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Charles de Gaulle, Anti-Hegemonic Discourse and International Law[#]

Introduction

French President Charles de Gaulle (1890-1970) was a controversial figure on the international scene during the Cold War. He steered an original and provocative course bordering on independence from the bipolar structure of post-1945 world politics. De Gaulle's combination of national independence and a global appeal to state sovereignty casts a long shadow over foreign policy debates in France and in Europe. Although his references to the long run of geopolitics, to history or to "Grandeur" seemed to run against the course of history for many contemporaries, de Gaulle's discourse can be linked up with timeless normative understandings between states. Self-determination, national legitimacy and independence are the precondition to a system whereby state consent creates norms. 1

The present contribution concentrates on the legal arguments employed to support de Gaulle's audacious speeches, travels and press conferences. My analysis aims to complement classical diplomatic history. Law is seen as a vector of consensus, used to attract partners in a horizontal normative environment. During the Cold War, vertical integration within ideological blocs was a consequence of military and strategic necessity. However, the balance of nuclear deterrence created political leverage for second-rank states, conformable to the fundamental legal values of liberty and equality as essential components of sovereignty within international society. Sovereignty can be seen as a pretext to undermine collective structures, but is a recall of states' double quality as both legal subjects and norm creators. The common liberty of all actors in the international arena is a bulwark against top-down descending unification. Bottom-up legitimated notions of justice and law resurface when we analyse primary sources in detail. Pragmatic political discourse and normative legal discourse are constantly cross-disseminated. International relations are not legal at an instant and political at another, but bear the same, mixed taint at every instance. 2

This article starts by sketching the implications of Second World War on the traditional European system (A) and will then address the three main areas of French foreign policy in the 3

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The present article is based on a part of my doctoral dissertation in law, defended at Ghent University on 13 September 2013 (*Balance of Power and International Law. European Diplomacy and the Elaboration of International Order, 18th Century and Post 1945*, under supervision of Prof. D. Heirbaut). My thanks go to the members of the jury for their useful commentaries, as well as to the anonymous reviewers of the present contribution for *Forum Historiae Iuris*.

1960s (B): Political intergovernmental cooperation, supranational economic integration, and the nature of the transnational military and strategic partnership.

A. International Legal Order in the 1950s and 1960s

For European states, the end of the Second World War had fundamentally changed the arena. Whereas European powers could delineate their major international relations in ‘classic’ European diplomatic schemes within the border of the continent or their overseas acquisitions, the international system had decisively developed into a global one. Europe was but one of the international theatres for global powers. Moreover, the USSR and the United States, who emerged as the strongest forces after the Second World War, had strategic interests on the continent, but were not part of Western Europe. Decision centres had moved away from Paris, London, Vienna or Berlin to Washington and Moscow. Consequently, agreements on armament reductions or nuclear non-proliferation were decided by the two superpowers, and were a sign that the other sovereign nations were out of the game. France¹ or China², permanent members of the 1945 big power club, did not accept this. The Federal Republic of Germany, on the other hand, could not afford to oppose such a text, and had to accede to the instrument (17 August 1965).

Consequently, European nations as France, Britain or Germany, in full disarray after the destruction and exhaustion caused by the war, had to reconstruct their international and legal discourse from a position hitherto unknown to them, that of second-rank powers³. The European management system of international affairs seemed to have utterly failed, perceived as the result of centuries of war, occasionally interrupted by balance-of-power diplomacy⁴, or channelled into colonial expansion⁵. Public opinion was more and more averse to military confrontation⁶

¹ E.g. France’s decision to stay away from the disarmament talks in Geneva (De Gaulle, press conference 15 May 1962: “nous ne voyons donc pas de raison pour grossir l’aéropage qui s’y trouve, qui entend exposer des plans inconciliables et ne peut rien faire que gémir comme le chœur des vieillards dans la tragédie antique: ‘Inextricable difficulté ! Comment en sortir ?’”, quoted by D. COLARD & J.-F. GUILHAUDIS, *De Gaulle et le désarmement*, in: INSTITUT CHARLES DE GAULLE (Hg.), *De Gaulle en son siècle*; T. 4: *La sécurité et l’indépendance de la France*, Paris 1991, S. 112), or the Non-Proliferation Treaty (Couve de Murville to diverse French diplomatic agents abroad, Paris, 3 February 1967, *DDF* 1967, No. 62, 207). *DDF* = *Documents Diplomatiques Français*, Paris 2004-...

² E.g. Open-air nuclear test ban treaty between the United States, Great Britain and the USSR, Moscow, 5 August 1963, 480 *UNTS* 43 (See Memorandum by Meyer-Lindenberg on the registration of the treaty with the UN, 16 October 1963, *AAPD*, 1963-III, No. 391). A year later (16 October 1964), the People’s Republic of China brought its first nuclear bomb to explosion. On 5 September 1966, France announced its first successful nuclear test at Mururoa. On the implications of the NTBT, see A. PEYREFITTE, *C’était de Gaulle*, Paris 2000, S. II, 29-31; M.-F. FURET, *La non prolifération des armes nucléaires*, in: *Revue générale de droit international public* LXXI (1967), S. 1009-1046. *AAPD* = *Akten zur Auswärtigen Politik der Bundesrepublik Deutschland*, Oldenbourg 1997-...

³ S. HOFFMANN, *Gulliver’s Troubles, or the setting of American policy*, New York 1968.

⁴ M. VEC, *From the Congress of Vienna to the Paris Peace Treaties of 1919*, in: B. FASSBENDER & A. PETERS (Hg.), *Oxford Handbook on the History of International Law*, Oxford 2012, S. 655-678.

⁵ E.g. G. CLEMENCEAU, *La politique coloniale: Clémenceau contre Ferry: discours prononcés à la Chambre des députés en juillet 1885* Paris 2012; R. TOMBS & M. VAISSE (Hg.), *L’histoire coloniale en débat en France et en Grande-Bretagne (Histoire)*, Bruxelles 2010, S. For the legal implications of Western

and the former European possessions or protectorates on other continents made an appeal to popular sovereignty and self-determination. Moreover, as the Cold War set in from 1947 on, Europe was divided according to the lines of occupation at the end of the Second World War. International organisations around the two antagonist superpowers followed. The continent's security was thus divided between associations of states anchored across the Atlantic, or behind the Iron Curtain.

In general internationalist doctrine, the end of the Second World War sounded as a unique opportunity for the theories of Georges Scelle⁷, Hersch Lauterpacht⁸ or Hans Kelsen⁹, who advocated the reining in of traditional sovereignty to the benefit of international community¹⁰. However, a full integration of the national and international legal orders, and the development of supranational institutions, capable to ensure legal protection to the individual¹¹, was limited to the European continent only. At the level of world politics, realism in political science could go together with a realist approach to international law¹². To paraphrase Antonio Truyol y Serra's course at the Hague Academy in the late 1950s, a sociologist could treat the international system in terms of a society. International community, however, was reserved to the prophet¹³.

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19th century colonialism, see A. ANGHIE, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge Studies in International and Comparative Law), Cambridge 2004; M. CRAVEN, *Colonialism and Domination*, in: B. FASSBENDER & A. PETERS (Hg.), *Oxford Handbook of the History of International Law*, Oxford 2012, S. 862-889.

⁶ J.J. SHEEHAN, *Where have all the soldiers gone? The transformation of modern Europe*, Boston 2008.

⁷ F. COUVEINHES, *Georges Scelle, les ambiguïtés d'une pensée prémonitoire*, in: *Revue d'histoire des facultés de droit et de la science juridique* (2005-2006), S. 339-406; A. WÜST, *Das völkerrechtliche Werk von Georges Scelle im Frankreich der Zwischenkriegszeit*. (Studien zur Geschichte des Völkerrechts; 13), Baden 2007.

⁸ P.C. JESSUP & R.R. BAXTER, *The Contribution of Sir Hersch Lauterpacht to the Development of International Law*, in: *American Journal of International Law* LV (1961), S. 97-103; H. LAUTERPACHT, *The Function of Law in the International Community*, Oxford 2011 [1933]; M. KOSKENNIEMI, *The gentle civilizer of nations: the rise and fall of international law, 1870-1960* (Hersch Lauterpacht memorial lectures), Cambridge 2001, S.353-412.

⁹ H. KELSEN, *The Essence of International Law*, in: K.W. DEUTSCH & S. HOFFMANN (Hg.), *The Relevance of International Law*, Cambridge (Mass.) 1971, S. 85-92; H. KELSEN, *Théorie du droit international public*, in: *Recueil des Cours de l'Académie de droit international de La Haye LXXXIV* (1953), S. 1-204; J. KAMMERHOFER, *Hans Kelsen's place in international legal theory*, in: A. ORAKHELASHVILI (Hg.), *Research Handbook on the Theory and History of International Law*, Cheltenham 2011, S. 143-167; J. VON BERNSTORFF, *Der Glaube an das universale Recht. Zur Völkerrechtstheorie Hans Kelsens und seiner Schüler*, Baden 2001.

¹⁰ M. LEFEBVRE, *Le jeu du droit et de la puissance. Précis de relations internationales* (Collection Major), Paris 2000, S.22, A. TRUYOL Y SERRA, *Genèse et structure de la société internationale*, in: *Recueil des cours de l'Académie de droit international de La Haye XLVI* (1959), S. 553-642, hier 574.

¹¹ H. LAUTERPACHT, *International law and human rights* London 1950; R. KOLB, *The Protection of the Individual in times of War and Peace*, in: B. FASSBENDER & S. PETER (Hg.), *Oxford Handbook of the History of International Law*, Oxford 2012, S. 319; R. TEITEL, *Humanity's law*, Oxford 2011.

¹² O. JÜTERSONKE, *Morgenthau, Law and Realism* Cambridge 2010, .; H.J. MORGENTHAU, *La Réalité des normes, en particulier des normes du droit international. Fondements d'une théorie des normes*, par Hans Morgenthau, Paris 1934; H.J. MORGENTHAU, *Macht und Frieden. Grundlegung einer Theorie der internationalen Politik* (Krieg und Frieden. Beiträge zu Grundproblemen der internationalen Politik), Gütersloh 1963.

¹³ TRUYOL Y SERRA, *Genèse et structure de la société internationale*, S. 574. The present contribution leaves aside the rule of law and domestic constitutional law, including fundamental rights and legal protection (R. WAHL, *Herausforderungen und Antworten: Das Öffentliche Recht der letzten fünf Jahrzehnte* (Schriftenreihe der Juristischen Gesellschaft zu Berlin; 178), Berlin 2006, 14-15), and is solely concerned

Section 1: A Bipolar World Order

“Ce machin qu’on appelle l’ONU”

Charles de Gaulle, 10 September 1960¹⁴

I. Leviathan tamed ? The UN System

The political divide in the post 1945 world, which was gradually installed from about 1947 on¹⁵, was posterior to the installation of universal international organisations, mostly the United Nations and its sister organisations. The principles governing the functioning of these bodies required a high degree of abstraction, a corollary of the need for general consent¹⁶. The United Nations security system was designed to freeze and protect the big powers’ interests. Consequently, the emphasis on sovereignty, equality and state consent, three cardinal factors in the classical European law of nations, was preponderant¹⁷. At the same time, this reinforced and consolidated secondary or small powers’ rights as sovereign states¹⁸.

If any development drew a strict line between the early modern state system and the post 1945-era, it was the outlawing of war in art. 2 (4) UN Charter¹⁹, according to which the “Members of the Organisation shall refrain, in their international relations from the threat or use of force

with horizontal legal discourse between states. For a history of German legal culture in public law and state theory, I refer to M. STOLLEIS, *Dans le ventre de Léviathan. La science du droit constitutionnel sous le national-socialisme*, in: *Astériorion. Philosophie, histoire des idées, pensée politique* 2006 (4), S. 99-122; *Geschichte des öffentlichen Rechts, III: Staats- und Verwaltungsrecht in Republik und Diktatur: 1914-1945*, München 1999.

¹⁴ Quoted in J. LACOUTURE, *De Gaulle, t. 1: le rebelle*, Paris 1984, S.110.

¹⁵ M. VAÏSSE, *La Paix au XXe siècle* (Belin Sup. Histoire; CAPES, agrégation), Paris 2004, S.220; J.L. GADDIS, *The Cold War* London 2007; Y. VANDENBERGHE, *De koude oorlog: een nieuwe geschiedenis (1917-1991)* Leuven 2008.

¹⁶ G. HÖHNE & H. ROSE, *Handbuch der internationalen Organisationen*, Berlin 1969, S.18: the Soviet Union declared in 1922 (under Lenin), to be prepared to accede to international organizations at three conditions: participation of all dependent or colonial peoples, non-interference in internal affairs by the organization and, lastly, development aid for less developed peoples. This point of view should be seen in the light of Lenin’s aspiration to set the USSR as a revolutionary power with worldwide appeal to Western colonies (L. MÄLKSOO, *International law between universality and regional fragmentation. The historical case of Russia*, in: A. ORAKHELASHVILI (Hg.), *Research Handbook on the Theory and History of International Law*, Cheltenham 2011, S. 474).

¹⁷ E.g. HÖHNE & ROSE, *Handbuch der internationalen Organisationen* (Anm. 16), S.487-488, who qualified the North Atlantic Treaty creating NATO (*o.c.*), founded with the mission “das militärische und ökonomische Potential der imperialistischen Staaten unter Führung der USA zusammenzufassen und zu vergrößern, um die Herrschaft des Monopolkapitals über die Erde zu erhalten“ as a violation of the UN collective security system. NATO’s proselytism to spread “Imperialistic” world order was contrasted with the Warsaw Pact’s preamble, appealing to all nations, irrespective of their internal order.

¹⁸ HOFFMANN, *Gulliver’s Troubles, or the setting of American policy* (Anm. 3), S.35. In the same sense: LEFEBVRE, *Le jeu du droit et de la puissance. Précis de relations internationales* (Anm. 10), S.33.

¹⁹ W. MICHAEL REISMAN, *Coercion and Self-Determination. Construing Article 2 (4)”; in: American Journal of International Law* LXXVIII (1984), S. 642-645; T. RUYS, ‘Armed Attack’ and Article 51 of the UN Charter. *Evolutions in Customary Law and Practice* (Cambridge Studies in International and Comparative Law), Cambridge 2013.

against the territorial integrity or political independence of any state²⁰”. This prohibition on the use of force in the settlement of disputes, declared a rule of customary international law by the ICJ in the *Nicaragua*-case (1986²¹), seemed the achievement of attempts to achieve “peace through law”, celebrating the achievements of the process of juridification in a state of “law through peace²²”. The UN Charter restricted the right of any sovereign state to solve quarrels “par une bonne guerre” to the case of self-defence (art. 51 UN Charter²³).

Sanctions for transgressors of this rule, however, were still as limited as in the 18th century²⁴. The Security Council, composed of five permanent members, could patrol the world, but only in case of unanimity between these very members who were all parties to the Cold War. From the Korea War on, the UN Security System was in temporary deadlock and paralysis, due to the USSR’s systematic abstention from the Security Council²⁵.

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II. Bipolar confrontation

As the Cold War set in, both the United States and the USSR built up international organisations corresponding to their ideological and geopolitical power ambitions²⁶. The USSR argued from a

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²⁰ Charter of the United Nations, San Francisco, 26 June 1945. Coordinated version <http://www.un.org/en/documents/charter/>; C. EAGLETON, *The United Nations: Aims and Structure*, in: *Yale Law Journal* LV (Aug. 1946), S. 974-996.

²¹ Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua/U.S.), 27 June 1986, *ICJ Reports* 1986, 14.

²² P.W. KAHN, *Imagining Warfare*, in: *European Journal of International Law* XXIV (2013), S. 199-226, hier 207-208: “Legal academics, in particular, read the movement [208] from the League to the Charter to the International Criminal Court as a single story of the progressive realization of a global legal order in which the idea of the enemy who is not a criminal ultimately has no place.”

²³ *Ibid.*, S. 210: “Self-defence is not about justice, but about protecting the political space of sovereignty”.

²⁴ R.C. VAN CAENEGEM, *Over koningen en bureaucraten: oorsprong en ontwikkeling van de hedendaagse staatsinstellingen* (Elseviers historische bibliotheek), Amsterdam 1977, S.44-45.

²⁵ C. FOCARELLI, *International law in the 20th Century*, in: A. ORAKHELASHVILI (Hg.), *Research Handbook on the Theory and History of International Law*, Cheltenham 2011, S. 504; J. WEILER & A. DESHMAN, *Far be it from Thee to Slay the Righteous with the Wicked: An Historical and Historiographical Sketch of the Bellicose Debate Concerning the Distinction between Jus ad Bellum and Jus in Bello*, in: *European Journal of International Law* XXIV (2013), S. 25-62, hier 35-38.

²⁶ HÖHNE & ROSE, *Handbuch der internationalen Organisationen* (Anm. 16), S.16-17, printed in the German Democratic Republic, on international organisations, classifying “socialist” and “imperialistic” IO’s (NATO/EEC), versus general IO’s, seen as neutral arena’s: “Die sozialistischen Organisationen [...] So wurde das militärpolitische Bündnis, der Warschauer Vertrag, als Reaktion auf den Beitritt des aggressivsten europäischen Staates – der westdeutsche Bundesrepublik- zur NATO geschaffen [...] der Rat für Gegenseitige Wirtschaftshilfe (RGW) [...] stellt das für die weitere Entwicklung der sozialistischen Arbeitsteilung und Kooperation notwendige Kollektivorgan dar, ohne das eine allseitige Entwicklung der einzelnen sozialistischen Länder nicht mehr denkbar ist. [...] [17] Die imperialistischen Organisationen wurden gebildet, um das imperialistische System unter Führung der USA zu organisieren und weil die UNO trotz der dort zeitweilig funktionierenden USA-Abstimmungsmaschine nicht in dem gewünschten Masse für die Interessen der stärksten imperialistischen Mächte eingespannt werden konnte. Es wird kein Hehl daraus gemacht, dass im Rahmen der imperialistischen Pakte die Souveränität der einzelnen Staaten nicht nur faktisch eingeschränkt, sondern auch juristisch zugunsten der Monopolbourgeoisie der stärksten imperialistischen Mächte aufgehoben werden soll.“ General International organizations, by contrast, embodied „dass vor allem in der Hauptfrage – Krieg und Frieden- trotz der vorhanden staatlichen Trennung eine Gemeinschaft gegen die imperialistische Bestrebungen entstanden ist.“ Höhne and Rose classified „imperialist“ IO’s as given facts, but as violations of general international law (“Nicht alles, was faktisch existiert, existiert auch rechtmäßig, das heißt in Übereinstimmung mit dem allgemein anerkannten

strict theory of sovereignty and non-intervention. The UN system was seen as legitimate, since it represented all states on an equal basis. Yet, at a regional level, international organisations were classified as either socialist or Imperialistic, and seen as vehicles in an ideological battle. As the Cold War became hot in Latin-America or Asia, Soviet doctrine condemned US intervention. However, the general customary principle of non-intervention did not apply in Eastern Europe, where the USSR crushed dissidence in Hungary (1956) or Czechoslovakia (1968), thanks to a supposed regional custom permitting intervention whereas it had been outlawed for the rest of the world, as an application of the *lex specialis*-principle²⁷.

The nuclear stalemate inherent to the armament of the two big powers, paradoxically, reinforced the protection of minor powers. If an attack means total destruction, any armed attack becomes highly improbable²⁸. States with proper means of nuclear deterrence, and thus less dependent on the two superpowers, could therein act with relatively greater freedom. Conversely, states in a precarious situation, such as West Germany, closely watched the “balance of power” in armaments. By contrast to Old Régime or 19th century diplomacy Concert of Europe- diplomacy, the metaphor did not serve to elaborate a legal structure any more, but became a symbol for a military expenses race²⁹.

