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The Treaty on European Union's Mutual Defence Clause: Analysis and Future Perspectives

by

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Abstract

The principle that *an attack on one is an attack on all* is not, as the common debate suggests, an exclusively Nato principle. Rather, it is a duty contained in all mutual defence clauses, implemented through various legal obligations and procedures. This paper examines Article 42(7) TEU, a provision of particular interest due to its potential role in shaping the evolving European security architecture. Notably, it features an unusually broad *casus foederis*, operates on a horizontal, reciprocal, and intergovernmental basis, and shares an overlapping scope with two other mutual assistance clauses - Article 222 TFEU and Article 5 of the North Atlantic Treaty. The interactions among these provisions are analysed from multiple perspectives. The paper also draws from past experiences and explores realms of future applicability.

Keywords

defence, NATO, solidarity, deterrence, Common Security and Defence Policy



1. Introduction

Russia's 2022 invasion of Ukraine and President Trump's return to the White House recently reignited the debate about the European security architecture and the European Union's role in it. The mutual defence clause enshrined in art. 42(7) of the Treaty on European Union (TEU) should be a key element of the discussion.

The EU's mutual defence clause is an expression of the founding principle of solidarity. It is a reciprocal duty against external aggression, with an intergovernmental functioning, being part of the Common Security and Defence Policy (CSDP), and so of the broader Common Foreign and Security Policy (CFSP). In fact, CFSP policies are constrained by «special rules and procedures» (art. 24(1) TEU), which require the Member States to decide almost always with unanimous decisions of the European Council or the Council of the European Union, with little involvement for the European Parliament or the European Commission (Lenaerts – Van Nuffel – Corthaut 2021: 587). Furthermore, the adoption of legislative acts is excluded (art. 24(1) TEU).

The mutual defence clause became part of the Union's law only recently. It has been included after the dissolution of the Western European Union, an organisation established in 1954 after the failure of the European Defence Community and founded on a mutual defence clause, art. V of the Brussels Treaty (1948), as amended with the Paris Agreements (1954), regarded as the predecessor of art. 42(7) TEU¹.

This paper investigates the legal implications and strategic functions of the European Union's mutual defence clause, art. 42(7) TEU. It works as a horizontally structured mechanism for reciprocal defence, as outlined in the following section, in the event of an armed aggression, a term with a contested meaning as explained in the third section. The following partitions are devoted to a comparison, respectively with art. 5 NAT and art. 222 TFEU, and a first appraisal of possible interactions and overlapping between the three provisions (§6). The seventh section briefly addresses the additional complexity posed by cyberspace. A brief account of the first and only invocation of art. 42(7), by France in 2015, comes subsequently. The following sections explore a series of borderline cases, a conflict scenario between a Member State of both the EU and NATO and a NATO Ally not in the EU (§9), one in an EU Member State's territory not ordinarily subject to EU law (§10) and



another in occupied territories legally part of an EU country (§11). A brief insight into hybrid threats in this context follows and, lastly, the conclusion of the paper.

2. Article 42(7) TEU: a commitment to reciprocal defence

With the entry into force of the Lisbon revision in 2009, the founding treaties were amended to include a guarantee of mutual military assistance, art. 42(7) of the Treaty on European Union. This represented an unprecedented development for an organisation that was not conceived as a military alliance and has not become one — it will, eventually, if the European Council, as provided by art. 42(2) TEU, unanimously decides to establish a common defence. The mutual defence clause states that «if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with art. 51 of the United Nations Charter». The TEU guarantee's functioning is entirely intergovernmental. The Member States do not engage in a collective defence led by common institutions — which, indeed, are not even mentioned — but rather a reciprocal defence among themselves. Once the clause is activated, no role is foreseen for the supranational institutions, the response being dependent on bilateral and multilateral relations among the Member States (Cirlig 2015: 5).

Art. 42(1) TEU clearly states that the Union may avail itself of the operational capacity, including military capability, under the Common Security and Defence Policy only outside its territory. Art. 4(2) TEU considers national security «the sole responsibility of each Member State». The defence aid can therefore only be provided reciprocally by one State to another, since the Union cannot intervene in matters of national security (art. 4(2) TEU). Even if the Union were to transition – unanimously, in accordance with art. 42(2) TEU, without amending the treaties - from a defence policy, characterized by coordinated national actions and positions, to a fully integrated common defence, decisions affecting national security would still remain subject to intergovernmental decision-making, even when involving forces managed at the Union level. A common defence could be achieved by means of a homogeneous defence policy structure, beyond coordination of national policies,



or through the creation of an European army — which may be conceived in various ways according to art. 42(2) TEU, but never in substitution for national armies (Munari 2024: 219).

It is worth recalling that the “*passerelle* clause” under art. 48(7) TEU, which allows the Council, acting unanimously, to decide to move on to qualified majority voting in areas that still require unanimity, does not apply to decisions with defence implications. Furthermore, no judicial review by the Court of Justice of the European Union is possible over national applications of art. 42(7) TEU (art. 24 TEU).

