



Intra-NATO Bilateral Defense Treaties: Undermining the NAT?

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Introduction

The North Atlantic Treaty (NAT) is a mutual defense pact between twenty-nine European countries and the United States. Crucially, it binds all participants to come to each other's aid in the event of an armed attack.¹ The geopolitical rationale for NAT is well understood: when it was ratified in April 1949, there was an existential need for a collective deterrent against the Soviet Union and its anticipated aggression.² Beyond an armed attack, the West also feared the cultural spread of Communism at the expense of shared notions of individual freedom,

¹ See North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243. The key security provision of this treaty is Article 5, which 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 and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised 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.”

² See generally, U.S. Department of State and Charles I. Bevans, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776-1949, VOL. 4 1946-1949. <https://tile.loc.gov/storage-services/service/ll/treaties/lltreaties-ustbv004/lltreaties-ustbv004.pdf>.

democracy, and the rule of law.³ As an instrument, NAT was a clear manifestation of the United States' desire to avoid overextension in Europe at the end of World War II, and a formal means of solidifying multilateral relations between Western states with the establishment of NATO.⁴ It irrefutably strengthened the US' geopolitical influence in Europe, dividing the continent in to Western and Eastern factions. Even after the fall of the Berlin Wall, NATO has continued to expand its operations, influence, and membership, uniting member states in the common causes of “stability and well-being in the North Atlantic Area.”⁵ In short, the alliance is generally presumed to be successful, stable, and enduring.⁶

But what happens when NATO member states begin forming strategic coalitions within the broader NATO framework? What would happen in a case where the United Kingdom and France decide that their alliance is perhaps more important than their relationship with Germany? If France invades Germany, the United Kingdom would suffer a conflict of law: its bilateral obligations to France as a military partner, and its multilateral obligations to defend Germany. Which source of law would reign supreme? We may intuitively see NATO obligations as superior, but this is not necessarily the case. This issue of conflicting treaty law is not altogether resolved under the international law framework; in fact, it has been observed that “international law may become increasingly dysfunctional in the first decades of the twenty-first century due to

³ *Supra* note 1 at Chapeau [Preamble], “[The Parties to this Treaty] are determined to safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of democracy, individual liberty and the rule of law.”

⁴ See generally, Victor D. Cha; *Powerplay: Origins of the U.S. Alliance System in Asia*. INTERNATIONAL SECURITY 2010; 34 (3): 158–196. <https://doi.org/10.1162/isec.2010.34.3.158>.

⁵ *Supra* note 1 at Chapeau [Preamble].

⁶ Though I would argue this may not be entirely “stable” or “enduring” for changing geopolitical reasons. (I.e., Europe’s oil dependence on Russia may come to have fragmenting effects within NATO; Poland’s highest court recently denied the supremacy of EU law, positioning itself for better dealings with Russia; as China’s economic and military powers continue to grow, America’s foreign policy will inevitably come to prioritize Asia over Europe; and of course, because of bilateral state conflict within NATO.) Still, we cannot deny that the NTA has been “successful.”

the sheer number of these treaties and the lack of useful, principled, methods to resolve conflicts between them.”⁷ While this hypothetical involving the United Kingdom, Germany, and France appears outlandish given their solid geopolitical interdependence, we are now seeing this exact conflict of legal obligations in the case of France, Greece, and Turkey.

Greece’s Defense Pact with France

On October 7, 2021, Greek lawmakers ratified a new defense pact between Greece and France that will “allow them to come to each other’s aid in the event of an external threat.”⁸ The agreement also includes an order for three French frigates worth approximately 3 billion Euros.⁹ At first glance, these obligations may seem innocuous enough. After all, both France and Greece are NAT signatories and are therefore already bound to come to each other’s aid if one of them is attacked.¹⁰ However, for those following European politics, it is clear that this affirmation of continuing military support is, at best, an implicit jab at Turkey.¹¹ Greece and Turkey have disagreed about “the extent of their continental shelves and their maritime boundaries” for decades.¹² This disagreement has hamstrung Athens in its effort to expand Greek territorial waters to 12 miles in to the Aegean Sea.¹³ Turkey, which is less than 12 miles from the easternmost Greek islands, says that such an act would constitute *casus belli* (an act of war).¹⁴

⁷ Christopher J. Borgen, *Resolving Treaty Conflicts*, 37 THE GEO. WASH. INT’L L. REV. 573, 574 (2005).

