Consensus Decisionmaking in NATO: French Unilateralism and the Decision to Defend Turkey

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On January 15, 2003, the United States formally requested that the North Atlantic Treaty Organization ("NATO") begin planning to defend one of its members, Turkey, from any counterstrikes launched by Iraq in the event of a war with Iraq.¹ France, Germany, and Belgium, concerned that such a move by NATO would send a message that war with Iraq was inevitable, resisted the request.² In response, Turkey, the only member of NATO that shares a border with Iraq, pressed the issue by invoking Article 4 of the North Atlantic Treaty,³ which provides that "[t]he 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."⁴ Despite Turkey's plea for collective defense, which is the purpose of NATO, France and the others continued to block any planning for almost a month.⁵ Because NATO operates under consensus decisionmaking, the votes of these three nations barred defensive preparation by NATO in support of Turkey.

NATO finally resolved the issue by moving the decision into its Defense Planning Committee ("DPC"), thereby circumventing France's veto.⁶ With France excluded, Germany and Belgium compromised and agreed to support the measure.⁷ As a result, NATO committed to provide some assets for the defense of Turkey without the full consensus of its members.

NATO's decision highlights a conflict between NATO's requirement of unanimity in decisionmaking and its obligation to provide collective defense.

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¹ Judy Dempsey, Dilemmas Abound as US Asks for NATO's Help, Fin Times P10 (Jan 17, 2003).
² Judy Dempsey, Allies' Broken Silence over Turkey Brings "Crisis of Credibility" for NATO, Fin Times P6 (Feb 11, 2003); Philip Shishkin, Head of NATO Admits Standoff Has Hurt Alliance, Wall St J A12 (Feb 19, 2003).
⁵ Shishkin, Standoff Has Hurt Alliance, Wall St J at A12 (cited in note 2).
⁶ Id.
⁷ Id.
This development examines the decision and attempts to answer the following questions: Did NATO's decision without France's consent violate the North Atlantic Treaty? Did France violate the treaty by refusing to fulfill its obligation to defend a fellow NATO member? What does NATO's decision imply for the future of NATO?

I. DID BYPASSING FRANCE VIOLATE THE NORTH ATLANTIC TREATY?

NATO, as an alliance among sovereign nations, reaches decisions by the consensus of its members: bypassing France appears to violate established custom. Article 9 of the North Atlantic Treaty created a council consisting of representatives of every member nation. The North Atlantic Council, as it is called:

is the only body within the Alliance which derives its authority explicitly from the North Atlantic Treaty. . . . All member countries of NATO have an equal right to express their views round the Council table. Decisions are the expression of the collective will of member governments arrived at by common consent.

While the wording of the treaty does not explicitly state a consensus or unanimity requirement, the status of the member nations as sovereign states implies it. Further, the practice has been consistently followed in the Council since 1949, arguably making the procedure a custom, which is another source of binding international law.

While the preceding cursory examination of international law appears to condemn NATO's action, two arguments convincingly defend NATO's procedural device: first, France consented to NATO making some military decisions without its approval when it withdrew from NATO's military structure in 1966, and second, NATO's remaining military structure has the authority to

8 North Atlantic Treaty art 9 (cited in note 4).
9 NATO Handbook 149 (NATO 2001).
10 See Louis Henkin, International Law: Politics and Values 27 (Kluwer Law International 1995) ("State consent is the foundation of international law. The principle that law is binding on a state only by its consent remains an axiom of the political system, an implication of state autonomy."). See also Bjarne Eriksen, The Committee System of the NATO Council 44 n 3 (Universitetsforlaget 1967) ("NATO has no supranational authority and can act only by unanimous agreement of the member nations.").
11 For evidence that NATO has consistently followed the unanimity rule, see Francis A. Beer, Integration and Disintegration in NATO: Processes of Alliance Cohesion and Prospects for Atlantic Community 13, 33, 52, 135, 168, 174, 178–79, 204 (Ohio State 1969) (discussing applications of the unanimity rule during NATO's history).
12 Frederic L. Kirgis, Jr., NATO Consultations as a Component of National Decisionmaking, 73 Am J Int'l L 372, 373 (1979) ("In the terms of traditional international law, a special custom within the alliance is established if the expectations are firm and are widely shared by the alliance's decisionmakers."). See also Henkin, International Law at 26–31 (cited in note 10).
make defensive plans through the DPC when there is unanimous consent within the DPC.\textsuperscript{13}

A. THE IMPACT OF FRANCE’S WITHDRAWAL FROM NATO’S MILITARY STRUCTURE

In early 1966, French president Charles de Gaulle withdrew France from NATO’s military organization.\textsuperscript{14} As a consequence of its withdrawal, France relinquished its share of authority over that organization. In a successful attempt to keep France involved, the alliance responded by emphasizing both the political and military functions of NATO.\textsuperscript{15} While France did remain a party to the treaty, it decided to fulfill its obligations while retaining direct control over its military.\textsuperscript{16}

France’s partial break with NATO, however, also resulted in France’s withdrawal from the DPC.\textsuperscript{17} Springing from de Gaulle’s desire to protect French sovereignty, the break led to a “de facto restructuring of the decision-making process in order to protect the common interest from national particularism.”\textsuperscript{18} While this de facto restructuring does not deprive France of its voice (or veto) in making policy decisions on the North Atlantic Council, it does remove France’s authority to contribute to DPC decisions about where to station NATO forces and about how NATO forces may be employed to provide collective force.