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Section 2: Europe, or the New Diplomacy of Regional Institutions

Due to the very (political) weakness of the Charter system, which maintained a Big Power-management of the global equilibrium, the UN Charter left room in its article 51 for collective self-defence³⁰. Thus, regional security organisations could fulfil every state’s right to defence,

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Völkerrecht. Das schließt nicht aus, dass unrechtmäßige Organisationen sich in rechtmäßige, in solche der friedlichen Koexistenz, verwandeln können.“, *ibid.*, S. 20). See as well G.I. TUNKIN, Co-Existence and International Law, in: *Recueil des Cours de l'Académie de droit international de La Haye XLV* (1958), S. 1-82, who conceived of coexistence in international law not as coexistence between sovereigns, but between two types to organize society: “the Marx-Lenin theory of reconstruction of society and building a new society based on common property in the means of production, envisaging elimination of social classes and extinction of the State”, versus “propounding principles of existing capitalist society based on private property”. See as well E. MCWHINNEY, “Peaceful Co-existence” and Soviet-Western International Law, in: *American Journal of International Law LVI* (1962), S. 951-970 ; O.J. LISSITZYN, “Le droit international dans un monde divisé, in: *Revue générale de droit international public LXIX* (1965), S. 917-976.

²⁷ M. KOSKENNIEMI, *From apology to utopia : the structure of international legal argument*, Cambridge 2005 [1989], S.447, footnote 216, G.I. TUNKIN, *Theory of International Law*, London 1974, S.46-47, 431.

²⁸ H. MEYROWITZ, *Les juristes devant l’arme nucléaire*, in: *Revue générale de droit international public LXVII* (1963), S. 820-873, hier 871: “Par la nature et par le degré de ces effets, l’arme nucléaire se situe au delà du droit de la guerre.” HOFFMANN, *Gulliver’s Troubles, or the setting of American policy* (Ann. 3), S.36 contrasts this with Thucyides’ idea on minor powers in Classical Greece: whereas the latter avoid to the maximum contact with big powers (Athens/Sparta), fearing for their subjection or destruction, minor powers in the Cold War could feel physically safer and diplomatically freer under the umbrella of a superpower.

²⁹ E.g. von Hase (delegate to the disarmament talks) to the Auswärtiges Amt, Geneva, *AAPD* 1962-I, N°. 134, 641: “We can agree to all worldwide disarmament arrangements which take account of the principle that the balance of power must not be shifted to the detriment of our side.”

³⁰ “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”, art. 51, UN Charter.

by pooling more states together in a permanent defensive alliance. For the Atlantic bloc, NATO became the key organisation in 1949³¹.

I. The consequences of the Cold War: reintroducing Germany

The immediate aftermath of the war made a reconciliation with the wiped-out German state difficult. France concluded a separate alliance with Britain and the USSR³². European defence was organized against the aggressor of the past war, as the Treaty on the Western European Union explicitly stated³³. It took until 1949 for the NATO-treaty to be signed³⁴. 13

From the Soviet point of view, European economic integration, a sidekick of the bigger American Imperialistic design³⁵, was bound to lead to the reaffirmation of an aggressive economic and political revival of West Germany³⁶, or merely served the monopolies of transnational corporations to the detriment of the working class (read: national Communist parties in Western Europe³⁷). The reintroduction of German military elements in NATO, called for by the Americans during the Korean War, reinforced this impression: the EEC and NATO were two equal parts of a strategy to attack the socialist nations: West German monopolies and the American military had concluded an alliance³⁸. For the Russian-led bloc, only the UN-organs had legitimacy to act on the international stage³⁹. 14

³¹ A. BEAUFRE, *L'OTAN et l'Europe* (Questions d'actualité), Paris 1966; W.E. BECKETT, *The North Atlantic Treaty, the Brussels Treaty and the Charter of the United Nations* (The Library of World Affairs; 12), London 1950; H. KISSINGER, *The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance*, New York 1965; S. ROBERT, P.-H. TEITGEN, G. BIDAULT, A. DENIS & J. DUMAS, *Le Pacte Atlantique* (Les documents parlementaires), Paris 1949; M. VAÏSSE, P. MELANDRI & F. BOZO (Hg.), *La France et l'OTAN 1949-1966*, Bruxelles 1996.

³² H.-D. LUCAS, *Europa vom Atlantik bis zum Ural ?* (Pariser Historische Studien), Bonn/Berlin 1992, S.38-45

³³ Treaty for collaboration in economic, social and cultural matters and for collective self-defence, between Belgium, France, Luxemburg, the Netherlands and the United Kingdom, Brussels, 17 March 1948, 19 *UNTS* 53, preamble: "To take such steps as may be held to be necessary in the event of a renewal by Germany of a policy of aggression" (our underlining). M.-T. BITSCH, *Histoire de la construction européenne de 1945 à nos jours* (Questions à l'histoire; 161), Bruxelles 2008.

³⁴ North Atlantic Treaty between Belgium, Canada, Denmark, the Federal Republic of Germany, France, Iceland, Italy, Luxemburg, the Netherlands, Norway, Portugal, the United Kingdom and the United States, Washington, 4 April 1949, 34 *UNTS* 243.

³⁵ HÖHNE & ROSE, *Handbuch der internationalen Organisationen* (Anm. 16), S.489. On the political pressure exerted by US Congress for the award of the Marshall Plan funds, see P. MELANDRI, *Les États-Unis face à l'unification de l'Europe, 1945-1954* (Publications de la Sorbonne; Série internationale; 11), Paris 1980, S.8.

³⁶ HÖHNE & ROSE, *Handbuch der internationalen Organisationen* (Anm. 16), S.482-483. See as well A. GRACHEV, *The Soviet Leadership's View of Western European Integration in the 1950s and 1960s*, in: A. DEIGHTON (Hg.), *Widening, Deepening and Acceleration* Baden-Baden 1999, S. 31-40.

³⁷ GRACHEV, *The Soviet Leadership's View of Western European Integration in the 1950s and 1960s* (Anm. 36), S. 36.

³⁸ *Pravda*, 17 March 1957, cited in *ibid.*, S. 37.

³⁹ E.g. Krutchev's November 1962 proposal to place the allied troops in West-Berlin under UN-flag. The allies refused to transfer the authority over their troops to the UN Security Council, since this would mean abandoning the occupation regime for Germany, while a definitive peace treaty to end World War II had not been signed (Memorandum by ambassador Ritter, 17 November 1962, *AAPD* 1962-III, nr. 453, 1950-1951). Furthermore, France feared that the UN General Assembly might get involved with the matter, on the basis of the Uniting for Peace Resolution, which opened the door to the Assembly to take over the management of

From the legal point of view, the statute of Germany was a cumbersome affair. Defeated on 8 May 1945, its sovereignty was not restored until the German unification took force on 15 March 1991. Neither the Federal Republic in the West nor the Democratic Republic in the East⁴⁰ were sovereign states⁴¹. The partitioned former Third Reich capital Berlin, under a four party-regime of the former wartime allies, or the modification of the Eastern border to compensate Poland (a quarter of pre-wartime German national territory⁴²) could count as symbols of this uneasy situation. The Federal Republic claimed to represent the former German state in its 31 December 1937 borders, well until the end of the 1960s⁴³. As well West as East Germany started from a handicapped position on the international level. Recognized and acting in international organisation, they were still nonetheless “non-sovereign entities”. Their decisions depended on the agreement of the quadripartite conglomerate of France, Britain, the USSR and the US.

Bringing West Germany in the North Atlantic Treaty Organisation, as happened in 1954⁴⁴, implied a considerable concession. The Federal Republic had to renounce the production or use of atomic, biological or chemical weapons⁴⁵. There again, even if the financial or industrial capabilities would have been present, Germany would have to fight a diplomatic battle without end to build nuclear weapons itself, as Britain and France could do freely. Moreover, West German diplomacy had to get its international partners to abstain from any recognition of the

the Korea War in absence of the USSR as a permanent member (FOCARELLI, *International law in the 20th Century*, S. 502-503). The Federal Republic feared that Berlin would become subject of a “floating vote” within the General Assembly (Ritter, 17 November 1962, 1954).

- 40 C. WENKEL, *Auf der Suche nach einem anderen Deutschland: das Verhältnis Frankreichs zur DDR im Spannungsfeld von Perzeption und Diplomatie* (diss.doc.) Paris 2008; M. VAÏSSE & C. WENKEL, *La Diplomatie française face à l’unification allemande, d’après des archives inédites (Histoires d’Aujourd’hui)*, Paris 2011.
- 41 I. COUZIGOU, *L’évolution du statut international de l’Allemagne depuis 1945* (Collection de droit international; 66), Bruxelles 2011; H.-J. KÜSTERS, *Der Integrationsfriede : Viermächte-Verhandlungen über die Friedensregelung mit Deutschland, 1945-1990* (Dokumente zur Deutschlandpolitik. Studien ; 9), München 2000.
- 42 COUZIGOU, *L’évolution du statut international de l’Allemagne depuis 1945* (Anm. 41), S.19-20 ; KISSINGER, *The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance* (Anm. 31), S.219.
- 43 COUZIGOU, *L’évolution du statut international de l’Allemagne depuis 1945* (Anm. 41), S.22 ; see Memorandum, Blankenhorn (German ambassador to Paris), Paris, 21 October 1963, *AAPD* 1963-III, No. 395, 1346), regretting the French refusal to alter its point of view concerning the Oder-Neisse-border: for France, relations with “den freiheitlich gesinnten Polen, die mit Deutschland die Herstellung freiheitlicher Verhältnisse in ganz Osteuropa ersehnten” were needlessly hampered by German territorial stubbornness. Herbert Blankenhorn (1904-1991) was ambassador in Paris from 1958 to 1963. H. BLANKENHORN, *Verständnis und Verständigung. Blätter eines politischen Tagebuchs 1949 bis 1979* Frankfurt-am-Main 1980; B. RAMSCHEID, *Herbert Blankenhorn (1904-1991). Adenauers aussenpolitischer Berater* (Forschungen und Quellen zur Zeitgeschichte; 49), Düsseldorf 2006.
- 44 Convention between the Federal Republic of Germany, France, the United Kingdom and the United States, Paris, 23 October 1954, 332 *UNTS* 3.
- 45 Unilateral Declaration by Konrad Adenauer, London, 3 October 1954, inserted into the WEU’s Protocol III concerning armament controls: “the Federal Republic of Germany has engaged itself not to produce on its territory any atomic, biological or chemical weapons.” Only a decision of the WEU’s council, on a proposal submitted by the SACEUR (NATO supreme commander in Europe) and the FRG government, can authorize a partial or total revision of this regime. By its accession to NATO, the Federal Republic of Germany acceded to the Western European Union, created by the Treaty between Belgium, France, Luxemburg, the Netherlands and the United Kingdom of Great Britain and Northern Ireland, for collaboration in economic, social and cultural matters, and for collective self-defence, Brussels, 17 March 1948, *UNTS* 19 (1948), I, nr. 304.

DDR. The so-called Hallstein-doctrine implied that West Germany posed the non-recognition of East Germany as a precondition in diplomatic affairs⁴⁶.

II. “Entrepreneurs of Europe⁴⁷” and traditional legal science

“Tandis que les hommes d’État débattent, sans ménager le poids de leur autorité et la fougue de leurs convictions [...] les juristes [...] s’emploient à la naissance, discrète mais lourde de promesses, d’un *droit* européen.”

Michel Gaudet, 1963⁴⁸

“Rien n’est possible sans les hommes, rien n’est durable sans les institutions.”

Jean Monnet, *Mémoires*⁴⁹

Although it might seem tempting to interpret the legal history of European integration with hindsight, the emergence of a legal discourse advocating a separate legal order was far from evident to the majority of European continental jurists. Resistance to the theory of supranationalism came both from national public law⁵⁰ and public international law. Mainstream internationalist doctrine continued in line with the post-World War I consensus, emphasizing consensualism (as expressed in the PCIJ’s *Lotus* case (1927⁵¹) and –thus- the precarious legal personality of any institution built on agreement between states⁵². State

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⁴⁶ Which could lead to a certain degree of paranoia, e.g. Carstens’s comments on the instructions of the American ambassador to the USSR: “Im sechsten Satz könne die ausdrückliche Hervorhebung, dass die USA keine formelle De-jure- oder De-facto-Anerkennung gewähren können, den Eindruck erwecken, als ob sie eine implizierte De-jure- oder De-facto-Anerkennung für möglich hielten.” (Carstens to German Embassy in Washington, 9 January 1962, geheim, AAPD 1962, I, nr. 13, 14). (our underlining). On the doctrine’s legal foundations, see G. CORTESE & R. PAPINI, De la doctrine Hallstein à la ‘Ostpolitik’, in: *Revue générale de droit international public* LXXIII (1969), S. 124-132.

⁴⁷ A. VAUCHEZ, *L’Union par le droit : L’invention d’un programme institutionnel pour l’Europe* (Références), Paris 2013, S.43. See as well M. SEGERS & M. KOHNSTAMM, *Diep Spel. De Europese dagboeken van Max Kohnstamm, september 1957-februari 1963*, Amsterdam 2011.

⁴⁸ M. GAUDET, Incidences des Communautés européennes sur le droit interne des États membres, in: *Annales de la Faculté de droit de Liège* I (1963), S. 5-26.

⁴⁹ J. MONNET, *Mémoires* Paris 1976, S.447; J.-B. DUROSELLE, Deux types de grands hommes : le général de Gaulle et Jean Monnet, in: J.-B. DUROSELLE (Hg.), *Itinéraires. Idées, hommes et nations d’Occident (XIXe-XXe siècles)* Paris 1991, S. 243-260 ; Y. KIM, *Identité et conscience européenne à travers les relations de Jean Monnet et de l’élite américaine 1938-1963* (diss. doc.) Cergy-Pontoise 2011.

⁵⁰ E.g. the constant minorisation of future EEC Commission president Walter Hallstein at the annual conferences of the *Vereinigung der Deutschen Staatsrechtslehrer* during the 1950s (VAUCHEZ, *L’Union par le droit : L’invention d’un programme institutionnel pour l’Europe* (Anm. 47), S.125) and the discussion leading to the *Solange*-decisions in Karlsruhe (M. MARESCAU, *De directe werking van het Europese Gemeenschapsrecht* ([Europeese monografieën; 24), Antwerpen 1978, S. 202; WAHL, *Herausforderungen und Antworten: Das Öffentliche Recht der letzten fünf Jahrzehnte*, 100: „[es ist klar], daß ein Vorrang logisch und sachlich nicht ohne Nachrang möglich ist“).

⁵¹ 1927 P.C.I.J. (Ser. A), No. 10 (Sept. 7).

⁵² KOSKENNIEMI, *From apology to utopia : the structure of international legal argument* (Anm. 27), S. 138 ; VAUCHEZ, *L’Union par le droit : L’invention d’un programme institutionnel pour l’Europe* (Anm. 47), S. 123.

sovereignty was unlimited, save for explicit limitations agreed to by the states themselves⁵³. Looked at from a distance of half a century, the emergence of key concepts as primacy or direct effect of European law seems evident⁵⁴. Yet, the opposition we will describe in the next part (B) between the French political discourse, on one hand, and the vertical integration of the Atlantic world, on the other hand, was not merely one between politics and the legal professions⁵⁵.

Instead, both a “weak” and a “strong” programme on the Rome Treaties lived in academia⁵⁶. The former saw the treaties creating three European communities as a coincidental whole of four separate international instruments, organising coexistence between states⁵⁷. The Commissions’ legal services, backed by business lawyers acting for (mainly American) multinational corporations⁵⁸, advocated that the treaties formed a constitutional bloc, installing a hierarchy between two separate legal orders, the national and the supranational. The traditional internationalist conception saw European community law as a *political* law, whereby political agreements between equal and sovereign partners continued as the sole source of law. Yet, Institutional⁵⁹ discourse, produced by the organs created by the treaties, saw the judge, and in the case of competition, the administration, as law creators themselves. This, in turn, had as a consequence that transnational economic activity would create an ever closer union *de facto*, whereas the traditional conception saw this as the mission of politicians and high government officials within each state. Finally, unification through the *renvoi*-procedure of art. 177 EEC allowed to bypass intergovernmental and national political procedures to let European law prevail in concrete cases⁶⁰. In other words, the European jurist’s interpretative *habitus* would be shaped in Brussels and Luxemburg⁶¹, away from the *legicentrism* of the national legal order, where top-down law-making prevailed⁶².

⁵³ KOSKENNIEMI, From apology to utopia : the structure of international legal argument (Anm. 27), S.221: “The essence of the law is to establish duties as exceptions to the initial liberty”.

⁵⁴ Case 26/62 *Van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963] ECR I; Case 6/64 *Costa v. ENEL* [1964] ECR 585.

⁵⁵ E.g. the choice of the term “Communities”, explained by Paul Reuter, legal adviser in the French Foreign Affairs Ministry, motivated as follows: “juridiquement –en dehors du mariage et des congrégations- [ce terme] ne veut strictement rien dire”. Precisely this quality allowed to create a legal *newspeak* within public international law, whereby “politics precedes political theory, as language precedes grammar” (W. HALLSTEIN, *United Europe: challenge and opportunity* (William L. Clayton lectures on international economic affairs and foreign policy; 5), Cambridge (Mass.) 1962, S. 29).

⁵⁶ The terms are those of VAUCHEZ, *L’Union par le droit : L’invention d’un programme institutionnel pour l’Europe* (Anm. 47), S. 215.

⁵⁷ E.g. H.J. SCHLOCHAUER, *Das Verhältnis des Rechts der Europäischen Wirtschaftsgemeinschaft zu den nationalen Rechtsordnungen der Mitgliedstaaten*, in: *Archiv des Völkerrechts* XI (1963), S. 2-34, hier 7-8. See as well H. STEIGER, *Die Unabhängigkeit der Rechtssetzung der europäischen Gemeinschaften*, Köln 1964; H. STEIGER, *Staatlichkeit und Überstaatlichkeit : eine Untersuchung zur rechtlichen und politischen Stellung der Europäischen Gemeinschaften* (Schriften zum öffentlichen Recht; 31), Berlin 1966.

⁵⁸ VAUCHEZ, *L’Union par le droit : L’invention d’un programme institutionnel pour l’Europe* (Anm. 47), S. 95-113 (La « place de Bruxelles »).

⁵⁹ “un système d’ « Institutions » avec le « i » majuscule” *ibid.*, S. 61.

⁶⁰ L. WINKEL, *Preliminary ruling of the European Court of Justice and their precursors*, in : *Tijdschrift voor Rechtsgeschiedenis / Revue d’Histoire du Droit / The Legal History Review* LXXV (2007), S. 231-237.

⁶¹ VAUCHEZ, *L’Union par le droit : L’invention d’un programme institutionnel pour l’Europe* (Anm. 47), S.177.

During the critical formation years in the 1950s, the legal advisors at the *Auswärtiges Amt* in Bonn⁶³ had strong ties with future commission president Walter Hallstein, who taught at the University of Frankfurt: the legal historian and diplomat Wilhelm Grewe (1911-2000⁶⁴), future secretary of state and Federal President Karl Carstens (1914-1992, also professor at the University of Cologne⁶⁵), Carl Friedrich Ophüls (1895-1970, diplomat and professor of international law at Frankfurt⁶⁶), Ernst Steindorff (°1920, Hallstein's former assistant, and professor at the University of Munich⁶⁷) and Hermann Mosler (1924-2001, professor at the University of Frankfurt and director of the Max Planck Institute for International Law and Comparative Public Law, future ECHR and ICJ judge⁶⁸). From the French side, the Quai d'Orsay and traditional high administration provided the ECSC and EEC with its finest civil servants: Emile Noël (1922-1996), former chief of cabinet to Prime Minister Guy Mollet (1905-1975), as Secretary-General of the Commission or Michel Gaudet (1915-2003), head of first the ECSC and then the EEC's legal service (whose numbers rose from 12 to 80 in the sixties⁶⁹). Not surprisingly, the European institutions' working languages were French – predominantly- and German⁷⁰.

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The following part, which deals with de Gaulle's opposition to the ongoing enterprise of unification through law, shows the resilience of the alternative narrative. Traditionally,

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⁶² Ibid. S. 152.

⁶³ C. HIEPEL, Le ministère ouest-allemand des Affaires étrangères et l'intégration européenne, des origines à 1974, in : L. BADEL, S. JEANNESON & N. PIERS LUDLOW (Hg.), *Les administrations nationales et la construction européenne : une approche historique (1919-1975)* Bruxelles 2005, S. 239-258.

⁶⁴ W.G. GREWE, The role of international law in diplomatic practice, in: *Journal of the History of International Law - Revue d'histoire du droit international I* (1999), S. 22-37.