⁸ Lefteris Papadimas et al., *Greek parliament approves defence pact with France*, REUTERS (Oct. 7, 2021). <https://www.reuters.com/world/europe/greece-france-defence-pact-protects-against-third-party-aggression-greek-pm-2021-10-07/>.

⁹ *Id.*

¹⁰ *Supra* note 1, art. 5.

¹¹ *Supra* note 8.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

The agreement has understandably angered Turkey, continuing a pattern of Greek diplomacy that creates and strengthens alliances with the rest Western Europe.¹⁵ In fact, it may be said that these alliances “have the benefit of presenting a common front against Turkey, particularly on matters of energy [and security].”¹⁶ It has been noted that, “instead of incentivizing Athens and Ankara in their diplomatic bid to resolve their bilateral disputes, Paris has opted to fully back one side of the conflict, turning a blind eye to the difficult geopolitical reality of the region . . . [Paris] decided to remain oblivious to Turkey’s legitimate concerns[.]”¹⁷ Generally speaking, the France-Greece defense pact has alienated Turkey on issues such as the arming of the Aegean islands, the need to come to a reasonable and fair resolution on the matter of territorial waters, and indeed the option of going to the Hague for adjudication.¹⁸

Conflicts with NAT

Article 8 of the NAT obliges member states to not “enter in to any international engagement in conflict with [the NAT].”¹⁹ Strictly speaking, France and Greece are permitted to enter into bilateral agreements both for security reasons and for the sale of military equipment, but what if such a sale undermines the spirit and purpose of the NAT’s collective defense provision? Article 5 obliges member states to come to one another’s aid if attacked.²⁰ How then should France respond in the event of escalation between Greece and Turkey? If one or the other

¹⁵ Sinan Ulgen, *France and Greece in a Defense Partnership: A View from Turkey*, INSTITUT MONAIGNE (Nov. 26, 2021). <https://www.institutmontaigne.org/en/blog/france-and-greece-defense-partnership-view-turkey>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Supra* note 1, art. 8.

²⁰ *Supra* note 1, art. 5.

is attacked, France must defend them, but what if it is not altogether clear who has attacked whom? Suppose tensions in the eastern Mediterranean gradually escalate in to a full-scale conflict, but an initial aggressor cannot be determined? France has taken a stand by suggesting it will back Greece under its bilateral defense pact, even if NAT obligations would require member states to make best efforts to resolve disputes peaceably.²¹

Article 1 of the NAT further obliges member states to “settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.”²² If France and Greece have essentially reduced the possibility of arbitration with Turkey by threatening an intra-NATO alliance at Turkey’s expense, one has to question whether or not the two treaty signatories are dealing with Turkey fairly and in good faith. They are, after all, allies; at least, they are on paper.

Conclusion

We make no conclusions about who in the Greek-Turkey disagreements is the agitator and who is the agitatee. We also raise no argument about whose claim to the disputed Mediterranean islands is strongest; nor do we draw any conclusions about the question of territorial waters surrounding these countries. We would, however, advance a warning: treaty law is a complicated patchwork of obligations between close friends, acquaintances, and sometimes even enemies. France, perhaps incentivized by a 3 billion Euro payout, has drawn a

²¹ *Supra* note 1, art. 1.

²² *Id.*

line in the sand and made a statement about which of the two states it supports in this conflict. Meanwhile, Turkey feels slighted by its NATO ally and threatened by an emboldened Greece. We would argue that intra-NATO bilateral treaties such as the one presented here, especially when diplomatic and military tensions already exist with a third-party NATO member, undermine the goals expressed in the NAT as well as NATO. If these states seek to preserve the legitimacy of NAT and of NATO, they should refrain from agitating each other in these ways whenever possible. France's posture is too bellicose relative to Turkey, and given Turkey's evolving friendship with Russia, we cannot afford to see the NATO alliance deflate from a 30-member system to mere pack of 29.