views of individual legislatures are properly considered.

Eastern European Regional Model

Ukraine should seek to broaden cooperation within regional formats with Eastern European states like the Lithuanian-Polish-Ukrainian Brigade and the Lublin Triangle between Poland, Lithuania, and Ukraine discussed above. These platforms could well serve as a basis for joint operations of Lithuanian and Polish troops in Ukraine. While the Lithuanian-Polish-Ukrainian Brigade currently does not participate directly in combat in the territory of Ukraine, it is already involved in humanitarian aid and training Ukrainian soldiers.¹⁸⁶

¹⁸⁴ Modeled on AFMP art. 24; EU treaty titles updated; geographic framing informed by mutual defence treaty art. V.

¹⁸⁵ *Consolidated Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other; on the free movement of persons*, art. 25, January 1 2021, 20 available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02002A0430%2801%29-20210101&qid=1765385007427>.

¹⁸⁶ Embassy of Ukraine in the Republic of Poland, *LITPOLUKRBRIG celebrated its fifth anniversary* (Oct. 2, 2020), available in Ukrainian at <https://poland.mfa.gov.ua/news/litpolukrbrig-vidznachila-pyatyi-lichnyy-stvorennya> (last visited Jan. 6, 26).

The founding agreement of the Lithuanian-Polish-Ukrainian Brigade could be amended by adopting a memorandum of understanding similar to the one on the Joint Expeditionary Force, a military framework established in 2014 by ten Northern European countries including the UK, Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, the Netherlands, Norway, and Sweden “*for the purposes of collective defense, crisis management and cooperative security*” outside NATO, EU, or UN mandates.¹⁸⁷

The proposed language would include peacetime joint training, exercises, and the ability to rapidly assemble tailored force packages for crisis response.¹⁸⁸ However, given that both Poland and Lithuania are NATO member states, any expanded involvement would likely require broader political agreement or tacit consensus within the Alliance. As such, the effectiveness of these regional mechanisms will ultimately depend on the collective political will of NATO allies.

¹⁸⁷ *Memorandum of Understanding on the Joint Expeditionary Force* (Nov. 10, 2015), para. 1, available at <https://www.gov.uk/government/publications/joint-expeditionary-force-policy-direction-july-2021/joint-expeditionary-force-jef-policy-direction> (last visited Jan. 6, 26).

¹⁸⁸ Article 7 of the JEF Foundation Memorandum provides: “7.1. The JEF will conduct peace time joint training, exercises, courses and other cooperative activities in order to ensure interoperability and readiness for operations, and to demonstrate capability. The Participants will bear the costs related with the participation of their personnel in JEF joint training, exercises, course and other cooperative arrangements, unless otherwise arranged. 7.2. The JEF will prepare for a full spectrum of operations up to and including high intensity operations. This will enable the JEF to conduct crisis specific force attribution to allow the creation of a flexible and tailored force package best suited to meet the operational requirement across the spectrum of conflict. 7.3. JEF contingents will follow NATO procedures and standards to best ensure capability and interoperability. OHQ [Operational Headquarters], though capability leads, will be responsible for ensuring that contingent interoperability is incorporated into any OMO/IA [Operational Mounting Order] and the JEF will meet any such defined standards and criteria. Participants will be responsible for assuring that their JEF force contributions meet any such standards”.