France’s loss of authority in planning NATO’s military operations is consistent with the importance of consent in international law. France’s voluntary withdrawal from NATO’s military organization demonstrated its ability to contract with other nations through treaties and its authority to negotiate to change its obligations.\textsuperscript{19} France relinquished some control over NATO’s military decisions under its unified command structure in return for, in de Gaulle’s view, greater French autonomy and a preservation of French sovereignty. When France correspondingly lost its seat on the Defense Planning Committee, the subsequent restructuring reflected France’s surrender of a veto with respect to the organization of NATO’s military arm.

\begin{itemize}
  \item \textsuperscript{13} Eriksen, \textit{The Committee System of the NATO Council} at 44 (cited in note 10) (explaining that “[t]he principle of unanimity applies . . . to the committees”).
  \item \textsuperscript{15} Id at 160.
  \item \textsuperscript{16} President de Gaulle’s Letter to President Johnson (7 March), NATO Letter 22 (May 1966).
  \item \textsuperscript{17} Beer, \textit{Integration and Disintegration in NATO} at 49 (cited in note 11).
  \item \textsuperscript{18} Feld, Jordan, and Hurwitz, \textit{International Organizations} at 157 (cited in note 14).
  \item \textsuperscript{19} France’s method of withdrawal in 1966, however, “arguably breached the implied North Atlantic Treaty obligation to consult by means of a review conference if it wished radically to alter its treaty commitment.” Kirgis, 73 \textit{Am J Intl L} at 384 (cited in note 12).
\end{itemize}
Even apart from France's consent, however, the de facto restructuring of NATO amounts to a change in custom. While the question of when a practice becomes a custom with legal significance under international law is a difficult one with many factors, the change within NATO does rise to the level of "general practice," [which is] usually defined as practice by a significant number of representative states concerned with the subject. Since 1966, all of the members of NATO have operated without French participation in NATO's military organization; thus, accord by all of the relevant states constitutes a general practice. Additionally, NATO's actions during the first Gulf War provide precedent for acting without French assent. Prior to the 1991 Gulf War, "[a] similar procedural tactic was used . . . as a way to skirt French objections to NATO sending its Allied Command Europe Mobile Force to southeastern Turkey."22

B. DEFENSIVE PLANNING

The DPC acted within the scope of its power when it approved planning by NATO to defend Turkey. As its name implies, the Defense Planning Committee "deals with most defence matters and subjects related to collective defence planning." Defense planning implies making decisions that fall short of making large policy determinations, but defending Turkey is not a policy decision—the treaty guarantees Turkey's defense.

The North Atlantic Treaty creates an obligation that each signing party will act in the collective defense of any party that is attacked. Article 5 states that:

an armed attack against one or more [NATO members] 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 . . . will assist the Party or Parties so attacked . . . .

The obligation to defend seems to include the lesser obligation to plan for a defense and to make purely defensive preparations prior to a possible attack. Within NATO's structure, the Defense Planning Committee shoulders the lesser obligation; France, because of its decision to control its military separately, bears an independent obligation to plan also for the defense of its allies. Therefore, NATO's unanimous decision in the DPC is merely a decision to fulfill its

20 Henkin, International Law at 29–30 (cited in note 10) (listing factors for judging if a practice has become a custom, but noting that "every 'piece' of customary law is different, develops in different circumstances, at a different rate of growth").
21 Id at 30.
23 NATO Handbook at 151 (cited in note 9).
obligation despite France’s attempts to obstruct the accomplishment of NATO’s obligation for its political purposes.

It seems implausible to contend that NATO would exceed its authority by merely planning to protect Turkey. Indeed, the power to plan for collective defense is necessary for the power to respond in collective defense to be effective; arguing otherwise relegates NATO to making ad hoc responses. The structure of NATO as a principally military organization supports such an understanding and implies that the parties agreed to defensive planning; planning is arguably the most important part of any military operation. The existence of a Defense Planning Committee since 1963 further reinforces this point.

In the current dispute, the particular forces sent to Turkey were defensive, consisting of early warning AWACs aircraft, Patriot air defense anti-missile systems, and chemical and biological defense units. Moreover, the DPC was careful in its statement to say, “This decision relates only to the defense of Turkey, and is without prejudice to any other military operations by NATO, and future decisions by NATO or the UN Security Council.” Thus, NATO’s decision to plan to defend Turkey without reaching consensus in the North Atlantic Council was legitimate.