⁶⁵ K. CARSTENS, *Das Recht des Europarats*, Berlin 1956; K. CARSTENS, K.V. JENA & R. SCHMOECKEL, *Erinnerungen und Erfahrungen (Schriften des Bundesarchivs)*, Boppard am Rhein 1993; K. SZATKOWSKI, *Karl Carstens. Eine politische Biographie* Köln 2007.

⁶⁶ Former ambassador to Belgium (1955-1958) and permanent representative to the EEC and Euratom (1958-1960), see W. HALLSTEIN (Hg.), *Festschrift für Carl Friedrich Ophüls aus Anlass seines siebenzigsten Geburtstages* Karlsruhe 1965.

⁶⁷ E. STEINDORFF, *Rechtsschutz und Verfahren im Recht der Europäischen Gemeinschaften* Baden Baden 1964.

⁶⁸ VAUCHEZ, *L'Union par le droit : L'invention d'un programme institutionnel pour l'Europe*, S.49-51; H. MOSLER, *Die Intervention im Völkerrecht* Berlin 1937 ; H. MOSLER, *Geschichte des Max-Planck-Instituts für ausländisches öffentliches Recht und Völkerrecht*, in: *Jahrbuch der Max-Planck-Gesellschaft zur Förderung der Wissenschaften* (1961), S. 687-703.

⁶⁹ G. BOSSUAT, *La culture de l'unité européenne des élites françaises aux Communautés européennes*, in: A. VARSORI (Hg.), *Inside the European Community : actors and policies in the European Integration 1957-1972 (Veröffentlichungen der Historiker-Verbindungsgruppe bei der Kommission der Europäischen Gemeinschaften; 9)*, Baden-Baden 2006, S. 67.

⁷⁰ Belgium's impact ("Les Flamingants") on the diminishing influence of French in the EEC was resented by high French civil servants (Bossuat, "La culture de l'unité européenne", 68, quoting Jean-François Deniau: "Le Néerlandais Joseph Luns [Minister for Foreign Affairs] s'exprimait en français, or les Belges en raison de leurs querelles linguistiques ont exigé de ne pas privilégier le français. Carli le president de la Banque d'Italie parlait le français". See as well F. BONN, *Les problèmes juridico-linguistiques dans les Communautés Européennes*, in: *Revue générale de droit international public* LXVIII (1964), S. 708-718. More generally, on language and cultural practices in diplomacy, C. COGAN, *French negotiating behavior : dealing with La grande nation (Cross-Cultural Negotiation Books)*, Washington 2003; W.R. SMYSER, *How Germans negotiate : logical goals, practical solutions* Washington 2002.

normative indeterminacy (or: the vagueness of treaty clauses agreed between states) provided diplomats and their legal advisers with a mandate to elaborate a hybrid politico-legal discourse. The European integration process, however, delegated this function to the court⁷¹.

B. L'embêteuse du monde : contesting American hegemony

“Nous ne voyons pas d'inconvénient à votre puissance, car sans elle, nous serions exposés à une hégémonie irrésistible des États-Unis. De même nous ne voyons pas d'inconvénient à la puissance des États-Unis, sans laquelle nous serions probablement exposés à l'hégémonie soviétique.”

Conversation de Gaulle-Breznev, 21 juin 1966⁷²

“Nous ne voulons pas d'intégration militaire, politique, économique, monétaire, avec les Américains, quoique nous voulions rester leurs amis.”

Conversation de Gaulle-Kiesinger, 14 January 1967⁷³

Initially, at the end of the War, France concluded a bilateral alliance with the Soviet Union⁷⁴, in order to balance the combination between Britain and the United States, and to acquire a more independent standing. De Gaulle explained this as “un impératif catégorique de la géographie, de l'expérience et du bon sens⁷⁵”, reminiscent of 18th or 19th century Franco-Russian diplomacy. 21

Yet, in the 1950s, the Fourth Republic cooperated in the demilitarisation (= end of the military occupation in the French, British and American zones in West Germany), coupled with the insertion of the Federal Republic into NATO. This rendered France suspect in the eyes of Stalin and Vyshinsky⁷⁶. At the regional level, the 1962 Fouchet Plan⁷⁷ was seen as “directed against the Soviet Union and the countries of the socialist camp⁷⁸”, just as the creation of a 22

⁷¹ A. STONE SWEET, *The judicial construction of Europe* Oxford 2004, S.15.

⁷² Moscow, 21 June 1966, AMAE, *Entretiens & Messages*, quoted in M. VAÏSSE, *La Grandeur. Politique étrangère du Général de Gaulle, 1958-1969*, Paris 1998, S.39.

⁷³ Paris, 14 January 1967, *DDF* 1967, No. 23, 84.

⁷⁴ Maluinsky, member of the Commission for the Preparation of the Peace Treaties and the Postwar Settlement, 25 March 1944 “We are interested in the existence of a France that would be sufficiently strong in order not to become secondary to Britain, but not strong enough to turn against us.” (quoted in GRACHEV, *The Soviet Leadership's View of Western European Integration in the 1950s and 1960s* (Anm. 36), S. 34). M. VAÏSSE (Hg.), *De Gaulle et la Russie* (CNRS Histoire), Paris 2006.

⁷⁵ C. DE GAULLE, *Discours et messages. 1. Pendant la guerre: juin 1940-1946* Paris 1970, S.186

⁷⁶ GRACHEV, *The Soviet Leadership's View of Western European Integration in the 1950s and 1960s* (Anm. 36), S. 36.

⁷⁷ R. BLOES, *Le “Plan Fouchet » et le problème de l'Europe politique* (Studies in contemporary European issues ; 5), Bruges 1970; M. CAMPS, *Die Diskussionen Über die Politische Union*, in: *Die Internationale Politik* (1962), S. 111-126; G. CLEMENS, *A delicate matter. Grossbritannien und die Fouchet-Verhandlungen, 1960-1962*, in: *Journal of European Integration History* XI (2005), S. 103-124; G.-H. SOUTOU, *Le Général de Gaulle, le plan Fouchet et l'Europe*, in: *Commentaire* XIII (1991), S. 757-766; J.W. VANKE, *An impossible union: Dutch objections to the Fouchet Plan, 1959-1962*, in: *Cold War History* II (2001), S. 95-113.

⁷⁸ Archives on Foreign Policy, Presidency of the Russian Federation, quoted in GRACHEV, *The Soviet Leadership's View of Western European Integration in the 1950s and 1960s* (Anm. 36), S. 38.

joint European (EEC + EFTA) or Trans-Atlantic (GATT⁷⁹) market was a threat to the Soviet economy⁸⁰. Dominated by security matters, the USSR's interpretation of the EEC did not go further than statements on the organisation as “an instrument of the Cold War and the Holy Alliance against the working class, the socialist system and the developing countries⁸¹”. Only in 1972 did the USSR recognize the EEC as a subject of international law.

Whereas the American nuclear force had provided protection for Europe in the first decade of the Cold War, the situation had changed by the end of the 1950s⁸². Soviet nuclear weapons could attain American territory thanks to the development of long-range-bombers. The effective use of nuclear power thus became much less likely: “No American politician would risk the destruction of his own cities to stop a Soviet advance in Europe”⁸³. Consequently, Europe had to turn to other solutions for an effective and certain protection.

When Charles de Gaulle returned to power in May 1958⁸⁴, he was seen as a nationalist leader with very little regard for the new international organisation⁸⁵. The failure of the European Defence Community, the initiative designed to pool the standing armies of France, Britain and Germany into a supranational force, was attributed to his opposition⁸⁶. In opposition for the whole of the Fourth Republic⁸⁷, de Gaulle had attacked the Treaties of Rome establishing the EEC and Euratom, concluded in March 1957⁸⁸, barely a month and a half before his return to

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⁷⁹ General Agreement on Tariffs and Trade, Geneva, 30 October 1947, 55 *UNTS* 187.

⁸⁰ Memorandum Legationsrat Lang, geheim, 12 January 1962, *AAPD* 1962-I, nr. 19, 125-134.

⁸¹ GRACHEV, The Soviet Leadership's View of Western European Integration in the 1950s and 1960s, (Anm. 36) S. 40.

⁸² W. LOTH, Franco-German Relations and European Security, 1957-1963, in: A. DEIGHTON (Hg.), *Widening, deepening and acceleration : the European economic community 1957-1963* (Veröffentlichungen der Historiker-Verbindungsgruppe bei der Kommission der Europäischen Gemeinschaften; 7), Baden-Baden 1999, S. 41.

⁸³ *Ibid.*

⁸⁴ G. ELGEY, *Histoire de la IVe république. 4 : De Gaulle à Matignon* Paris 2011 ; R. RÉMOND, *Le retour de de Gaulle (Questions au 20e siècle)*, Bruxelles 1998.

⁸⁵ De Gaulle opposed the “alchemy” of the ECSC and castigated the European Defence Community (“mélange apatride”, “robot”, “monstre artificiel”, “Frankenstein”, “protectorat”) for allowing the Americans into French military affairs through the backdoor (VAÏSSE, *La Grandeur. Politique étrangère du Général de Gaulle, 1958-1969* (Anm. 71), S.32, D. COLLARD & G. DAILLE, *Le Général de Gaulle et les alliances*, in: INSTITUT CHARLES DE GAULLE (Hg.), *De Gaulle en son siècle*; T. 4: *La sécurité et l'indépendance de la France*, Paris 1992, S. 67; J. PINDER, *Europe against de Gaulle* (Federal trust for education and research. Publications), London 1963).

⁸⁶ P. BUTON, *La CED, l'affaire Dreyfus de la Quatrième République ?*, in: *Vingtième Siècle* (2004), S. 43-59; on the legal debate in France, see J.-M. MILLET, *Les publicistes français et la CED, controverse doctrinale et engagement civique*, in: *Relations Internationales* (2012), S. 101-114.

⁸⁷ E.g. Couve de Murville's interview on diplomatic service at the Quai d'Orsay under the Fourth Republic (expressing a point of view close to that of de Gaulle): “ces gouvernements faisaient ce que je me permettrais d'appeler des âneries. Ils suivaient les Américains les yeux fermés et, lorsqu'il y avait un incident ils faisaient n'importe quoi” (S. MAFFERT & M. VAÏSSE, *Entretien avec Maurice Couve de Murville*, in: INSTITUT CHARLES DE GAULLE (Hg.), *Gaulle en son siècle. T. 4: La sécurité et l'indépendance de la France*, Paris 1992, S. 222).

⁸⁸ Treaty between Belgium, the Federal Republic of Germany, France, Italy, Luxemburg and the Netherlands, creating the European Economic Community, Rome, 25 March 1957, 294 *UNTS* 3 (official text in French); Treaty between Belgium, the Federal Republic of Germany, France, Italy, Luxemburg and the Netherlands

power. The “Adenauer-Schuman”-era, which had seen the birth of the ECSC and the integration of West-Germany into NATO, was closed⁸⁹. Britain hoped the new French chief of government would renege his predecessors’ engagements in the Treaties of Rome⁹⁰.

Yet, de Gaulle’s action would turn out decisive for the consolidation of the European Community: “on a dit que ceux qui ont signé le traité de Rome ne l’auraient pas appliqué, et que le général de Gaulle ne l’aurait pas signé mais l’a mis en application⁹¹”. He saw the Common Market as essential to European organisation, since it allowed for the controlled development of West Germany⁹². Irrespective of the factual failure of his political designs, the French President obtained the supranational organization of the Common Agricultural Policy⁹³. Moreover, de Gaulle, son of a history teacher, tried to link Europe’s past to a multipolar message for the future⁹⁴.

Simultaneously, the economic revival of Western Europe, triggered by American help, made France less dependent on its former colonial markets. With the other continental powers no longer as competitors, it could look for a new partnership. De Gaulle openly teased the United States, who had reproached France its war in Algeria. In February-March 1964, Nikolaï Podgorny, president of the USSR’s Soviet, visited Paris. Directly afterwards, de Gaulle went to Mexico (15-24 March). Half a year later, to Latin America, qualifying Fidel Castro as a Latin-American nationalist⁹⁵. In March 1965, France and the USSR agreed to jointly develop colour television (SECAM-standard)⁹⁶. A year later, de Gaulle spent 12 days in Russia, orated before a million people, and installed a structural cooperation, as if the Entente Cordiale, the 19th

creating the European Community for Atomic Energy (EURATOM), Rome, 25 March 1957, 294 *UNTS* 259 (official text in French).

⁸⁹ Conversation Gerhard Schröder-Dean Acheson, Bonn, 19 October 1963, geheim, *AAPD* 1963-III, No. 394, 1342; T. HÖRBER, *The Foundations of Europe: European Integration Ideas in France, Germany and Britain in the 1950s* (Forschungen zur Europäischen Integration; 19), Wiesbaden 2006.

⁹⁰ VAÏSSE, *La Grandeur. Politique étrangère du Général de Gaulle, 1958-1969* (Anm. 71), S.166.

⁹¹ E. BURIN DES ROZIERS, *L’indépendance nationale selon de Gaulle: fondement et pratique d’une politique*, in: INSTITUT CHARLES DE GAULLE (Hg.), *De Gaulle en son siècle. T. 4: La sécurité et l’indépendance de la France*, Paris 1992, S. 235.

⁹² VAÏSSE, *La Grandeur. Politique étrangère du Général de Gaulle, 1958-1969* (Anm. 71), S.166-167.

⁹³ A.-C. LAURING KUNDSSEN, *Creating the Common Agricultural Policy*, in: W. LOTH (Hg.), *Crises and Compromises: The European Project 1963-1969* Baden-Baden/Bruxelles 2001, S. 131-156; A. MORAVCSIK, *Le grain et la grandeur. Les origines économiques de la politique européenne du général de Gaulle* (1ère partie), in: *Revue française de science politique* XLIX (1999), S. 507-544; X (2000), No. 1, 73-124 (part II).

⁹⁴ “Histoire”, in: C. ANDRIEU, P. BRAUD & G. PIKETTY (Hg.), *Dictionnaire De Gaulle* (Bouquins), Paris 2006, S. 608-609.

⁹⁵ De Gaulle to Peyrefitte, 21 October 1964, “Si ce voyage a eu une utilité, c’est de montrer que les nations ne demandent qu’à s’affirmer. Elles ne seront pas toujours prêtes à abdiquer leur souveraineté aux mains des deux super-grands. Elles prennent conscience du fait qu’elles doivent leur résister. La Chine en est plus que convaincue. Le Mexique, le Brésil, l’Argentine, le Chili aussi, au fond d’eux-mêmes, même s’ils hésitent à le proclamer. C’est la vocation de la France d’exercer son influence pour favoriser ce mouvement. Un jour viendra où tous les pays hostiles à la domination des deux grands se dresseront pour défendre leur indépendance. Ce jour-là sera le nôtre” (PEYREFITTE, *C’était de Gaulle* (Anm. 2), S. II,207).

⁹⁶ O. CHANTRIAUX, *Le bras de fer franco-allemand en matière de télévision en couleurs*, in: *Revue d’histoire diplomatique* CXIX (2005), S. 75-92.

century alliance behind Germany's back, had returned⁹⁷. A year and a half after the beginning of systematic US bombardments in the French former colony Vietnam⁹⁸, de Gaulle castigated the aggressive policy of the hegemon in his Pnom Penh discourse (30 August 1966. The US did not understand that never: “les peuples de l'Asie se soumettent à la loi de l'étranger venu de l'autre rive du Pacifique, quelles que puissent être ses intentions et si puissantes que soient ses armées⁹⁹.” France had shrugged off its former role as colonial power¹⁰⁰, and took the role of “morale Führungsmacht für die dritte Welt¹⁰¹”. Whereas the United States had criticized the Anglo-French intervention in Suez or the Algerian War, de Gaulle projected the image of an Imperialist state on a nation confident on its historical credentials as the first post-colonial state¹⁰².

Section 1: Two, Three, Six, or One ? “La Grandeur par l'Europe¹⁰³”

I. Franco-German Friendship, A New Balance for Europe¹⁰⁴ ?

“Le traité franco-allemand n'avait pas été conçu
seulement pour sceller la réconciliation des deux
peuples. Devant les réticences de nos partenaires du
Marché commun à s'engager sur le plan politique, il
devait servir aussi de base à une union franco-allemande
possédant ses vues, ses idées, sa politique.”

Couve de Murville, 7 July 1964¹⁰⁵

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- ⁹⁷ H. CARRÈRE D'ENCAUSSE, *La Russie dans la géopolitique de Charles de Gaulle*, in: M. VAÏSSE (Hg.), *De Gaulle et la Russie*, Paris 2006, S. 273-293 ; Z. BIELOUSSOUVA, *La visite du général de Gaulle en URSS en juin 1966*, in: INSTITUT CHARLES DE GAULLE (Hg.), *De Gaulle en son siècle*; T. 4: *La sécurité et l'indépendance de la France*, Paris 1992, S. 392-401.
- ⁹⁸ P. ISOART, *Les conflits du Viêt-nam: positions juridiques des États-Unis*, in: *Annuaire français de droit international* XII (1966), S. 50-88.
- ⁹⁹ Quoted in A. SA'ADAH, *Idées simples et idées fixes: De Gaulle, les États-Unis et le Vietnam*, in: INSTITUT CHARLES DE GAULLE (Hg.), *De Gaulle en son siècle*; T. 4: *La sécurité et l'indépendance de la France*, Paris 1992, S. 278, M. VAÏSSE, *De Gaulle et la guerre du Vietnam: de la difficulté d'être Cassandre*, in: C. GOSCHA & M. VAÏSSE (Hg.), *La guerre du Vietnam et l'Europe* Bruxelles 2003, S. 169-178.
- ¹⁰⁰ For a voice in French contemporary doctrine, see M. MOUSKHÉLY, *La naissance des États en droit international public*, in: *Revue générale de droit international public* LXVI (1962), S. 469-485.
- ¹⁰¹ Memorandum Blankenhorn, 21 October 1963, *o.c.* (Anm. 43), 1350.
- ¹⁰² HOFFMANN, *Gulliver's Troubles, or the setting of American policy* (Anm. 3), S.100-102. “L'embêteuse du monde” in the present section title, is drawn from R. DEBRAY, *La France doit quitter l'OTAN. Lettre à Hubert Védrine*, in: *Le Monde Diplomatique* LX (2013), S. 7; originally from a play by J. Giraudoux, *L'impromptu de Paris* (1937).
- ¹⁰³ S. BERSTEIN, *Histoire du Gaullisme*, Paris 2001, S. 306.
- ¹⁰⁴ M. COUVE DE MURVILLE, *Der Sinn des deutsch-französischen Vertrages: Für ein Gleichgewicht in Europa*, in: *Der europäische Osten* (Jul-Aug 1963), S. 399-403.
- ¹⁰⁵ Telegram to the French diplomatic representatives at Bonn, Rome, Brussels, EEC, The Hague, Luxemburg, Washington, London and New York, Paris, 7 July 1964, réservé, *DDF*, 1964, n° 12, 35. On Maurice Couve de Murville, Foreign Minister (1958-1968, the longest tenure since the *Ancien Régime*), Minister of Finance (1968) and Prime Minister (1968-1969), see M. COUVE DE MURVILLE, *Une politique étrangère: 1958-1969* Paris 1971; J.-P. DE GARATE, *Couve de Murville* (1907-1999) Paris 2007; M. VAÏSSE,

“Les traités sont comme des jeunes filles et des roses: ça dure ce que ça dure. Si le traité allemand n'était pas appliqué, ce ne serait pas le premier dans l'Histoire.”

Charles de Gaulle to the UDR-parliamentary fractions, 3 July 1963¹⁰⁶

Having arrived in power as Prime Minister in 1958, Charles De Gaulle personally cancelled a trilateral agreement between France, the Federal Republic of Germany, and Italy. The three countries had teamed up in 1957 to jointly produce nuclear weapons, confirmed by a 1958 co-financing agreement on an isotope separation machine at Pierrelatte (France)¹⁰⁷. This was hard to reconcile with the Federal Republic's 1954 renunciation to ABC weapons¹⁰⁸. Instead, De Gaulle offered Adenauer a separate bilateral cooperation, and, at the same time, courted Macmillan and Eisenhower for a tripartite directorate in NATO¹⁰⁹. This last step meant that France would render the other Western European partners dependent on her, and at the same time obtain a joint veto with Britain on the use of American force¹¹⁰. Britain, in the meanwhile, had turned away from France, signing a bilateral agreement at the Bahamas-summit late 1962¹¹¹.

De Gaulle's schemes for European integration saw Franco-German cooperation as the logical reaction to American-led integration of the Western bloc¹¹². British-American separate meetings had irritated Konrad Adenauer as well¹¹³. Yet, from a German perspective, the French plans were ambivalent. On one hand, they could provide an alternative to complete dependence on American force¹¹⁴, as the United States were shifting their priorities to Asia¹¹⁵. Yet, on the

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COUVE DE MURVILLE Maurice, in: J.-F. SIRINELLI (Hg.), Dictionnaire historique de la vie politique française au XXe siècle Paris 2004, S. 279-299.

¹⁰⁶ PEYREFITTE, C'était de Gaulle (Anm. 2), S. II, 231.

¹⁰⁷ C. BARBIER, Les négociations franco-germano-italienne, en vue de l'établissement d'une coopération militaire nucléaire au cours des années 1956-1958, in: Revue d'histoire diplomatique CVI (1990), S. 81-113; P.-M. DE LA GORCE, Charles de Gaulle. 2: 1945-1970 Paris 2008, S.459.

¹⁰⁸ In Adenauer's view, the clause had been conditioned by a *clausula rebus sic stantibus*, which he interpreted in the light of the American nuclear presence to protect the FRG's territory (LOTH, Franco-German Relations and European Security (Anm. 81), 1957-1963, S. 49; Conversation Adenauer/De Gaulle, Paris, streng geheim, 4 July 1962, AAPD 1962-II, N°. 273, 1213; Conversation Adenauer/De Gaulle, Paris, 21 January 1963, AAPA [Auswärtiges Amt Berlin, Politisches Archiv], B21, v. 2, 3.). M.-F. FURET, La République Fédérale d'Allemagne et les armements nucléaires, in: Revue générale de droit international public LXXIV (1970), S. 314-356.

¹⁰⁹ Memorandum Wertz, 13 February 1962, geheim, AAPD 1962-I, N°. 69, 355-357 (Dreier-Direktorium). A. LOCHER & C. NUENLIST, NATO Strategies toward de Gaulle's France, 1958-1966: Learning to Cope, in: C. NUENLIST, A. LOCHER & G. MARTIN (Hg.), Globalizing de Gaulle : international perspectives on French foreign policies, 1958-1969 (Harvard Cold War Book Series), Lanham 2010, S. 85-109.

¹¹⁰ P. MANGOLD, The almost impossible ally: Harold Macmillan and Charles de Gaulle, London 2006.

¹¹¹ The Bahamas-agreement foresaw that the US would provide British submarines with American Polaris missiles. Kennedy and Macmillan foresaw French participation. Yet, as the plan would eliminate the separate and particular "force de frappe" of the French Republic, they *de facto* drove France away from them. Memorandum Scheske, 28 December 1962, streng geheim, AAPD 1962-III, n°. 500, 2118-2120.

¹¹² LOTH, Franco-German Relations and European Security (Anm. 81), 1957-1963, S. 45.

¹¹³ Conversation Adenauer/Jean Monnet, Bonn, 5 February 1962, geheim, AAPD 1962-I, N°. 55, 266 (on the 22 December 1961 communiqué concluding talks between Kennedy and Macmillan, a year before the Bahamas summit).

¹¹⁴ E.g. Conversation de Gaulle/Adenauer, Düsseldorf, 6 September 1962, streng geheim, AAPD 1962-III, N°. 347, 1502 (Adenauer) : "weil angeblich die Vereinigten Staaten eine bedeutende Veränderung hinsichtlich der nuklearen Verteidigung Europas vorgenommen hätten und nur dann nuklear eingreifen wollten, wenn die

other hand, they might give the USSR the impression of a divided –and thus vulnerable– Western bloc, and lure the United States into isolationism¹¹⁶.

For America, paying for 350 000 troops on the ground in Europe was an expensive affair¹¹⁷. Robert McNamara (1916-2009), Kennedy's Secretary of Defence, openly advocated a "flexible response" strategy from 1962 on¹¹⁸. This implied that the United States would determine in which circumstances the USSR would sufficiently have altered the balance of power between the two blocs, to use nuclear firepower. Anything below this threshold would remain in the realm of conventional defence. Consequently, the European allies would have more to say, if they drove up the number of their own forces¹¹⁹, diminishing the financial burden for the United States¹²⁰. Yet -in spite of Kennedy's rhetoric on a Grand Design or a new Partnership¹²¹- in case of a war, for Germany in particular, this could imply a penetration of enemy forces into its territory for a considerable distance¹²².

Adenauer, to whom war meant attacks on Frankfurt or Munich, or battles behind the Elbe, Weser or Scheldt¹²³, and not theoretical confrontation on another continent, thousands of kilometres away, feared Washington might be tempted to conclude an agreement with the

Vereinigten Staaten selbst angegriffen oder ein so großer Teil Europas von den Sowjets erobert würde, dass es für Amerika gefährlich werde."

- 115 Conversation Schröder/Couve de Murville, Bonn, 21 July 1966, geheim, *AAPA*, B 150, 80, p. 2 (Couve de Murville) : "die großen Probleme der jetzigen Zeit [lägen] in Asien, das heißt die großen Probleme, die zu einer Krise geführt hätten und Entscheidungen erforderten. Gegenwärtig gebe es in Europa keine Krise. Auch nicht in Afrika und in Amerika."
- 116 E.g. Conversation Adenauer/de Gaulle, Bonn, 5 September 1962, streng geheim, *AAPD* 1962-III; N°. 346, 1494-1495 (Adenauer): "Frankreich und Deutschland seien gemeinsam von der Sowjetunion bedroht [...] und die Natur der Dinge mache es zwingend, dass diese beide Länder einen politischen Damm gegen den [1495] Vormarsch des östlichen Kommunismus darstellten [...] [1498] Sie seien beide unmittelbar bedroht. Unmittelbarer als England oder Amerika."
- 117 Memorandum Scheske, 28 December 1962, *o.c.* (Anm. 110), 2117. Adenauer estimated the American contribution to NATO's total cost of 65 billion USD at 50 billion, or almost 77% (conversation Adenauer/De Gaulle, Baden-Baden, 15 February 1962, *AAPD* 1962-I, No. 73, 379).
- 118 NATO Athens summit, May 1962; the previous doctrine, "massive retaliation", adopted at the 1956 NATO summit, was abandoned, also in light of the Cuba crisis, which had set the two superpowers on the verge of genuine nuclear war (September 1962; Memorandum Scheske to Gerhard Schröder, 28 December 1962, *o.c.* (Anm. 110), 2116). Massive retaliation would have meant a nuclear NATO response to any conventional Soviet advance into West Germany, and thus best suited the security needs of the Federal Republic. The switch to "flexible response" meant that a conventional confrontation in Germany, or a "limited war", was no longer excluded (*o.c.*, 2122). German requests for tactical nuclear weapons, or middle-distance nuclear missiles were turned down.
- 119 E.g. McNamara's request to the Federal Republic, to drive up its land forces to 750 000, a proposal judged impracticable by Adenauer and Strauss (Conversation Adenauer/de Gaulle, Düsseldorf, streng geheim, 6 September 1962, *AAPD* 1962-III, No. 347, 1503).
- 120 Memorandum Werz, 13 February 1962, streng geheim, *AAPD* 1962-I, N° 70, 359. Paradoxically, the "flexible response", a rhetorical device designed to shift means from one theatre to another, averred to have the inverse effect. The United States were carrying out "2,5 wars at the same time" in Asia, Europe, and a guerilla in Vietnam (P. MELANDRI, *La politique extérieure des Etats-Unis de 1945 à nos jours* (Politique d'aujourd'hui), Paris 1995², S.138).
- 121 J.-B. DUROSELLE, *Les États-Unis devant l'unification de l'Europe*, in: *Europe en formation* (Déc 1966), S. 12-15.
- 122 Memorandum Scheske, 28 December 1962, *o.c.* (Anm. 110), 2122.
- 123 *Ibid.*, 2121.

Soviet Union, at the expense of a divided Germany¹²⁴. Logically, Adenauer turned to de Gaulle, albeit in a balancing act between Washington and Paris. The Chancellor relied on American diplomats and politicians active in the preceding decade¹²⁵, with whom he had built a relation of confidence, e.g. John McCloy (1895-1989)¹²⁶ or Dean Acheson (1893-1971)¹²⁷, and simultaneously constructed a personal friendship with de Gaulle, from his 1958 visit to Colombey-les-deux-Églises on¹²⁸. Conversely, de Gaulle never questioned the fundamental Franco-American alliance¹²⁹.

On 18 July 1961, the heads of government of the Six EEC member states solemnly declared their intention to enact the Treaties of Rome's intentions to found a political union, through the creation of a commission, under the presidency of the French diplomat Christian Fouchet¹³⁰. From the beginning on, the question of political union was intertwined with that of British accession. Britain had stayed out of the ECSC in 1951, both since it had important commercial relations with the Commonwealth-countries, and because it preferred the transformation of the Organisation for European Economic Cooperation to a genuine pan-European free trade zone¹³¹. Both the Benelux countries and Germany were in favour of a narrow cooperation with a prospective new big member state, which would serve to balance French influence.

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¹²⁴ LOTH, *Franco-German Relations and European Security* (Anm. 81), 1957-1963, S. 46.

¹²⁵ D. CLAY LARGE, *Die deutsch-amerikanische Verteidigungspartnerschaft und die Sicherheit Europas 1950-1968*, in: D. JUNKER (Hg.), *Die USA und Deutschland im Zeitalter des Kalten Krieges 1945-1990* München 2001, S. 325-336.

¹²⁶ T.A. SCHWARTZ, *America's Germany : John J. McCloy and the Federal Republic of Germany* Cambridge (Mass.) 1991.

¹²⁷ R.L. BEISNER, *Dean Acheson: a life in the Cold War* Oxford 2006, E.g. Acheson's regret of the Kennedy and Johnson administrations' softer stance to Europe, expressed as follows in a conversation with Ludwig Erhard (18 October 1963, *o.c.*, 1338): "Er [Acheson] habe dem Präsidenten schon lange gepredigt, daß Deutschland das Land sei, mit dem die Vereinigten Staaten am engsten zusammenarbeiten müßten. Der Grund dafür sei, daß es nutzlos sei, die russische Politik beeinflussen zu wollen [...] Beschlossen die Russen einmal bei sich, daß der Zeitpunkt gekommen sei, um einen Schritt zu tun, dann brauche man keine Diplomatie, keine Diskussion und kein Argumentieren, um sie dazu zu bewegen. Gewöhnlich versuchten die Russen, eine unmögliche Bedingung daran zu knüpfen. Habe man diese [...] abgelehnt, könne man sich auf das einigen, wozu die Russen von sich aus bereit seien. Wollten die Russen andererseits nicht mitmachen, dann helfe kein Überreden und kein Überzeugen." (our underlining)

¹²⁸ De Gaulle to Peyrefitte, 23 June 1964, after a meeting with Adenauer took longer than foreseen, causing Ludwig Erhard and two other cabinet ministers to wait on the French President: "J'étais avec Konrad Adenauer. J'étais séduit et conquis. Je n'ai pas vu le temps passer." (PEYREFITTE, *C'était de Gaulle* (Anm. 2), S. II, 258). Adenauer's visit to Colombey in 1958 meant that Germany could cooperate with de Gaulle, as well as previously, under the Fourth Republic, with the centre-parties (Christian democrats, radicals) and the centre-left (SFIO; K. CARSTENS, K.V. JENA & R. SCHMOECKEL, *Erinnerungen und Erfahrungen* (Schriften des Bundesarchivs), Boppard am Rhein 1993; see C. ANDRIEU, *La France à la gauche de l'Europe*, in: *Le Mouvement Social* (1986), S. 131-153. The image of Gaullism as an amalgam of Bonapartism, Boulangism or currents within the French Right during the Thirties, is not correct. The following of Charles de Gaulle, combined, as a political movement *sui generis*, several tendencies. Cf. André Malraux: "Le gaullisme, c'est comme le métro: on y rencontre tout le monde" (DE GARATE, *Couve de Murville* (1907-1999), S.215).

¹²⁹ E.g. Conversation Adenauer/de Gaulle, 15 February 1962, *o.c.*, 380; Franco-German governmental meeting, Baden-Baden, 15 February 1962, streng geheim, *AAPD* 1962-I, N° 74, 393.

¹³⁰ Memorandum Lang (Anm. 79), 128.

¹³¹ VAÏSSE, *La Grandeur. Politique étrangère du Général de Gaulle, 1958-1969* (Anm. 71), S.165.

France, on the other hand, was eager to push through plans for a union of European states, encompassing the existing institutional structures (Council of Ministers, Commission, Parliament, Court of Justice). The European Political Union would constitute an umbrella over the Economic Communities. The European Commission would not have competence in the Political Union's matters, but instead be replaced by a purely administrative organ¹³². Two organs would be necessary: a Council, consisting of the heads of state and government and ministers for foreign affairs¹³³, seconded by an administrative Secretariat. De Gaulle opposed the latter institution, since it suggested a taint of supranationality¹³⁴. 32

In practice, the Council, operating as an intergovernmental organ and subject to the rule of unanimity, would have the residuary competence and thus become the prime mover for any new European policy¹³⁵. In other words, whereas the proponents of economic integration saw the fusion of the *sui generis* institutions of the three Communities as the spearhead of European Union, the French tried to proceed the other way round. Council of Ministers, Commission and Parliamentary Assembly¹³⁶ would first be subjected to the intergovernmental Council, to be merged in an ulterior phase¹³⁷. The primacy of the intergovernmental *modus operandi* had considerable consequences. If a new policy did not meet with unanimous agreement, it would either have to be carried on outside the European institutional framework¹³⁸, or would necessitate the opposing country's deliberate absence, in analogy with the USSR's abstention in the UN Security Council¹³⁹. In essence, France and Germany tried to avoid a formal, individual 33

¹³² Memorandum Josef Jansen, 22 January 1962, geheim, AAPD 1962-I, nr. 36, 204.

¹³³ Memorandum Lang (Anm. 79), 130.

¹³⁴ "Es handele sich um den Zusammenschluss von Staaten, und er wolle nicht, dass ein Behörde erfunden werde, die zwar kein Staat sei, aber die Staaten mehr oder weniger überwachen solle." (Franco-German Governmental meeting, 15 February 1962, o.c., 386, our underlining)

¹³⁵ Memorandum Jansen (Anm. 131), 201: "Das Ziel sei nicht die Schaffung einer Allianz zwischen den sechs Staaten, sondern –in Ergänzung und Fortentwicklung der Europäischen Gemeinschaften- die Begründung einer Gemeinschaft und auch auf politischem Gebiet." As to the objectives of the Fouchet Plan, the inclusion of the coordination of economic policy in the Union's goals was seen as an incursion on the "weitgehende Zuständigkeit der Europäischen Gemeinschaften" (203; see as well Franco-German Governmental meeting, o.c., 383-384).

¹³⁶ Adenauer: "Er habe [...] gewisse Befürchtungen gehabt, dass die Menschen vielleicht noch nicht reif genug seien könnten, um in ein Europäisches Parlament zu gehen [...] Es gebe allerdings schon so viele Wahlen und so viele Parlamente, dass ihm nicht sehr viel daran gelegen sei, noch weitere Wahlen bestreiten zu müssen."; De Gaulle: "es gebe in Frankreich recht wenige ernstzunehmende Leute, die sich für ein Europäisches Parlament passionierten. Es sei ohnehin schon schwer genug, das nationale Parlament zu beschicken." (Franco-German Governmental meeting, 15 February 1962, o.c., 387).

¹³⁷ Memorandum Lang (Anm. 79), 130; Memorandum Jansen (Anm. 131), 200 (position of the Belgian government, according to which "müsse diese Organisation dem Rhythmus der Brüsseler Gemeinschaften angepasst werden").

¹³⁸ E.g. de Gaulle giving the example of a joint project between France, Germany, Italy and the Netherlands, with Belgium as sole objector. The other four countries (omitting Luxemburg) would be forced to drop the project (Franco-German governmental meeting, 15 February 1962 o.c., 384-385).

¹³⁹ Adenauer, Franco-German governmental meeting, Baden-Baden, 15 February 1962, o.c., 385.

veto by the smaller member states, but, instead, tried to retain an implicit joint veto by the major powers¹⁴⁰.

Again, in the French view, the problem of British accession would be solved by distinguishing membership of the (political) European Union from the (economic) European Communities, the latter being a precondition to the former. Consequently, Britain could adhere to the EEC, if the Political Union would have taken over the bulk of the integration process, to possibly find the door of the main organ, the new intergovernmental international organisation, shut¹⁴¹. The central role of law in the European integration process through the Court consequently risked to be reined in, as the Luxemburg judges would not have competence over the structures responding directly to the organs of the European Political Union¹⁴². Moreover, the Political Union would be financed by member states' contributions, without interference of the Parliamentary Assembly¹⁴³, whose role was finally reduced to the screening of an annual report submitted by the Council¹⁴⁴.

The Plan was damned. France's emphasis on sovereignty and on an institutional two-track between European Economic Communities and Political Union was irreconcilable with the other member states' views, who saw the existing Communities as the only possible framework for an enlargement of their cooperation¹⁴⁵. Even for its most convinced sponsors within the EEC, British accession was tied to a pure acceptance of the *acquis* of European integration by the British ('ohne Reserve'¹⁴⁶). By contrast, sensitive issues as agriculture, coal and steel, textiles or voting rights in the Council of Ministers would provide substantial negotiation issues¹⁴⁷. Yet, even if the Netherlands and West Germany abandoned their initial precondition about British EEC-membership¹⁴⁸, the institutional aspects of the French proposal inevitably backfired¹⁴⁹. The intergovernmental Grand Design was stalled.

¹⁴⁰ "Wenn diese beiden Länder sich nicht einigten, gäbe es weder einen Rat noch einen Europäischen Bund, noch ein solcher Bund dann überhaupt erforderlich." (De Gaulle, Franco-German governmental meeting, Baden-Baden, *o.c.*, 388). Carstens suggested to adopt the ECSC voting system (art. 28, Treaty of 18 April 1951), whereby the threshold consisted of "Deutschland und Frankreich und noch ein beliebiges weiteres Land (selbst Luxemburg genügt)" (*ibid.*).

¹⁴¹ Memorandum Jansen (Anm. 131), 205.

¹⁴² Memorandum Lang (Anm. 79), 132.

¹⁴³ Memorandum Lang (Anm. 79), 132.

¹⁴⁴ Memorandum Jansen (Anm. 131), 205.

¹⁴⁵ Memorandum Voigt, geheim, 21 May 1962, *AAPD* 1962-II, N°. 214, 964.

¹⁴⁶ Memorandum Jansen, 17 July 1962, *AAPD* 1962-II, N°. 289, 1290. Next to the British demand, Denmark, Norway and Ireland had applications filed as well in 1961-1962 (Memorandum Lahr, 18 July 1962, *AAPD* 1962-II, N°. 291, 1295). Sweden, Austria, Switzerland, Spain (all 1962) and Turkey (1959) had asked for an association agreement, which Greece had already signed on 9 July 1961 (*O.J.* 1963, 294-263). Jansen remarked the stark contrast between French (and Belgian) eagerness for the conclusion of association agreements with the former African colonies and de Gaulle's indifference regarding the other states (*ibid.*, 1296).

¹⁴⁷ E.g. Conversation Adenauer/De Gaulle, Bonn, 5 September 1962, streng geheim, *AAPD* 1962-III, No. 364, 1495.

¹⁴⁸ N. PIERS LUDLOW, *Dealing with Britain: the Six and first UK application to the EEC* (Cambridge Studies in International Relations; 56), Cambridge 1997, S. 236-237.