II. DID FRANCE VIOLATE THE NORTH ATLANTIC TREATY BY REFUSING TO PLAN FOR TURKEY’S DEFENSE?

Because the need to defend Turkey was still inchoate at the time of the decision, France did not fail to meet its treaty obligations. While the preceding arguments about France’s lessened authority in NATO might suggest relieving France of any wrongdoing by refusing to plan for Turkey’s defense, the de facto restructuring of NATO’s military organization did not remove France’s obligation to defend Turkey; it merely created a procedural avenue useful for fulfilling NATO’s defense obligation without France’s support. France, however, “undermined the alliance’s core commitment, the very reason why NATO came into being 54 years ago—to defend a threatened ally.” Because the need for defense was still embryonic at the time, France did not actually breach its duties, yet its political maneuvering undermined the deterrent effect of NATO and called into question NATO’s prospects for the future.

25 Id art 6 (“For the purpose of Article 5 an armed attack on one or more of the Parties is deemed to include an armed attack . . . on the territory of [Turkey].”).
26 Beer, Integration and Disintegration in NATO at 49 (cited in note 11).
27 Keith B. Richburg, NATO Agrees to Begin Aid to Turkey; Germany, Belgium Stand Down as Deadlock Ends, Wash Post A1 (Feb 17, 2003).
28 Sennott, NATO Ends Its Impasse, Boston Globe at A1 (cited in note 22).
29 Shishkin, Standoff Has Hurt Alliance, Wall St J at A12 (cited in note 2).
If the coalition-led war on Iraq had not successfully seized and retained the initiative during the war and if Iraq had managed to launch an attack on Turkey, France would have had an individual duty to contribute to the collective defense of Turkey. Under Article 5, an armed attack on Turkey would require that “each [NATO member] . . . assist [Turkey] by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force.” This language demonstrates that each nation has some level of obligation to take action in response to an attack on another NATO member. What this level of obligation is, though, remains in question.

France could assert wide freedom under Article 5 to choose what level of action “it [France] deems necessary.” If this interpretation is correct, and “member nations have the ability to determine their own involvement,” France could claim that no obligation really exists or could claim to meet its obligations while providing only negligible assistance, such as potentially redundant intelligence information. Such an interpretation, while plausible, renders the North Atlantic Treaty ineffectual. In contract terms, reading the treaty that way would render each nation’s promise illusory; the lack of mutual obligation would mean there was no contract, or treaty, in the first place. A more reasonable interpretation, then, would infer an implied promise to make good faith efforts to take a reasonable level of action. Under this second interpretation, France would breach the North Atlantic Treaty if it failed to take reasonable action in good faith to defend Turkey.

III. WHAT DOES THE DISPUTE OVER PLANNING TO DEFEND TURKEY IMPLY FOR NATO’S FUTURE?

Because eighteen of nineteen members of NATO did continue to honor their obligations, NATO remains strong at its core; France’s participation in NATO (or, rather, its lack thereof), however, faces a bleaker outlook. NATO seems confronted with a choice: either remain committed to collective self-
defense at the expense of French input or erode NATO’s strength and ability to deter through the intransigence of one member.

If NATO continues on its current course, further tension between France and other NATO members, particularly the United States, seems inevitable. France’s actions might result from “what it sees as Washington’s growing dominance and perceived disregard for the opinions of its allies.” Indeed, recent debate on the war on Iraq included frequent accusations of unilateralism against the United States for its pressure on the international community to enforce a unanimous UN resolution.

Unilateralism, however, more accurately describes France’s approach to NATO. Even prior to 1966, France under de Gaulle withdrew its Mediterranean and Atlantic fleets from NATO and declined to cooperate in other military operations. In 1966, France completely withdrew from NATO’s military organization, leading President Johnson to comment, “The United States Government cannot, therefore, understand the basis upon which the French government has concluded, without consulting the other parties to the Treaty, that it is impossible to amend the NATO arrangements and that it must act unilaterally.” In 1991 and again in 2003, the other eighteen members of NATO had to maneuver through the Defense Planning Committee to circumvent France’s single vote. As one commentator said, “A good case could be made for voting France out of NATO, simply because it has no wish to cooperate with the other 18 members.”

If France continues as a member of NATO without committing more fully to defending its allies, NATO will weaken as a regional power purportedly committed to collective defense. Shortly after France’s refusal to support defense planning for Turkey, a Polish diplomat commented, “If you ask me, . . . France was signing the death warrant of NATO . . . .” While such a prognosis is probably overly fatalistic, NATO must either continue to dilute France’s role or lose its credibility as an organization of collective self-defense. After all, “[w]hat is the purpose or value of a mutual aid society that doesn’t aid its members?”

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35 Shishkin, Standoff Has Hurt Alliance, Wall St J at A12 (cited in note 2).
38 George Melloan, Will There Be a New World Order after Iraq?, Wall St J A17 (Mar 18, 2003).
40 Foster, NATO: A Pulse, Just Barely, Milwaukee J & Sentinel 12A (Feb 18, 2003).