Consequently, Adenauer suggested to leave the European Political Union in suspense¹⁵⁰ and to move on with Franco-German cooperation, in a classical bilateral treaty, outside the Communities' legal framework. **36**

Horst Osterheld (1919-1998)¹⁵¹, Adenauer's chief adviser in foreign affairs, feared for a complaint with the Federal Constitutional Court in Karlsruhe against a too exclusive Franco-German pact¹⁵². Yet, the battle was fought in the CDU fraction, and not in court: Adenauer's party compelled the Chancellor to insert a preamble¹⁵³ radically opposite to the actual aims of de Gaulle: Germany reaffirmed its ties with the US, and the aim to admit Britain to the EEC¹⁵⁴. **37**

Outside of Europe, De Gaulle's ideas had more appeal. According to Chinese archives, the multipolar discourse provided the "intellectual justification and foundation" for Mao's rapprochement with France¹⁵⁵, culminating in the recognition of the PRC on 27 January 1964, an act condemned by both the United States and the Federal Republic of Germany¹⁵⁶. Frustrated as France with the Limited Nuclear Test Ban Treaty, and annoyed by Soviet rivalry for dominance in Central Asia, Mao turned away from support to Algeria or Indochina, two very sensitive arena's where he confronted France¹⁵⁷. **38**

149 E.g. Memorandum Voigt, *o.c.*, 965: "Es kann sogar bezweifelt werden, ob selbst ein der Römischen Verträgen entsprechender politischer Vertrag, wenn er nur unter den Sechs geschlossen werden soll, von Belgien und den Niederlanden heute akzeptiert werden würde."

150 Conversation Adenauer/De Gaulle, 5 September 1962, *o.c.*, 1496: "Seither sei alles in der Schwebe. Wenn es nach ihm [Adenauer] gehe und de Gaulle ihn nicht vom Gegenteil überzeuge, solle man es auch in der Schwebe lassen. Das deutsch-französisches Verhältnis aber müsse geregelt werden. Dies liege ihm sehr am Herzen. Je grösser die Gefahr der Bedrohung aus dem Osten sei, um so notwendiger sei es, dass Frankreich und Deutschland eine gemeinsame Politik hätten." (our underlining)

151 H. OSTERHELD, Außenpolitik unter Bundeskanzler Ludwig Erhard 1963-1966 (Forschungen und Quellen zur Zeitgeschichte ; 23), Düsseldorf 1992; H. OSTERHELD, Konrad Adenauer: ein Charakterbild Stuttgart 1987.

152 LOTH, Franco-German Relations and European Security (Anm. 81), 1957-1963, S. 50.

153 M. BOTHE, Völkerrechtliche Praxis der Bundesrepublik Deutschland im Jahre 1963, in: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht XXV (1965), S. 227-281.

154 "Ils font comme s'ils ne voulaient pas que ça soit un traité d'amitié et de coopération privilégiée. Ils en ont fait une fumisterie. Et puis, je parlerai de l'Europe telle qu'elle doit être, c'est-à-dire européenne et non américaine. L'Europe qu'ils voudraient faire, ils en feraient cadeau aux Américains. Alors ça, je leur démontrerai qu'il y a des partisans de l'Europe, et les partisans du protectorat. Alors, je suis pour l'Europe, je ne suis pas pour le protectorat." (De Gaulle to Peyrefitte, 23 June 1964, PEYREFITTE, C'était de Gaulle (Anm. 2), S. II, 257).

155 B. KROUCK, De Gaulle et la Chine: la politique française à l'égard de la République populaire de Chine Paris 2012; G. MARTIN, Playing the China Card ? Revisiting France's Recognition of Communist China, 1963-1964, in: Journal of Cold War Studies X (2008), S. 52-80 ; Q. ZHAI, Seeking a Multipolar World: China and de Gaulle's France, in: C. NUENLIST, A. LOCHER & G. MARTIN (Hg.), Globalizing de Gaulle : international perspectives on French foreign policies, 1958-1969 Lanham 2010, S. 190.

156 Ludwig Erhard's visit to the United States, 12-13 June 1964. De Gaulle to Peyrefitte, 7 July 1964: "Il n'a pas besoin de s'en mêler ! Pourquoi a-t-il besoin de condamner ? C'est un peu fort ! A quoi sert le traité franco-allemand ? Il s'est laissé imposer ce communiqué par les Américains. Comme il se laisse imposer les armements américains, au lieu d'en faire fabriquer avec nous [...] L'idéal de la vie politique pour lui, c'est de dire qu'il est bien avec tout le monde dans ses communiqués. Il est peut-être très fort en économie, mais finalement c'est un pauvre type." (PEYREFITTE, C'était de Gaulle (Anm. 2), S. II, 263).

157 ZHAI, Seeking a Multipolar World: China and de Gaulle's France (Anm. 154), S. 191.

Going out into the wider world, from which it had retreated as a colonial power, France now had “bargaining power” between the Communist bloc and the US¹⁵⁸. France had succeeded its decolonisation of Algeria¹⁵⁹, and could purport to play the role of impartial mediator. Yet, the margins were reduced, as concessions America made or military actions undertaken in one sphere of the globe, could have their repercussions in the theatre most vital to France: Europe¹⁶⁰. 39

British accession was largely conditional to a choice of the EEC over the Commonwealth¹⁶¹. At the time of the Schuman-Monnet-plan, Britain had declined invitations to join¹⁶². Likewise, transatlantic economic integration and the EEC were two different processes¹⁶³. De Gaulle saw Britain as a bridgehead linking these two processes, and well to the detriment of the latter¹⁶⁴. Finally, the legal framework of the Communities was used by de Gaulle to force Britain to choose the EEC over its other engagements, such as EFTA: 40

“On a fait la Communauté des Six, d’ailleurs sans moi, on aurait pu faire autre chose : une zone de libre-échange européenne, qui aurait peut-être mieux valu. Mais c’est la Communauté qui a été faite avec ses règles et ses conditions et qui a été une réalisation pénible. Là-dessus, vous arrivez. Comment allez-vous être là-dedans ? Mettez-vous à notre place¹⁶⁵.” 41

¹⁵⁸ Y. TORIKATA, The U.S. Escalation in Vietnam and de Gaulle’s Secret Search for Peace, 1964-1966, in: C. NUENLIST, A. LOCHER & G. MARTIN (Hg.), *Globalizing de Gaulle : international perspectives on French foreign policies, 1958-1969* (Harvard Cold War Book Series), Lanham 2010, S. 156.

¹⁵⁹ M. VAÏSSE, *Comment de Gaulle fit échouer le putsch d’Alger* Bruxelles 2011; ID. (Hg.), *De Gaulle et l’Algérie, 1943-1969* (Recherches), Paris 2012.

¹⁶⁰ Torikata, *The U.S. Escalation in Vietnam and de Gaulle’s Secret Search for Peace, 1964-1966* (Anm. 157), S. 157.

¹⁶¹ Conversation between Adenauer and de Gaulle, Paris, 21 January 1963, *o.c.*, 7. (de Gaulle): “England befindet sich in einer sehr schwierigen Lage, weil es sich entscheiden müsse, ob es dem Commonwealth Lebewohl sagen solle oder nicht.“ Moreover, the legal effects of EEC accession were underestimated by the Macmillan government, at the image of Chancellor of the Exchequer Lord Dilhorne’s August 1962 statement in the Lords that –after accession– “EEC legislation would not affect the majority of British people’s lives” (N.S. MARSH, *Le Royaume-Uni devant les problèmes juridiques du Marché Commun*, in: *Revue internationale de droit comparé* XV (1963), S. 649-661).

¹⁶² Conversation Adenauer/de Gaulle, Bonn, 5 September 1962, *o.c.*, 1495.

¹⁶³ N. WELTER, *Die Kennedy-Runde*, in: *Die Internationale Politik* (1966-1967), S. 405-425; H. WALKER, *Dispute Settlement: The Chicken War*, in: *American Journal of International Law* LVIII (1964), S. 671-685.

¹⁶⁴ E.g. Conversation de Gaulle/Harold Wilson, at the occasion of Wilson’s bid for British membership of the EEC, Trianon (Versailles) 19 June 1967, *DDF*, 1967, N° 320, 770 (de Gaulle) : “Nous nous sommes résignés à une politique sinon d’intégration, du moins de coopération continentale et européenne organisée précisément pour échapper à une telle domination. Nous ne sommes pourtant pas sûrs que si vous entrez un jour ou l’autre dans la Communauté, cette Communauté atlantique ne se produirait pas. Vous aurez beau être dans la Communauté européenne, vous resterez comme vous êtes. En fait, vous introduirez, même si vous n’y tenez pas et si le gouvernement britannique [Labour/Wilson] n’y tient pas aujourd’hui, un élément dans l’ensemble favorable à l’affaire atlantique [...] Or, nous ne sommes entrés dans la Communauté que pour l’empêcher. Si, pendant et après la guerre et même maintenant, il y avait eu un Royaume-Uni tout à fait séparé [...] et résolu à faire son chemin, peut-être que nous n’aurions pas eu la même attitude à votre égard et moi-même, qui vous suis depuis vingt-sept ans, je n’aurais pas été aussi circonspect dans les affaires européennes ; et je le suis car je vous ai toujours vus, que vous le vouliez ou non, liés aux États-Unis.” (our underlining)

¹⁶⁵ Conversation de Gaulle/Wilson, 19 June 1967, *o.c.*, 771.

II. Erhard, or disillusion

De Gaulle's *Grand design* to form a Franco-German tandem leading the Six on an independent and "truly European" course failed. As Ludwig Erhard took over the *Bundeskanzleramt* in 1963, Germany firmly chose Washington over Paris as its privileged partner¹⁶⁶, symbolised by the personal sympathy between Lyndon Johnson¹⁶⁷ and the new Chancellor, who met already in December 1963, and the ensuing commercial weapons agreement (5 November 1964). This reflected a fundamental difference in political ideas. Whereas De Gaulle (or Adenauer¹⁶⁸) firmly camped on traditional high politics¹⁶⁹, Erhard, "Father of the DMark" saw the economy as the most important field¹⁷⁰ and relied completely on the United States for defence¹⁷¹. De Gaulle's political and legal positions were incomprehensible to him¹⁷², and were seen as the causes

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¹⁶⁶ E.g. Couve de Murville to French diplomats, 7 July 1964, *o.c.*, 36: "Dans le reste du monde, elle [La France] n'a guère trouvé de contreparties. Le récent communiqué de Washington entre le président Johnson et le chancelier Erhard a par exemple indiqué que sur les affaires d'Extrême-Orient, où l'Allemagne n'est point directement intéressée, elle n'avait pourtant point eu de scrupules à s'aligner sans discussion sur les positions de Washington." This was not limited to foreign policy. In line with Ludwig Erhard's internal views, the Chancellor was attracted by Lyndon Johnson's *Great Society* (22 May 1964, speech at the University of Michigan), akin to his Christian democratic project of a "Formierte Gesellschaft", developed in the 1965 Federal elections and presented at the end of March 1965 (Conversation Schröder/McGee (American Ambassador to the FRG), Bonn, 14 January 1966, geheim, AAPD 1966-I, No. 8, 24). See L. ERHARD, *Die formierte Gesellschaft: Ludwig Erhards gedanken zur politischen Ordnung Deutschlands: Reden und Interviews des Bundeskanzlers und bemerkenswerte Stellungnahmen Bonn 1966*.

¹⁶⁷ W.I. COHEN & N. TUCKER (Hg.), *Lyndon Johnson Confronts the World. American foreign policy 1963-1968* Cambridge 1994; L. GARDNER, *Lyndon Johnson and de Gaulle*, in: R.O. PAXTON & N. WAHL (Hg.), *De Gaulle and the United States* Oxford 1994, S. 257-278; T.A. SCHWARTZ, *Lyndon Johnson and Europe* Cambridge (Mass.) 2003.

¹⁶⁸ U. LAPPENKÜPER, "Ein Europa der Freien und Gleichen": la politique européenne de Ludwig Erhard (1963-1966), in: W. LOTH (Hg.), *Crises and Compromises: the European Project 1963-1969* (Groupe de liaison des historiens auprès des Communautés; 8), Baden-Baden/Bruxelles 2001, S. 74.

¹⁶⁹ "L'économie, c'est l'intendance", B. SCHOENBORN, *Les réticences du chancelier Erhard à l'égard de la France (1963-1966)*, in: *Relations internationales* (2006/2), S. 3-13, hier 5.

¹⁷⁰ L. ERHARD, *Deutschlands Rückkehr zum Weltmarkt Düsseldorf 1954*; L. ERHARD & K. HOHMANN, *Gedanken aus fünf Jahrzehnten: Reden und Schriften Düsseldorf 1988*; T. GEIGER, *Ludwig Erhard und die Anfänge der Europäischen Wirtschaftsgemeinschaft*, in: R. HRBEK & V. SCHWARZ (Hg.), *40 Jahre Römische Verträge: der deutsche Beitrag: Dokumentation der Konferenz anlässlich des 90. Geburtstages von Dr.h.c. Hans von der Groeben Baden 1998*, S. 50-64.

¹⁷¹ "Der Herr *Bundeskanzler* bat zu bedenken, daß die deutsche Unruhe der Tiefen Einsicht entspränge, ohne die USA verloren zu sein." (Conversation Erhard/Dean Rusk, Bonn, 25 October 1963, AAPD 1963-III, nr. 402, 1385). Compare with de Gaulle to Peyrefitte, 12 November 1964: "Ils se mettent complètement à la botte des Américains. Ils trahissent l'esprit du traité franco-allemand. Et ils trahissent l'Europe" PEYREFITTE, *C'était de Gaulle* (Anm. 2), S. II, 270). De Gaulle's emotional phrase is a reaction to the agreement on armaments between Robert Macnamara and Kai-Uwe von Hassel, Minister for Defence in Erhard's government. This agreement rendered Germany dependant on American procurers (KISSINGER, *The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance* (Anm. 31), S.207). The Federal Republic bought arms in the United States, to offset in part the American balance of payment deficit (the same idea was behind the integration of the American and EEC markets in GATT and OECD: the US counted on a counterpart by the European nations it had helped in the Marshall Plan; see P. MELANDRI, *La politique extérieure des États-Unis de 1945 à nos jours* (Anm. 119), S.122; R.A. BLASIUS (Hg.), *Von Adenauer zu Erhard: Studien zur auswärtigen Politik der Bundesrepublik Deutschland 1963* (Schriftenreihe der Vierteljahrshefte für Zeitgeschichte; 68), München 1994, S. 34. In turn, at Erhard's exit, the American insistence on the weapons deal was seen as a cause of budgetary problems (Seydoux de Clausonne to Couve de Murville, Berlin, 3 January 1967, DDF 1967, Nr. 2, 6).

¹⁷² An alternative, but not fundamentally different, assessment can be found with A.C. MIERZEJEWSKI, *Ludwig Erhard. A biography* Chapel Hill 2004, S.29: "Erhard understood politics; therefore he rejected it,

of transatlantic trouble¹⁷³. In this respect, Erhard echoed American interpretations of rising nationalism in Europe¹⁷⁴ or the perceived inadequacy of the nation-state with regard to 20th Century problems¹⁷⁵, leading e.g. Dean Acheson to qualify British insistence on a national nuclear defence as “English Gaullism¹⁷⁶”. De Gaulle, in turn, found Erhard had no original political opinions, and seemed at a loss to construct his foreign policy¹⁷⁷.

For Erhard, de Gaulle maliciously kept Britain and the EFTA countries at a distance¹⁷⁸, contrary to German economic interests¹⁷⁹. The German Chancellor abhorred of EEC bureaucracy¹⁸⁰ or political bargaining and aspired to a “functional economic integration of all free countries in Europe¹⁸¹.” This is a fundamental difference between French and German conceptions. Whereas the latter saw Atlantic and economic integration as a pathway to prosperity and progress, the former adhered to a revival of nationalism, or, popular legitimacy for sovereign states, which would inevitably lead to different outcomes around the world, and thus to a multipolar world¹⁸². For Erhard, who made a staggering career after decades of

saw himself as the educator who would teach the German people the values of free market and democracy”. Erhard never formally adhered to the CDU.

¹⁷³ Conversation Erhard/Dean Acheson, Bonn, 19 October 1963, *AAPD* 1963-III, No. 393, 1336.

¹⁷⁴ J.W. FULLBRIGHT, Les pays occidentaux doivent choisir entre le nationalisme qui divise et une politique d'association prospère, in: *Le Monde Diplomatique* XI (mars 1964), S. 1-2.

¹⁷⁵ KISSINGER, *The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance* (Anm. 31), S.229.

¹⁷⁶ Conversation Erhard/Acheson, 19 October 1963, *o.c.*, 1337 see as well the lamentations on British atavism for Empire in the ensuing conversation Schröder/Acheson, geheim, *AAPD* 1963-III, No. 394, 1341.

¹⁷⁷ “Je crois que, chaque matin, il [Erhard] regarde dans [367] le journal pour savoir ce qu'il pourrait bien vouloir dans la journée...” (De Gaulle, quoted in H. KUSTERER, *Le Général et le Chancelier* Paris 1995, S.366).

¹⁷⁸ W. KAISER, A Better Europe ? EFTA, the EFTA Secretariat and the European Identities of the « outer Seven » 1958-1972 in: M.-T. BITSCH & R. POIDEVIN (Hg.), *Institutions européennes et identités européennes* Bruxelles 1998, S. 165-185.

¹⁷⁹ Conversation Erhard/Acheson, 19 October 1963, *o.c.*, 1337. SCHOENBORN, *Les réticences du chancelier Erhard à l'égard de la France (1963-1966)*, S. 3-13.

¹⁸⁰ U. LAPPENKÜPER, "Europa aus der Lethargie herausreißen": Ludwig Erhards Europapolitik 1949-1966, in: M. KÖNIG & M. SCHULZ (Hg.), *Die Bundesrepublik Deutschland und die europäische Einigung 1949-2000. Politische Akteure, gesellschaftliche Kräfte und internationale Erfahrungen. Festschrift für Wolf D. Gruner zum 60. Geburtstag* Stuttgart 2004, S. 107; R. MARCOWITZ, *Option für Paris ? : Unionsparteien, SPD und Charles de Gaulle 1958 bis 1969 (Studien zur Zeitgeschichte; 49)*, München 1996, S.178. In his 21 November 1963 meeting with the fresh Chancellor, De Gaulle tried to construct a common ground, by quoting one of Erhard's speeches on the ill effects of a supra-national bureaucracy (KUSTERER, *Le Général et le Chancelier*, S.359).

¹⁸¹ LAPPENKÜPER, "Europa aus der Lethargie herausreißen": Ludwig Erhards Europapolitik 1949-1966, S. 107.

¹⁸² J. LACOUTURE, *De Gaulle, t. 3: le souverain* Paris 1986, S.342: Jean Lacouture's phrase that the Fouchet Plan pertained as well to the 19th (with its emphasis on intergovernmentalism) as to the 21st century (in its multipolar view of the world) is applicable to many domains. Cf. D. MOISI, *The Land of Hope Again in: Foreign Policy* (2008), S. 140-144, hier 143-144: “The world is becoming more multipolar again, in the classic sense of the term, and this new balance of power is becoming the equivalent for today of what the Concert of Europe was for the Westphalian European order in the eighteenth and nineteenth centuries, but with [144] a major difference. Back then, the nation-states competing among themselves were aware of the fact that they were united in a common interest in preserving the system. War was the pursuit of politics by other means, but it was never to become total, for that would destroy the Concert of Europe principle, which was that the major powers must act together on questions of common interest and preserve the peace through concerted diplomatic action.”

relative discretion as a university professor, 1945 had been *Stunde Null* for the world as well¹⁸³. De Gaulle, on the other hand, saw a continuous history of Europe, and recurring patterns in geopolitics as the main mover of foreign policy¹⁸⁴.

As German-German questions were concerned, France steered on the course of *détente*¹⁸⁵, aimed at a consensual end to the Cold War. Yet, for the Federal Republic, talks with the “Sovietische Besatzungszone” were much more delicate. In the follow-up of de Gaulle’s NATO-decision, Foreign Affairs minister Maurice Couve de Murville bluntly declared to his German colleague Gerhard Schröder¹⁸⁶ that:

“Deutschland ja nicht nur geographisch im Zentrum Europas liege, sondern auch im Mittelpunkt der europäischen Probleme. Frankreich könne hierzu allerdings nichts tun. Da lege Wert auf die Entwicklung seiner eigenen Beziehungen, die es für nützlich halte, und habe die Absicht, auf diesem Weg fortzuschreiben. Man würde es auf französischer Seite für nützlich halten, wenn andere europäische Länder den gleichen Weg einschlagen würden, könne sie aber nicht in diesen Sinne beeinflussen¹⁸⁷.”

Section 2: The Empty Chair Crisis

“Le marché commun agricole, ça ne peut pas rater !
Ou bien le Marché commun lui-même ratera [...] Les autres, notamment les Allemands, tiennent à leur Marché commun; or, ils ne l'auront pas sans mon Marché commun agricole; donc je l'aurai.”

De Gaulle at the French Council of Ministers, 1 July 1964¹⁸⁸

“Frankreich unternimmt einen konzentrischen Angriff auf die Europäische Kommission, sowohl auf ihre Rolle wie auf ihre personelle Zusammensetzung [...] Das im Rom-Vertrag niedergelegte Prinzip der Mehrheitsentscheidung (Artikel 148) wird durch ein „liberum veto“ beseitigt [...] Was die französische Haltung darüber hinaus besonders bedenklich erscheinen lässt, ist, dass diese Ziele mit der „Politik des leeren Stuhls“ erreicht werden sollen. Diese Politik stellt einen Vertragsbruch dar.”

¹⁸³ J.M. LUKOMSKI, Ludwig Erhard: der Mensch und der Politiker Düsseldorf 1965, S.59.

¹⁸⁴ A.W. DE PORTE, Europe between the Superpowers: the enduring balance (Council on Foreign Relations Books), New Haven 1986, S.x.

¹⁸⁵ W. LOTH & G.-H. SOUTOU (Hg.), The making of détente : Eastern and Western Europe in the Cold War, 1965-75 (Cold War History Series; 20), London 2008; V. DUJARDIN, Pierre Harmel: Biographie (Biographie), Bruxelles 2004.

¹⁸⁶ Gerhard Schröder (1910-1989), minister for foreign affairs (1961-1966). Atlanticist, but a rival of Ludwig Erhard. See G. SCHRÖDER, Wir brauchen eine heile Welt. Politik in und für Deutschland Wien 1963; T. OPPELLAND, Gerhard Schröder (1910-1989). Politik zwischen Staat, Partei und Konfession (Forschungen und Quellen zur Zeitgeschichte; 39), Düsseldorf 2002.

¹⁸⁷ Conversation Schröder/Couve de Murville, 21 July 1966, o.c., 15.

¹⁸⁸ PEYREFITTE, C’était de Gaulle (Anm. 2), S. II, 264.

Secretary of State Rudolf Lahr, 19 January 1966¹⁸⁹

Contrary to De Gaulle's basic assumptions, the Court of Justice was transforming the European Communities to an autonomous and supranational order, more in the sense of the 1951 ECSC Treaty¹⁹⁰ than of the 1957 EEC Treaties¹⁹¹. Yet, for France, the EEC should serve to protect her economic interests in the trans-Atlantic trade within GATT, implying a slower start of the Kennedy Round liberalisation talks, which opened in Geneva on 4 May 1964¹⁹². Similarly, de Gaulle saw the EEC as a pool to draw allies for his attack on the gold exchange standard, when he announced his request to physically exchange the dollars detained by the *Banque de France* for gold (Press Conference, 4 February 1965¹⁹³).

The Empty Chair Crisis (December 1965-January 1966) was an attempt to rein in the functioning of the EEC, stressing the state consent-based nature of the Treaties of Rome. Yet, French insistence on *de facto* veto powers could not meet with success. De Gaulle had secured the Common Agricultural Policy (CAP) in a bilateral deal with Adenauer (31 December 1963 agreement in the Council of Ministers), and, again, with his successor Erhard¹⁹⁴ (15 December 1964¹⁹⁵). Thus, it was of prime importance that France offered concessions to the other parties

¹⁸⁹ Geheim, *AAPD* 1966-I, nr. 12, 39-40. This should, however, be nuanced : the ECSC treaty concerned more direct relations between individuals and the ECSC-institutions, than the EEC treaty (MARESCAU, *De directe werking van het Europese Gemeenschapsrecht* S.2). On Rudolf Lahr (1908-1985), Secretary of State at the *Auswärtiges Amt* (1961-1969), see R. LAHR, *Zeuge von Fall und Aufstieg : private Briefe 1934-1974*, Hamburg 1971.

¹⁹⁰ Treaty between Belgium, France, the Federal Republic of Germany, Italy, Luxemburg and the Netherlands, instituting the European Coal and Steel Community, Paris, 18 April 1951, 261 *UNTS* 140. See H. MOSLER, *Der Vertrag über die Europäische Gemeinschaft für Kohle und Stahl – Entstehung und Qualifizierung*, in: *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* XIV (1951), S. 1-45; C. BILFINGER, *Vom politischen und nicht-politischen Recht in organisatorischen Kollektivverträgen. Schuman-Plan und Organisation der Welt*, in: *ibid.*XIII (1950-1951), S. 615-659.

¹⁹¹ J. MÉGRET, *La spécificité du droit communautaire et harmonisation des législations nationales*, in: *Revue internationale de droit comparé* XVIII (1967), S. 93-120; W. GANSHOF VAN DER MEESCH, *Vues comparatives sur l'ordre juridique communautaire et l'ordre juridique national dans les droits belge, néerlandais et luxembourgeois*, in: *ibid.*(1966), S. 797-829.

¹⁹² President Kennedy had obtained far-reaching powers from Congress for negotiations with the EEC, and could let fall import duties altogether on certain goods (*Trade Expansion Act*, 11 October 1962). If Britain acceded to the EEC, 80% of the Western world's trade would be concentrated between the US and Europe (Memorandum Grewe, *AAPD* 1962-II, N°. 243, 1087-1088). P. GERBET, *La Construction de l'Europe* Paris 1999, S.178-224 ; R. JOCHINSEN, *Die Entwicklung der Internationalen Wirtschaftsbeziehungen in den Jahren 1964 und 1965*, in: *Die Internationale Politik* (1964-1965), S. 100-159.

¹⁹³ "Pour que les Américains arrivent à maintenir le Gold Exchange Standard, comme ils sont censés le faire, il faudrait que leur balance des paiements soit équilibrée. Mais ils en sont incapables. Alors, le dollar décrochera un jour ou l'autre de l'or, malgré toutes les pressions." (PEYREFITTE, *C'était de Gaulle* (Anm. 2), S. II, 81). See U. SCHTELHAASS, *Internationale Währungsprobleme*, in: *Die Internationale Politik* (1966-1978), S. 426-464.

¹⁹⁴ L. GALL, *Ludwig Erhard, 1897-1977*, in: K. HILDEBRAND (Hg.), *Die grossen Deutschen unserer Epoche* Berlin 1985, S. 368-378 ; BLASIUS (Hg.), *Von Adenauer zu Erhard : Studien zur auswärtigen Politik der Bundesrepublik Deutschland 1963* ; V. LAITENBERGER, *Ludwig Erhard. Der Nationalökonom als Politiker (Persönlichkeit und Geschichte; Band 126-128)*, Göttingen 1986.

¹⁹⁵ "C'est par la force du poignet que j'ai obligé nos partenaires à accepter l'agriculture dans le Marché commun: tout au moins en principe. Si jamais ça se réalise à la fin des fins, c'est seulement parce que je l'aurais voulu, puisque ça consiste pour nos partenaires à payer beaucoup plus cher leur alimentation et à verser des prélèvements qui reviennent surtout en subventions à notre agriculture" (De Gaulle to Peyrefitte, 8 September 1965, PEYREFITTE, *C'était de Gaulle* (Anm. 2), S. II, 298). It would take us too far to analyse the CAP negotiations in detail within the frame of this dissertation. I refer to C. GERMOND, *The*

as well. Abandoning the letter and spirit of the Rome Treaties was incompatible with clinging on to the CAP. Again, in Lahr's words:

“Wir haben Große Sorge, dass die Gemeinschaft künftig mehr und mehr denaturiert wird, dass das Leben in der Gemeinschaft unerfreuliche Formen annehmen wird und dass die materiellen Opfer, die für Europa bisher schon gebracht worden sind und weiter gefordert werden, ihren politischen Sinn verlieren. Wir halten es für einen Widerspruch, einerseits für eine straff organisierte gemeinsame Agrarpolitik einzutreten, andererseits aber den politischen Gehalt des Rom-Vertrages auszuholen und die nichtagrarischen Bereiche zu vernachlässigen, mindestens aber ihre Zukunft im Ungewissen zu lassen¹⁹⁶.“

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I. Hallstein's bold reform plan

“Il n'est pas imaginable que, le 1er janvier 1966, notre économie soit soumise à une règle de la majorité qui nous imposera la volonté de nos partenaires, dont on a vu qu'ils pouvaient se coaliser contre nous. Il faudra profiter de l'occasion pour réviser les fausses conceptions qui nous exposaient à subir le diktat des autres. Révisons cette stupidité!”

De Gaulle at the French Council of Ministers, 7 July 1965¹⁹⁷

At his 9 September 1965 press conference, De Gaulle characterized the European Commission as an “aréopage technocratique, apolitique, irresponsable”. Commission President Hallstein was the direct cause of this outburst¹⁹⁸, as he had presented bold plans for reform to the European Parliamentary Assembly in Spring 1965 (23 March¹⁹⁹). For the Commission, article 155 EEC, specifying its coordinating role with regards to national policies, was insufficient. Hallstein was in favour of a stronger structure, whereby the Parliamentary Assembly would directly control the Commission's budget, as the *Bundestag* did in the German Federal Republic²⁰⁰.

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The issue of CAP financing would lead to a confrontation on the big lines: traditional international law-consensualism versus European law-activism. The Commission put forward its proposals for a financial settlement on 1 July 1965, linking the completion of the CAP's financing to a far more structural decision to attribute custom revenue directly to the Community,

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Agricultural Bone of Contention: The Franco-German Tandem and the Making of the CAP, 1963-1966, in: *Journal of European Integration History* XVI (2010), S. 25-44; M. SPOERER, "Fortress Europe" in LongSpoerer-term Perspective: Agricultural Protection in the European Community, 1957-2003, in: *ibid.* S. 143-162.

¹⁹⁶ Lahr, 19 January 1967, *o.c.*, 43.

¹⁹⁷ PEYREFITTE, *C'était de Gaulle* (Anm. 2), S. II, 292.

¹⁹⁸ N. PIERS LUDLOW, A Supranational Icarus? Hallstein, the early Commission and the search for an independent role, in: A. VARSORI (Hg.), *Inside the European Community: actors and policies in the European Integration 1957-1972* (Veröffentlichungen der Historiker-Verbindungsgruppe bei der Kommission der Europäischen Gemeinschaften; 9), Baden-Baden 2006, S. 37-53.

¹⁹⁹ M. VAÏSSE, La politique européenne de la France en 1965: pourquoi 'la chaise vide'?, in: W. LOTH (Hg.), *Crises and Compromises: The European Project 1963-1966* Baden-Baden/Bruxelles 2001, S. 204.

²⁰⁰ M. SCHÖNWALD, Walter Hallstein and the 'Empty Chair'-crisis 1965/1966, *ibid.* (Hg.), S. 157-172.

under parliamentary control²⁰¹. This “serment de jeu de paume²⁰²,” was a bridge too far for de Gaulle, who abhorred of the idea of a supranational regalian “state” and had previously strongly opposed the accreditation of diplomats to the Commission. Handing over a genuine budget to the European Parliament (“l’Assemblée de Strasbourg”) would turn the intergovernmental Council of Ministers from legislator to a second chamber, equivalent to the German *Bundesrat* or the French Senate²⁰³.

Moreover, the Treaty of Rome on the EEC foresaw in its article 148 that, from 1 January 1966 on, decisions within the Council of Ministers would be subject to Qualified Majority Vote²⁰⁴, abandoning the traditional interpretation of equality between sovereign states²⁰⁵. Consequently, the CAP’s financing agreement, which came at an end on 30 June 1965, could be revised by the Five other members states if no consensus was reached²⁰⁶. When bilateral Franco-German talks on CAP financing broke down in July 1965, de Gaulle decided to take advantage of Hallstein’s *faux pas*²⁰⁷, and to block the European institutions²⁰⁸.

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II. “A la fin de l’année, on les ramassera à la cuiller²⁰⁹”: France against supranationality

“Mon cher ami vous nous proposez quelque chose que nous n’aimons pas : l’adhésion de l’Angleterre et pour nous le faire accepter, vous y ajoutez quelque chose que nous détestons encore beaucoup plus, qui est la supranationalité, donc vous n’avez aucune chance de nous convaincre.”

²⁰¹ N.P. LUDLOW, *The European Community and the crises of the 1960s : negotiating the Gaullist challenge* (Cass series. Cold War history; 9), London 2006, S.71-93.

²⁰² Words of Commission Vice-President Robert Marjolin, in an allusion to the decision of the French Third Estate at Versailles, reported by VAÏSSE, *La politique européenne de la France en 1965: pourquoi 'la chaise vide' ?* (Anm. 198), S. 212.

²⁰³ De Gaulle to the French Council of Ministers, 14 April 1965, PEYREFITTE, *C’était de Gaulle* (Anm. 2), S. II, 281-286: “Oui ou non, acceptons-nous que l’administration de la Communauté, notamment en matière financière, soit en fait attribuée à la Commission de Bruxelles, et contrôlée par l’Assemblée de Strasbourg ? L’accepter, c’est dépouiller les gouvernements de leurs prérogatives. C’est supranationaliser toute la CEE. C’est abandonner des fonds énormes à des organismes sans aucune responsabilité. A Bruxelles, ce ne sont pas des élus, ce sont des gens qui ne relèvent de personne. Ils n’ont que la responsabilité des propos [282] qu’ils tiennent, ils bombinent dans le vide, comme la coquecigrue de Rabelais" [...] La France a vécu avant le traité de Rome et pourra vivre après sa mise en sommeil.”

²⁰⁴ The adoption of a proposal required twelve positive votes. France, Germany and Italy each had four votes, Belgium and the Netherlands two, and Luxemburg one (Memorandum Carstens, 6 July 1962, vertraulich, *AAPD* 1962-II, N° 278, 1241).

²⁰⁵ E.D.W. DICKINSON, *The Equality of States in International Law* (Harvard studies in jurisprudence; 3), Buffalo, NY 2003 [1920]; J. GOEBEL, *The Equality of States. A Study in the History of the Law* New York 1923.

²⁰⁶ VAÏSSE, *La politique européenne de la France en 1965: pourquoi 'la chaise vide' ?* (Anm. 198), S. 202.

²⁰⁷ J.-P. Brunet, Note “Conditions dans lesquelles ont été rompues, le 30 juin, les négociations sur le règlement financier. Responsabilité particulière de l’Allemagne”, Paris, 1 February 1966, *DDF* 1966, No. 86, 212-214; PEYREFITTE, *C’était de Gaulle* (Anm. 2), S. II, 288.

²⁰⁸ “Quant à la Commission, elle ne l’emportera pas en paradis ! Je lui règlerai son compte ! Hallstein, Marjolin et Mansholt, c’est fini ! Je ne les renouvellerai pas !” (De Gaulle to Alain Peyrefitte, Schloss Ernich by the Rhine, 12 June 1965 (PEYREFITTE, *C’était de Gaulle* (Anm. 2), S. II, 288)).

²⁰⁹ De Gaulle to Peyrefitte, 21 July 1965, *ibid.*, S. II, 294.

Jean-Marc Boegner (French permanent representative to the EEC) to Robert Toulemon, chief of cabinet to Robert Marjolin (Vice-President of the Commission)²¹⁰

On 6 July 1965, the French permanent representative at the COREPER quit his seat²¹¹. Two months later, Charles de Gaulle sent out a crossfire of verbal missiles against the supranational conception of European integration²¹². In private, the President equalled the introduction of Qualified Majority Voting in the Council of Ministers to the loss of French sovereignty²¹³, called for a revision of the treaty, implying abandoning supranationality and QMV altogether, and for the dismissal of the whole Commission²¹⁴.

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The chances of success were extremely reduced, not to say inexistent. France's partners were shocked at this challenge to the very core principles behind the European treaties²¹⁵. De Gaulle counted on bilateral talks between France and its EEC partners, completely bypassing their common institutions, thus, in practice applying the Fouchet Plan, which they had refused earlier²¹⁶. France's trump card was that it could not be missed in the European integration process, and the essential sovereign consent-underpinning of the European treaty²¹⁷. However, making this argument hard required either an exit from the EEC (which implied abandoning the hard-fought CAP, which served as a counterpart to the German-desired customs union²¹⁸), or a treaty revision (which required unanimity). If France did not go this far, its representatives'

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²¹⁰ Quoted in Bossuat "La culture de l'unité", 73.

²¹¹ J. NEWHOUSE, Collision in Brussels : the Common Market crisis of 30 June, 1965 New York 1967,

²¹² De Gaulle in the French Council of Ministers, 1 July 1965, associated Common Market officials with his former political opponents in the Fourth Republic: "Le problème, c'est que toute cette mafia de supranationalistes, qu'ils soient commissaires, parlementaires ou fonctionnaires. Ce sont tous des ennemis. Ils ont été mis là par nos ennemis. Le copinage socialiste, avec quelques otages MRP [Christian Democratic Party, whose leaders included Robert Schuman], quelques copains à Félix Gaillard et à Maurice Faure. Alors, ils passent leur temps à créer un état d'esprit hostile à la France. Comme ils l'ont fait partout. C'est la même vengeance qui a retardé de deux ans les négociations avec le FLN pour l'Algérie. C'est la même catégorie, non seulement apatride, mais anti-patrie, qui est la sécrétion ignoble des partis. C'était la clientèle des partis. Un garçon qui ne réussissait pas à son concours, on le mettait là. Les fils à papa, on les mettait là. On les mettait soit à la RTF [French State Television], soit à Bruxelles. Et c'est pourquoi il faut nettoyer tout ça." PEYREFITTE, C'était de Gaulle (Anm. 2), S. II, 291.

²¹³ De Gaulle to Peyrefitte, 8 September 1965, *Ibid.*, S. II, 299.

²¹⁴ "il faut réviser le Traité de Rome et renvoyer cette Commission", de Gaulle to Peyrefitte, 21 July 1965, *o.c.*, II, 297.

²¹⁵ É. DESCHAMPS, Pacta sunt servanda. Spaak, la France et al crise de la chaise vide (1965-1966), in: G. DUCHENNE, M. DUMOULIN & V. DUJARDIN (Hg.), Paul-Henri Spaak et la France Bruxelles 2007, S. 201-224 ; A.G. HARRYVAN & J. VAN DER HARST, For once a united front. The Netherlands and the empty chair crisis of the mid-1960s, in: W. LOTH (Hg.), Crises and Compromises. The European Project 1963-1969 Baden-Baden/Bruxelles 2001, S. 173-191.

²¹⁶ P. BAJON, Europapolitik "am Abgrund". Die Krise des "leeren Stuhls" 1965-1966 (Anm. 215) (Anm. 215) (Studien zur Geschichte der Europäischen Integration - Studies on the History of European Integration - Études sur l'Histoire de l'Intégration Européenne; 15), Wien 2012, S.211.

²¹⁷ *Ibid.*, S. 257.

²¹⁸ N. PIERS LUDLOW, The Eclipse of the Extremes. Demythologising the Luxembourg Compromise, in: W. LOTH (Hg.), Crises and Compromises. The European Project 1963-1966 Baden-Baden/Bruxelles 2001, S. 253.

absence at the Council of Ministers would not necessarily put a stop to EEC activity²¹⁹. Moreover, French Presidential elections, which took place in the month of December, were a warning to de Gaulle, who fell short of a majority in the first round (44,64%) and was criticised by pro-integration centre candidate Jean Lecanuet (15,57%)²²⁰.

Finally, an exceptional Council of Ministers was scheduled in Luxemburg for 13 and 14 January 1966, a good month after the French Presidential elections. This meeting initiated the final phase of discussions. France's bilateral strategy had failed, since the other member states held on to the common *forum* to resolve the question²²¹. Consequently, a treaty change to accommodate French wishes was excluded. Instead, de Gaulle counted on a multilateral protocol declaration, serving as an interpretation of the treaty²²². Unanimity would function as the primary objective of EEC talks, irrespective of the possibility to apply QMV. Any state which felt threatened in its essential interest, could object to a potentially harmful decision. On 29 January 1966, at the end of a six month-rhetorical struggle, the five other member countries accepted an interpretative declaration on QMV²²³, as well as a French-inspired "heptalogue" of seven points to rein in the Commission's activities²²⁴.

The final text stated that, in case of a potentially harmful decision to vital interests of one of the Member States, the other Council members will elaborate a solution agreeable to all of them, and the interests of the Community. In the French interpretation, this amounted to the formal engagement to pursue discussions (and not proceed to a vote) until a final deal was reached²²⁵. In case of failure, disagreements persisted between France and the five others. The minutes of

²¹⁹ Conversation Gerhard Schröder/Paul-Henri Spaak, Bonn, 26 Juli 1965, geheim, *AAPD* 1965-II, nr. 303, 1275. Schröder consulted Carl Friedrich Ophüls (BAJON, Europapolitik "am Abgrund". Die Krise des "leeren Stuhls" 1965-1966 (Anm. 215), S.257-259). Yet, Ophüls' view, that France's participation was not necessary, contrasted with that of Mosler, who found that "Durch die Abstinenz Frankreichs [...] war das zur Vertretung der Staaten innerhalb der Gemeinschaft gebildete Organ schwerwiegend gestört und für wichtige Entscheidungen funktionsunfähig. Der Rat hat Organcharakter, d.h. seine Akte sind der Gemeinschaft selbst zuzurechnen [...] Die Mitglieder des Rates [...] haben eine doppelte Funktion [...] einerseits [...] Angehörige des Gemeinschaftsorgans 'Ministerrat' [...]. Es ist aber auch denkbar, daß sie bindende Erklärungen namens der von ihnen vertretenen Mitgliedstaaten abgeben." (H. MOSLER, National- und Gemeinschaftsinteressen im Verfahren des EWG-Ministerrats. Die Beschlüsse der Außerordentlichen Tagung des EWG-Rates in Luxemburg vom 29. Januar 1966, in: *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* XXVI (1966), S. 1-62, S. 7).

²²⁰ G. VEDEL, *Rétrofiction: Si de Gaulle avait perdu en 1962... Si Alain Poher avait gagné en 1969....* in: *Revue française de science politique* XXXIV (1984), S. 719-751.

²²¹ MOSLER, National- und Gemeinschaftsinteressen im Verfahren des EWG-Ministerrats. Die Beschlüsse der Außerordentlichen Tagung des EWG-Rates in Luxemburg vom 29. Januar 1966 (Anm. 216), S. 5.

²²² *Ibid.*, S. 23: "Kein Bestandteil des Vertrags, sondern eine zur Vertragsanwendung getroffene Verfahrens- und Verhaltensabsprache."

²²³ Couve de Murville to diverse French diplomatic representatives abroad, Paris, 31 January 1966, *DDF* 1966, No. 75, 187-188.

²²⁴ Couve de Murville to diverse French diplomatic representatives abroad, Paris, 31 January 1966, *DDF* 1966, No. 76, 188-189; MOSLER, National- und Gemeinschaftsinteressen im Verfahren des EWG-Ministerrats. Die Beschlüsse der Außerordentlichen Tagung des EWG-Rates in Luxemburg vom 29. Januar 1966 (Anm. 216), S. 1-4, BAJON, Europapolitik "am Abgrund". Die Krise des "leeren Stuhls" 1965-1966 (Anm. 215), S.171-172.

²²⁵ Couve de Murville, 31 January 1966, *o.c.*, 187.

the meeting of the Foreign Ministers on 28 January 1966 mark the ambiguous character of the first compromise²²⁶:

Couve de Murville: “Si le traité [de Rome] n’est pas changé, les règles sont aussi inchangées. Évidemment si vous passez outre, il y a conflit.” 56

Werner [Luxemburg]: “Excluez-vous l’application du traité ?” 57

Couve de Murville: “Je me tue à vous le dire depuis quinze jours.” 58

Schröder: “Si après tous ces efforts, quelque chose reste non résolu, et que les cinq pays soient d’accord, le vote majoritaire est-il possible ?” 59

Couve de Murville: “[...] La question de M. Schröder me paraît académique, car si les cinq passaient outre, ils feraient par définition des choses non raisonnables.” 60

Schröder: “Que ferez-vous ?” 61

Couve de Murville: “Ou bien nous accepterons, ou bien il y aura une histoire sérieuse [...]. Il faut distinguer entre le droit et la politique. La Communauté doit fonctionner par accord. Le droit reste inchangé. Il y a les conséquences politiques.” 62

The eventual compromise, an “agreement to disagree”, could be interpreted in all possible ways, to such an extent that the question could be asked if it had altered anything to the letter of the EEC Treaty²²⁷. More fundamentally, who was to identify a “vital national interest” able to temporarily invalidate QMV²²⁸ ? For France, an individual member state decided in a discretionary way. For Germany, on the other hand, fixing the threshold was a collective competence²²⁹. Why should the other states rely on a unilateral statement by one of the partners²³⁰? In the German view, even the horizontal, or traditional treaty-based strand of European integration, was submitted to the common obligation to coordinate economic policy, contained in Article 6 EEC²³¹. A non-agreement on the non-application of the majority rule 63

²²⁶ Note, 29 January 1966, *o.c.*, 173.

²²⁷ R. LAHR, Die Legende vom "Luxemburger Kompromiss", in: Europa-Archiv (1983), S. 223-232.

²²⁸ E.g. discussion between Lahr and Couve de Murville, Luxemburg, 28 January 1966, *DDF* 1966, No. 70, 174. Lahr: “La phrase “lorsque les intérêts en cause le justifient” pose la question de savoir qui le dit. Si c’est un seul pays, c’est un veto. Si la majorité était d’accord sur les interdits en cause, ce ne serait plus un veto.” Couve de Murville: “On votera. La formule “lorsque les intérêts en cause le justifient” est vague. Si on la supprime parce que vague, ça serait pire car cela ouvrirait la voie à l’arbitraire. (our underlining)”

²²⁹ BAJON, Europapolitik “am Abgrund”. Die Krise des “leeren Stuhls” 1965-1966 (Anm. 215), S.324-325.

²³⁰ “Diese Unbestimmtheit deutet darauf hin, daß der Staat, der behauptet, seine sehr wichtigen Interessen stünden auf dem Spiel, der Begriff zunächst selbst interpretieren soll. Die anderen Mitglieder des Rates sind aber nicht verpflichtet, dieser Auslegung zu folgen [...] Die Entscheidung darüber, was [dem Staat] zumutbar ist, liegt beim Rat, nicht bei dem betroffenen Mitgliedstaat.” MOSLER, National- und Gemeinschaftsinteressen im Verfahren des EWG-Ministerrats. Die Beschlüsse der Außerordentlichen Tagung des EWG-Rates in Luxemburg vom 29. Januar 1966 (Anm. 216), S. 22 & 23-24 (our underlining).

²³¹ *Ibid.*, S. 24: “Die Gemeinschaft ist zwar weder ein Bundesstaat, noch ein Staatenbund, noch entspricht sie anderen historischen bekannten Föderationen. Sie besitzt neben einem hierarchisch-administrativen Element ein bündisch-koordinierendes. In diesem letzteren Bereich, um den es sich hier handelt, haben alle Beteiligten die Pflicht zur gegenseitigen Rücksichtnahme bei der Verwirklichung der gemeinsamen Ziele. Ist einer der Beteiligten besonders betroffen, so darf er erwarten, daß die anderen seine Situation sorgfältig prüfen. An der wirksamen Durchführung des Vertrags findet diese Rücksichtnahme allerdings ihre Grenze.” (our underlining)

equalled its confirmation²³². In any case, the sanction in case of an effective QMV-outcome against France could not be anything but a political one (cf. Couve de Murville: “il y aura une histoire sérieuse”). In theory, political agreements have their sanction in the reciprocal character of the agreement. In the case of the Luxemburg compromise, France was the sole beneficiary²³³.

Yet, the political impetus of European integration had changed under the menace of a looming “Veto culture”²³⁴, which, in the short run, assured France not to be outvoted in agricultural issues, and Germany not to know the same fate in the Kennedy Round (GATT) negotiations²³⁵. On middle-term basis, discussions in Council, Commission or Parliament turned away from grand designs of further integration, and concentrated on technical matters²³⁶. In the short run, at a procedural level, France insisted on preliminary Commission contact with the member states through the permanent representatives at the council²³⁷. Equally, the Commission could not render public any document before their formal delivery to Member States²³⁸ and the presentation of letters of credence by third-party diplomats became the affair of the Council of Ministers, as well as the Commission’s president²³⁹.

In the long run, the recognition of an essential national interest did not disappear, as Mosler thought it would²⁴⁰. Instead, it provided arguments for new member states, such as the United Kingdom (1972) to insist on concessions during the preparatory stage of Commission

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²³² E.g. Mosler saw the Luxemburg compromise as an agreement outside the formal framework of the competences attributed to the Council of Ministers by the EEC treaty. The six member states had concluded a political agreement not to use the possibility to use QMV. Mosler equated this to a common press statement by the six foreign ministers, containing a forecast of future negotiations (Ibid., S. 12).

²³³ Ibid., S. 12-13: “Die Sanktion für die Einhaltung der Abmachung liegt in der Gegenseitigkeit. Das Sanktionsmittel, sich nicht mehr gebunden zu halten, wenn der andere Teil dies nicht tut, funktioniert aber nur dann, wenn die Abmachung die Interessen beider (oder aller) Partner ausgleicht.”

²³⁴ Cf. “poisoning” of the atmosphere (BAJON, Europapolitik “am Abgrund”. Die Krise des “leeren Stuhls” 1965-1966 (Anm. 215), S.310); NEWHOUSE, Collision in Brussels : the Common Market crisis of 30 June, 1965, S.160-163.

²³⁵ Conversation Erhard/de Gaulle, Paris, 7 February 1966, DDF 1966, No. 96, 232 (Erhard): “Lorsque le Traité de Rome a été négocié, j’étais personnellement contre cette notion de décisions majoritaires et pour l’unanimité. Dans des pays souverains avec un régime parlementaire, il est pratiquement impossible qu’une nation impose sa volonté à ses partenaires.” (our underlining); PIERS LUDLOW, The Eclipse of the Extremes. Demythologising the Luxembourg Compromise (Anm. 217), S. 260; BAJON, Europapolitik “am Abgrund”. Die Krise des “leeren Stuhls” 1965-1966 (Anm. 215), 305.

²³⁶ BAJON, Europapolitik “am Abgrund”. Die Krise des “leeren Stuhls” 1965-1966 (Anm. 215), S.328.

²³⁷ Point 1 of the Commission/Council collaboration agreement; Couve to diverse diplomatic representatives, 31 January 1966, o.c., 188; BAJON, Europapolitik “am Abgrund”. Die Krise des “leeren Stuhls” 1965-1966 (Anm. 215), S. 312.

²³⁸ Point 2, Commission/Council collaboration agreement.

²³⁹ Commission/Council collaboration agreement, point 3. Equally, diplomatic inquiries by third states had to be communicated to member states by the Commission (point 4). Contacts with international organisations were equally brought under joint Council/Commission competence.

²⁴⁰ MOSLER, National- und Gemeinschaftsinteressen im Verfahren des EWG-Ministerrats. Die Beschlüsse der Außerordentlichen Tagung des EWG-Rates in Luxemburg vom 29. Januar 1966 (Anm. 216), S. 27: “Andererseits ist es nicht ausgeschlossen, daß das Funktionieren des Gemeinsamen Marktes die Anrufung der Interessenklausel mehr und mehr überflüssig machen wird. Der Kreis der “sehr wichtigen Fragen” würde zugunsten der anderen Fragen, die dem Normalverfahren unterworfen werden, kleiner werden.”

proposals²⁴¹, and can still serve as a political pressure argument today, irrespective of the precarious legal status of the (non-)agreement²⁴². Its finality, however, is not that of provoking a rupture, but of moving the need for compromise on essential interests forward in the institutional mechanics.

Section 3 : “*L’intégration n’a rien de réciproque*”²⁴³: France and NATO

“Rien ne peut faire qu’une loi, sans amendement, s’impose, quand elle n’est plus en accord avec les mœurs. Rien ne peut faire qu’un traité soit valable intégralement quand son objet s’est modifié. Et rien ne peut faire qu’une alliance peut rester telle quelle, quand ont changé les conditions qui étaient celles dans lesquelles elle a été conclue.”

Charles de Gaulle, press conference 21 February 1966²⁴⁴.

“General *de Gaulle* erklärte, Verteidigung sei nicht Strategie, sondern Politik, und die Politik eines Staates sei in erster Linie seine Verteidigung.”

Conversation de Gaulle/Erhard, Paris, 21 November 1963²⁴⁵

NATO cancelled out France’s *acquis* at the UN Security Council: in New York, it held a position as a permanent member. At the NATO Council, *la Grande Nation* was just one of the club members. In Henry Kissinger’s words: 66

“Given the nature of America’s relations with the rest of the world, it seems strange that partnership should be said to be possible only among equals. The assertion that we can deal effectively only with countries of equal strength is not conducive to inspiring confidence among the great majority of the nations of the world which are weak²⁴⁶.” 67

From his taking of office as Prime Minister in June 1958 on²⁴⁷, de Gaulle considered an exit, or, to be more precise, a reminder of the Atlantic Treaty’s exact clauses. This especially in the 68

²⁴¹ E.g. Conversation Erhard/De Gaulle, Paris, 7 February 1966, *o.c.*, 252 (Erhard): “Bruxelles [The Commission] a déclenché un choc chez tous les partenaires du Marché Commun [...] Je ne me fais pas d’illusions. Les souverainetés nationales ne disparaîtront pas pour autant et le Royaume-Uni ne se soumettra certainement pas à une institution supra-nationale.”

²⁴² BAJON, Europapolitik “am Abgrund”. Die Krise des “leeren Stuhls” 1965-1966 (Anm. 215), S.331.

²⁴³ DEBRAY, La France doit quitter l’OTAN. Lettre à Hubert Védrine, S. 6.

²⁴⁴ Institut National de l’Audiovisuel, <http://www.ina.fr/video/CAF89032821/conference-de-presse-du-general-de-gaulle-a-l-elysee-video.html> [Last accessed 14 October 2014].

²⁴⁵ Geheim, *AAPD* 1963-III, No. 423, 1470. The corresponding French version (*DDF* 1963-II, No. 207, 538-542) did not register this phrase, so I chose to quote it in German (translation).

²⁴⁶ KISSINGER, The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance (Anm. 31), S.237.

²⁴⁷ René Coty, the last President of the IVth Republic, called on de Gaulle to lead the Government. Elected by Parliament on 21 December 1957, de Gaulle’s mandate as President of the Vth Republic did not start until 8 January 1959. The first direct Presidential election, where de Gaulle beat François Mitterrand, albeit in the second round (55,2-44,8%) only took place on 5 and 19 December 1965.

light of the Treaty's expiring in 1969²⁴⁸. At first, de Gaulle proposed President Eisenhower (24 September 1958) to create a tripartite directorate of NATO, recalling the allied organisation during the war²⁴⁹. However, once this idea had vanished, France gradually distanced itself from the military organisation of the alliance²⁵⁰. The Republic retired its Mediterranean fleet from NATO-command (11 March 1959) and refused to have American bombers with nuclear warheads on its national territory (5 September 1960), arguing that the presence of nuclear weapons on French soil was incompatible with the lack of decision power on their use. Next, France refused to cooperate in a joint NATO air-alarm system, and, after the end of the Algerian conflict, did not integrate its returned divisions in the NATO system. From 1960 on, France started to work on its own "force de frappe"²⁵¹.

I. Prelude to separation

"Que voulez-vous que j'en attende ? L'OTAN ne sert à rien: il ne peut rien s'y passer! Tout ça, c'est zéro, zéro, zéro. C'est fait pour faire vivre des fonctionnaires internationaux qui se font payer grassement à ne rien faire, sans verser d'impôt."

de Gaulle on the May 1964 NATO summit²⁵²

Initially, de Gaulle went for a "European" defence. When it became clear, with the failure of the Fouchet negotiations (1962) and the subsequent preamble to the Elysée Treaty (16 May 1963), that this would not work, de Gaulle steered on a firmly national course²⁵³. On 27 April 1964, de Gaulle withdrew the French officers from NATO's naval command. Three months later, in his 23 July 1964 press conference, the General buried the German attempt to pool nuclear forces within NATO, by attacking the Multilateral Force (MLF), which would still mean that the Americans would decide on the effective use of nuclear power²⁵⁴. For the Federal Republic of

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²⁴⁸ C. WILLIAMS, *The last Great Frenchman* London 1993, S.447.

²⁴⁹ Memorandum Blankenhorn, 21 October 1963, *o.c.* (Anm. 43), 1348.

²⁵⁰ F. BOZO, *Deux stratégies pour l'Europe : de Gaulle, les États-Unis et l'Alliance atlantique, 1958-1969* (Collection Espoir), Paris 1996 ; G.-H. SOUTOU, *La France et la défense européenne du traité de l'Élysée au retrait de l'OTAN (1963-1966)*, in: W. LOTH (Hg.), *Crises and Compromises: The European Project 1963-1966 Baden-Baden/Bruxelles 2001*, S. 21-46; M. VAÏSSE, *La politique française à l'égard de l'OTAN (1956-1958): Continuité ou rupture ?*, in: INSTITUT CHARLES DE GAULLE (Hg.), *De Gaulle en son siècle. T. 4: La sécurité et l'indépendance de la France*, Paris 1992, S. 71-83.

²⁵¹ A. GROSSER, *Freundschaft ohne Illusionen*, in: H.-D. MÜLLER (Hg.), *Die Force de Frappe. Europas Hoffnung oder Verhängnis* Freiburg 1965, S. 45-55 ; S. GUETAZ, *La mise en place d'une force de frappe, 1960-1964 : le débat politique (mémoire de DEA)* Paris 1999.

²⁵² PEYREFITTE, *C'était de Gaulle* (Anm. 2), S. II,216.

²⁵³ During the Franco-German summit (under Erhard), de Gaulle proposed Secretary of State Karl Carstens an opt-in to use the French *force de frappe* if necessary (P. MAILLARD, *De Gaulle et l'Europe (Approches)*, Paris 1995; A.J. OLSEN, *Erhard rejects bid by de Gaulle for atomic aid*, in: *New York Times* (international edition) (25-26 juill. 1964), S. 1).

²⁵⁴ Memorandum Scheske, 28 December 1962, *o.c.* (Anm. 110), 2117. M. KOOPMANN, *Le malentendu d'une défense nucléaire commune: l'Allemagne et la Force multilatérale*, in: W. LOTH (Hg.), *Crises and Compromises: The European Project 1963-1966 Baden-Baden/Bruxelles 2001*, S. 47-64.

Germany, “full integration”²⁵⁵” meant access to participation on a vital defence issue. However, for France, it meant downgrading its autonomy. Consequently, although the idea had initially been put forward as a sign of America’s understanding of the Federal Republic’s feeling of discrimination²⁵⁶, Lyndon Johnson could only note the crisis within NATO, when he publicly abandoned the very idea of an MLF on 21 December 1964²⁵⁷. Yet, this did not appease France: in May 1965, de Gaulle announced that his country would not take part in planned joint NATO manoeuvres. The decision to leave the integrated military structure had been taken by de Gaulle and Couve de Murville, ahead of the December 1965 Presidential elections²⁵⁸.

II. Back to the treaty clauses ? French unilateral interpretation

France did not leave the USA in a big suspense anymore: from 21 February (press conference) to the formal announcement on 31 March 1966, the retreat from any peri-contractual NATO structures (Military Committee, Permanent Group, Saceur²⁵⁹, Saclant²⁶⁰, Chinchon²⁶¹) was formalised²⁶². Alluding on the *clausula rebus sic stantibus* in international law²⁶³, de Gaulle argued that anything beyond a contractual alliance could not be binding anymore for France. Invoking national independence and sovereignty, NATO-troops were asked to leave the French national territory²⁶⁴. From a legal point of view, the decisions (unanimously) taken by the Atlantic Council, allowing for the creation of the commandment structures after the Korean

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²⁵⁵ Memorandum Scheske, 28 December 1962, *o.c.* (Anm. 110), 2121.

²⁵⁶ Conversation Erhard/Acheson, Bonn, 19 October 1963, *o.c.*, 1337-1338: “Der Herr *Bundeskanzler* wies darauf hin, daß die Bundesrepublik natürlich keine nuklearen Waffen produzieren wolle. Sie wolle aber die Gewißheit haben, daß für die Verteidigung Deutschlands die gleichen Waffen zur Verfügung stünden wie für die Verteidigung anderer Länder. Das sei seines Erachtens die Bedeutung der multilateralen Streitmacht.”

²⁵⁷ De Gaulle, 18 November 1964 : “Que me dirait Johnson et qu'est-ce que je lui dirais? Une rencontre avec Johnson n'est pas comme une rencontre avec Kennedy. Il n'est pas à la hauteur et il le sait. Il est complètement dépendant de ses services. Il ne connaît aucun dossier. Il ignore tout de l'Europe. Il croyait que Napoléon était italien (gros rire). Alors, que voulez-vous faire avec des types comme ça ? [...] Ce n'est pas lui qui a barre sur moi, c'est moi qui ai barre sur lui. Que voulez-vous qu'il fasse contre nous, Johnson ? [...] Si je claue la porte à tout le saint-frusquin de l'OTAN, qu'est-ce qu'il peut faire contre moi ? Rien.” (PEYREFITTE, C'était de Gaulle (Anm. 2), S. II, 61). See KISSINGER, *The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance* (Anm. 31), S.128-140 and S. REYN, *Atlantis lost: the American experience with De Gaulle, 1958-1969* (American studies), Amsterdam 2010, S.304-305.

²⁵⁸ MAFFERT & VAÏSSE, *Entretien avec Maurice Couve de Murville*, S. 224.

²⁵⁹ Allied command structure (Europe).

²⁶⁰ Allied command structure (Atlantic).

²⁶¹ Channel Committee.

²⁶² J. CHARPENTIER, *Le retrait français de l'O.T.A.N.*, in: *Annuaire français de droit international* XII (1966), S. 409-433, hier 411.

²⁶³ Whose application was very restricted to contemporary standards, cf. E. VAN BOGAERT, “Le sens de la clause “*Rebus sic stantibus*” dans le droit des gens actuel, in: *Revue générale de droit international public* LXX (1966), S. 49-74 : revision procedures in most treaties founding international organisations, as well as arbitral sentences tried to avoid unilateral breaches of jointly undertaken obligations.

²⁶⁴ C. ROUSSEAU, *Chronique des faits internationaux: retrait du gouvernement français de l'O.T.A.N.* (10 mars 1966), in: *ibid.*S. 760-763, hier 762-763: “On aura du mal à persuader les esprits sérieux, surtout après dix-sept années d'application du régime conventionnel que l'on remet aujourd'hui en cause, que la présence de forces militaires étrangères stationnées sur le territoire national en vertu d'engagements librement consentis doit obligatoirement s'analyser comme une atteinte à la souveraineté de l'État de séjour.”

War, were considered as merely indicative, and thus insufficiently explicit to limit French sovereignty²⁶⁵.

“Flabbergasted²⁶⁶” American diplomats saw De Gaulle as a “twentieth-century Don Quixote²⁶⁷”. Rationally looked at French (or British) independent fire power, a European nuclear defence without American participation would amount to “eine Kombination von Zwergen²⁶⁸”. Moreover, France did never question its fundamental allegiance to the United States in the world conflict, and –since 1776- had never engaged in a military confrontation with its ally overseas²⁶⁹. Finally, France was not deprived of its veto right within the NATO structures, which foresaw the Atlantic council’s supreme authority. Couve de Murville declared at the *Assemblée Nationale* that, indeed, the problem did not reside with the absence of a veto, but with the incompatible interests of the United States, which, as a global power, had potential *casus belli*, well outside of France’s reach:

“Il ne s'agit pas tant de pouvoir faire ce que l'on veut que de ne pas être entraîné à faire ce que l'on ne veut pas.”²⁷⁰

However, with regard to the very restricted probability of an actual military confrontation, Cold War-defence issues boiled down to psychological issues²⁷¹. Both Washington’s and

²⁶⁵ CHARPENTIER, *Le retrait français de l’O.T.A.N.* (Anm. 261), S. 421. However, article 9 of the NATO-treaty provided a legal base for the creation of these instruments. Consequently, French unilateral retirement from the parallel structures theoretically required the consent of the other Member States. “Il est toutefois bien évident que sur le plan politique ses alliés ne peuvent lui [au gouvernement français] imposer de poursuivre une participation à laquelle il aurait décidé de mettre fin.” (Ruffin to Burin des Rozières, Note on NATO engagements, Paris, 31 January 1966, *DDF* 1966, nr. 78, 191-193). The decision to expel NATO headquarters (SHAPE) as well as the seat of the Council from France was equally subject to US consent (Treaty between France and the United States, Paris, 6 November 1953, 340 *UNTS* 200; C. ROUSSEAU, *Chronique des faits internationaux: Situation de la France au regard du traité de l’Atlantique nord après son retrait de l’O.T.A.N.*, in: *Revue générale de droit international public* LXXI (1967), S. 1088-1090).

²⁶⁶ WILLIAMS, *The last Great Frenchman*, S.447

²⁶⁷ K. WEISBRODE, *The Atlantic Century. Four Generations of Extraordinary Diplomats who forged America’s Vital Alliance with Europe* Cambridge (Mass.) 2009, S.185; “Why should a country want freedom of action when, by definition, its interests cannot diverge from those of the dominant partner ?” (KISSINGER, *The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance* (Anm. 31), S.10). See as well the contemporary press, e.g. “De Gaulle’s “grand design” for the US: “get out”, *U.S. News World Report*, 25 July 1965, LIX, No. 4, 50-52.

²⁶⁸ Conversation Gerhard Schröder/Dean Acheson, Bonn, 19 October 1963, geheim, *AAPD* 1963-III, No. 394, 1343.

²⁶⁹ E.g. De Gaulle to Peyrefitte, 24 October 1962 : “Le principe est simple: quand un conflit mondial menace, la France est la première, et en fait la seule, à marquer sa solidarité avec les Américains. Quand les choses sont normales, la France est la première pour mettre fin à la dépendance de l’Europe envers les Américains [...] Solidaires dans la tempête, indépendants par temps calme. Il n’est pas possible que nous restions seuls dans ce cas.” (PEYREFITTE, *C’était de Gaulle* (Anm. 2), S. II, 21 (our underlining)).
C. COGAN, *Oldest allies, guarded friends: the United States and France since 1940* Westport, Connecticut 1994; F. COSTIGLIOLA, *France and the United States. The Cold Alliance since World War II* (Twayne’s international history series ; 9), New York 1992; J.-B. DUROSELLE, *La France et les États-Unis : des origines à nos jours* Paris 1976; P. MELANDRI, *The Troubled Friendship : France and the United States, 1945-1989*, in: G. LUNDESTAD (Hg.), *No End to Alliance : the United States and Western Europe : Past, Present and Future* New York 1998, S. 112-133.

²⁷⁰ Couve de Murville, 15 April 1966, *Journal Officiel de la République Française*, 1966, 690, quoted in Charpentier, *Le retrait français de l’O.T.A.N.* (Anm. 261), 414.

²⁷¹ Memorandum Scheske, 28 December 1962, *o.c.* (Anm. 110), 2123. E.g. de Gaulle to Erhard, 21 November 1963, Paris, *DDF* 1963-II, No. 207, 540: “Quand l’Europe, et notamment la France, auront de quoi tuer la

Moscow's enormous military build-up could be termed "apocalyptic, and thus insignificant"²⁷². The perception of a state's capability to keep an aggressor at bay was not an absolute, but a relative phenomenon. An expensive investment in nuclear capabilities was not designed to wipe out any potential aggressor, but to affirm a minor power's existence on the world stage in case of a conflict between the two big powers²⁷³. Consequently, the key issue for the two superpowers was to ensure their allies had *confidence* in the over-arching strategy. A purely theoretical or technological monopoly was insufficient, since the superpower would always intervene in case of a conflict involving its main competitor²⁷⁴. In the French case, "measures contradictory to those of the US were thus in a sense supported by the American nuclear umbrella"²⁷⁵.

De Gaulle had to have recourse to bilateral negotiations with the Federal Republic to station troops on its territory²⁷⁶. Isolated from Germany as well²⁷⁷, the French President publicly castigated Ludwig Erhard's government (28 October 1966 press conference). Yet, in turn, Erhard could not afford to be portrayed an *Einzelgänger* within Germany²⁷⁸. Konrad Adenauer, who had retired from public office in 1963, had launched his attack far earlier, almost from the moment he resigned as Chancellor²⁷⁹. From the start of his tenure on, Erhard had the impression to be more supported by outside partners than within his own party²⁸⁰. Irrespective of the CDU/CSU-FDP coalition's electoral victory in October 1965, Adenauer even asked for its replacement by a Grand Coalition with the SPD (3 January 1966)²⁸¹. The day before de Gaulle's

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Russie, celle-ci n'attaquera pas l'Europe, c'est-à-dire l'Allemagne [...] tant que nous sommes debout, elle ne nous attaquera pas et nous n'attaquerons pas non plus la Russie." See as well HOFFMANN, *Gulliver's Troubles, or the setting of American policy* (Anm. 3), S.24 : "Thus, the effort of nuclear weapons so far has not been to compel nations to use force (how could they, given the absence of any compelling supranational authority and the proliferation of conflicts among and within the states). Rather, it has compelled them to adhere to a considerable amount of both deterrence and self-deterrence in the use of force, and to make the two chief rivals behave at times exactly like partners in a Balance-of-Power-system - associated with a common interest in not having world peace upset by lesser powers."

²⁷² Hoffmann, paraphrasing Talleyrand. *Gulliver's Troubles, or the setting of American policy* (Anm. 3), S. 46.

²⁷³ *Ibid.*, S. 44.

²⁷⁴ KISSINGER, *The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance* (Anm. 31), S.19.

²⁷⁵ "A country gains little from being allied and risks little by being neutral." *Ibid.*, S. 16-17.

²⁷⁶ The so-called "Ailleret-Lemnitzer"-discussions, see *DDF* 1967. *Le retrait de la France des structures militaires de l'OTAN et les forces françaises d'Allemagne*, in: *Annuaire français de droit international* XII (1966), S. 784-798; E. STEIN & D. CARREAU, *Law and Peaceful Change in a Subsystem: "Withdrawal" of France from the North Atlantic Treaty Organization*, in: *American Journal of International Law* LXII (1968), S. 577-640.

²⁷⁷ H. DE KERGORLAY, *M. Schroeder disposé à jouer très dur sa partie avec la France*, in: *Le Figaro* (19 mai 1966), S. 3.

²⁷⁸ E.g. Erhard's attempt to reboot Franco-German cooperation and European Political union in 1965, see F. DHONDT, *Grandeur ou Grand Marché ? Les conceptions atlantiques et européennes du Général de Gaulle et du Chancelier Erhard (1963-1966)* (mémoire de recherche, Sciences Po Paris), Paris 2009, S. 68-72 and 75-82 (<http://www.thesis.net/grandeur/grandeur.pdf>, last accessed 15 October 2014).

²⁷⁹ E.g. G. Haake, "So schafft es Erhard nicht ! (interview with Konrad Adenauer)", in: *Bild am Sonntag*, 1 November 1964. "Essayez donc de clouer au mur un pudding!" (Adenauer on Erhard's character, quoted in KUSTERER, *Le Général et le Chancelier*, S.367).

²⁸⁰ LAPPENKÜPER, "Ein Europa der Freien und Gleichen": la politique européenne de Ludwig Erhard (1963-1966) (Anm. 168), S. 74.

²⁸¹ R.J. GRANIERI, *The ambivalent alliance: Konrad Adenauer, the CDU/CSU, and the West, 1949-1966* (Monographs in German History; 9), Oxford 2003, On CDU/CSU-opposition to Erhard and Schröders

public invective, the liberal ministers had resigned from Erhard's government, leading to his personal exit (1 December 1966). The new Chancellor, Kiesinger, dropped his support for de Gaulle's other opponent, Walter Hallstein, who could not preside over the newly merged European Commissions²⁸².

De Gaulle's attitude towards NATO has cast its long shadow on French Foreign policy²⁸³, as well as on the questions discussed within the alliance²⁸⁴. At the time of the 1966 decision, public opinion did not support de Gaulle's NATO stance²⁸⁵. It took France until the Sarkozy presidency (2007-2012) to reintegrate the military structures²⁸⁶.

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Conclusion

De Gaulle's perturbing diplomatic action had a double objective. On the internal front, he strived to restore national pride after the Algerian imbroglio, and to mark a turn-around for the French economy. On the external front, he wanted to recall the perpetual rules of international relations to the hegemonic power within the Western bloc. Both were intimately linked²⁸⁷. The United States, imbued with a missionary conviction that their action would ultimately lead to stability and peace through the rule of law²⁸⁸, had to be reminded that the international society functioned as an arena. For de Gaulle, every state (including the new ones, created in the wave of decolonisation), had a legitimate claim to further its own national interest, irrespective of supranational order²⁸⁹. The order propagated by the Americans entailed a consensus around

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Atlanticist line: K.T.F.Z. GUTTENBERG, Wenn der Westen will. Plädoyer für eine mutige Politik Stuttgart 1964; H.G. HUYN, Die Sackgasse. Deutschlands Weg in die Isolierung Stuttgart 1966; F.J. STRAUSS, Tuchfühlung mit de Gaulle: Plädoyer für eine deutsch-französische Europapolitik, in: Die Zeit XXI (8 avr. 1966), S. 9-10.

²⁸² BAJON, Europapolitik "am Abgrund". Die Krise des "leeren Stuhls" 1965-1966 (Anm. 215), S.320-323

²⁸³ M. VAÏSSE, La puissance ou l'influence ? La France dans le monde depuis 1958, Paris 2009.

²⁸⁴ "Anyone who studies the contemporary Atlantic world cannot avoid noticing that it is still haunted by the problems of the 1960s. Europeans and Americans still haggle over the meaning of consultation, as well as about the proper relationship between the Atlantic Alliance and European Integration [...] How is it possible that an alliance that was "back on track" [...] nonetheless continues to struggle to define its international role nearly five decades later ?" (R. J. GRANIERI, reviewing A. LOCHER's Crisis ? What Crisis ? NATO, de Gaulle and the Future of the Alliance, 1963-1966 (Baden-Baden 2010), Sehepunkte XII (2012) [<http://www.sehepunkte.de/2012/10/21232.html>, last accessed 14 October 2014]).

²⁸⁵ BERSTEIN, Histoire du Gaullisme (Anm. 102), S.300: polls for 1966 show a support of 39% for de Gaulle's policy towards NATO, almost equal to the 38% contesting the president's stance.

²⁸⁶ E.g. Gabriel Robin, former permanent representative for France at the NATO council (1987-1993), quoted in DEBRAY, La France doit quitter l'OTAN. Lettre à Hubert Védrine, S. 6: "L'OTAN pollue le paysage international dans toutes les dimensions. Elle complique la construction de l'Europe [...] Elle complique les rapports avec la Russie [...] Elle complique même le fonctionnement du système international parce que, incapable de signer une convention renonçant au droit d'utiliser la force, l'OTAN ne se conforme pas au droit international. Le non-recours à la force est impossible à l'OTAN car elle est précisément faite pour recourir à la force quand bon lui semble [...] Je ne vois pas très bien ce qu'un pays comme la France peut espérer de l'OTAN, une organisation inutile et nuisible, sinon qu'elle disparaisse."

²⁸⁷ J. VERNANT, Le général de Gaulle et la politique extérieure, in: Politique Étrangère (1970), S. 619-629, hier 626.

²⁸⁸ KISSINGER, The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance (Anm. 31), S.58.

²⁸⁹ SA'ADAH, Idées simples et idées fixes: De Gaulle, les États-Unis et le Vietnam (Anm. 98), S. 266. In this sense, decolonisation can be seen as the revanche of the nation state, made possible through the actions

values which de Gaulle found naïve. For de Gaulle, there was no genuine “common international interest” behind the structure of the post-1945 international organizations, but merely badly disguised attempts to manipulate allies²⁹⁰. A Europe of States, “from the Atlantic to the Ural”, did not distinguish between East and West, whereas, for Washington, including the former would be impossible²⁹¹.

Yet, distinct sets of values and geopolitically determined interests did not necessarily entail armed confrontation, but reflected a realist perspective on international relations. Polycentrism, echoing the horizontal order after the Peace of Utrecht (1713²⁹²) or the 19th Century Concert of Europe, was achievable. Not in terms of physical capability, but in terms of political decision centres, where international discourse could be mastered independent from the leading ally²⁹³. De Gaulle was convinced that his opinion was so self-evidently internally valid and reflected structural necessity for the international system, that history would prove him right²⁹⁴.

The jurist’s position in specific political discourse is very close to complete apology. De Gaulle saw political will as the *prima donna* of international lawmaking (as the Luxemburg compromise, and the Fouchet proposals demonstrate) and relied on the unilateral interpretation of agreements (cf. the NATO decisions of 1966). Yet, de Gaulle’s advocacy of the international arena as one of confrontation did entail a minimum consensus on values. In itself, the promotion of a multipolar and egalitarian international society is a normative principle, relying on reciprocal consent and advantage, inextricably linked with a European tradition of diplomatic

of those who principally opposed it (LEFEBVRE, *Le jeu du droit et de la puissance. Précis de relations internationales* (Anm. 10), S. 11).

²⁹⁰ SA'ADAH, *Idées simples et idées fixes: De Gaulle, les États-Unis et le Vietnam* (Anm. 98), S. 267-269. Here, Kissinger (KISSINGER, *The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance* (Anm. 31), S.60, writing from a critical perspective to the foreign policy of the Kennedy and Johnson administrations) joined de Gaulle, and criticizes the American emphasis on European unity, without ever being concrete: “a political unit must mean something to itself before it can have meaning to others. Before a state can contribute usefully to common decisions, it must be convinced that its opinions matter”. De Gaulle’s nationalism was seen as an example of American lack of sensitivity to cultural differences: where the US preached nationalism against communism or old-style European imperialism, the concept was forgotten in Europe, where it originated (ibid.). France, moreover “exaggerates their disagreements, some other countries obscure theirs” (ibid.) and was presented as a general warning to American foreign policy. Europeans, “living on a continent covered with ruins testifying to the fallibility of human foresight”, represented “expressions of a historical experience” in their diplomatic discourse, and were thus –in Kissinger’s eyes- relatively immune to American visions of a new world order. Consequently, Adenauer (on the defence of Germany) or de Gaulle (on the “Force de Frappe”) claimed autonomy and responsibility within the alliance, insisting on the necessity to have a common policy reflecting “an act of will, and not an organizational necessity” (ibid.). Kissinger dismissed statements as “the US will take the defence of Europe as seriously as that of Alaska”, since they missed the essential point: European allies were sovereign states (“Precisely because Alaska is not sovereign, it can be defended by a strategy with might prove unacceptable to our European Allies”, ibid.). In the same sense, Duroselle DUROSELLE, *Les États-Unis devant l’unification de l’Europe*, S. 13): “Une véritable Europe ne sera pas l’Europe ‘américaine’, telle qu’ils la conçoivent, mais l’Europe des Européens, choisie par eux, faite par eux, et pour commencer, voulue par eux”.

²⁹¹ DUROSELLE, *Les États-Unis devant l’unification de l’Europe*, S. 13.

²⁹² F. DHONDT, *La représentation du droit dans la communauté des diplomates européens des « Trente Heureuses » (1713-1740)*, in : *Tijdschrift voor Rechtsgeschiedenis / Revue d’Histoire du Droit / The Legal History Review* LXXXI (2013), S. 595-620.

²⁹³ KISSINGER, *The Troubled Partnership: A Re-Appraisal of the Atlantic Alliance* (Anm. 31), S.17

²⁹⁴ *Ibid.*, S. 61.

culture, which functions as the nurturing and mutually influenced infrastructure of legal discourse.