The commitment binding the Member States — and the deterrent for potential aggressors — is to provide «aid and assistance by all the means in their power» (art. 42(7) TEU). It is debated whether this obligation requires the use of the full range of available means, military and non-military, or whether the aforementioned resources shall be used each to the maximum of its own capacity. The intergovernmental nature of art. 42(7) TEU suggests that measures must be assessed in light of the seriousness of the aggression and agreed bilaterally. However, a State cannot be required to make a contribution exceeding what is necessary to end the aggression, nor can it be required to sacrifice its own defence capabilities in order to support those of another (Sari 2019: 434). The Protocol on the Concerns of the Irish People on the Treaty of Lisbon, added to the treaties in 2013 but agreed to within the European Council in 2009, clarifies that all States are free to determine the nature and extent of the assistance they provide to the State under attack, provided that it is sufficient to fulfil the duty of solidarity (art. 3). Neutral States, such as Ireland, may unilaterally decide to offer only non-military assistance (Protocol on the Concerns of the Irish People on the Treaty of Lisbon 2013: art. 3).

The addition of the mutual defence clause in the TEU was the result of a compromise among Member States which, following the dissolution of the Western European Union — and therefore of art. V of the Brussels Treaty — wished to retain an autonomous security guarantee from that offered by NATO, those seeking to protect their neutral status and those viewing transatlantic relations as a priority^{II} (Lonardo 2017: 891). The compromise took the form of two clarifications in art. 42(7) TEU’s text. Regarding neutral countries, that the «the specific character of the security and defence policy of certain Member States» would remain unaffected. Regarding NATO, that «commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for



those States which are members of it, remains the foundation of their collective defence and the forum for its implementation».

The interpretation of the clause lies entirely with the Member States (Protocol on the Concerns of the Irish People on the Treaty of Lisbon 2013: art. 3). In case of disagreement, art. 32 TEU requires them to seek a resolution in the Council, but the final determination as to whether armed aggression has occurred and which response is appropriate belongs to each State individually. States' sovereignty is crucial also to strike a balance between the duty of mutual solidarity under art. 42(7) TEU and the obligation to respect NATO commitments. In fact, following an invocation of art. 42(7) TEU, EU Member States that are also NATO Allies owe assistance even without a commitment from NATO and it is up to their individual interpretations — not to any common institution — to determine which actions may be taken in parallel with NATO without disobeying their own obligations under either organisation (Sari 2019: 420, 436).

3. The *casus foederis*: armed aggression

A particularly relevant question is the meaning to be attributed to the expression “armed aggression”. Neither the Treaties nor secondary legislation provide a definition of this term, nor do they indicate the specific circumstances that can trigger art. 42(7) TEU. This omission is intentional rather than accidental: the drafters sought to avoid drawing an excessively clear red line, which could allow a hostile actor to remain strategically below the threshold and ensure that the clause would never be invoked (Sari 2019: 410).

A more problematic choice is the use of “armed aggression” rather than “armed attack”. The latter is the expression employed in art. 51 of the United Nations Charter — in accordance with which the response of the Member States under art. 42(7) TEU must be compliant^{III} — as well as in art. 5 of the North Atlantic Treaty and in art. V of the Brussels Treaty. An armed attack can be described, drawing on the judgment of the International Court of Justice in *Nicaragua v. United States of America* (1986), as a use of force possessing a certain degree of gravity in terms of scale and effects (para. 195). State practice further clarifies that such use of force must originate outside the territory of the State under attack (though not necessarily from another State actor)^{IV}, that it cannot be equated with ordinary



criminal activity or an isolated incident, and must be directed against the State's territory or its military assets — even if located in international waters, in international airspace^v, or lawfully within the territory of another State (Boddens Hosang - Ducheine 2020: 8).

A possible solution is to consider the concept of “armed aggression” different and broader than that of “armed attack”, thereby allowing art. 42(7) TEU to be invoked in a wider range of circumstances, including situations of lesser gravity. In cases where the acts of force do not rise to the threshold of armed attack, States would be required to provide aid and assistance by all the means in their power, apart from military force, so as to remain within the boundaries of the UN Charter. This interpretation mirrors the 1974 definition of “aggression” adopted by the United Nations General Assembly, which describes aggression as «the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations» (UNGA Resolution 3314/1974: art. 1). Said Resolution enumerates the acts considered as aggression, including invasion, annexation, bombardment, and blockade, carried out not only by regular armed forces but also through mercenaries or rebels (UNGA Resolution 3314/1974: art. 3). Under the Resolution, the term ‘aggression’ should therefore include the actions referred to by ‘armed attack’ and others.

A more restrictive interpretation holds that the notions of “armed aggression” in the TEU and “armed attack” in the UN Charter wholly coincide (for an overview on the topic please see Ruys 2010: 127 et seq.). The use of the two terms as interchangeable by the International Court of Justice is not decisive, since acts which constitute an aggression are deemed *a fortiori* armed attacks, and the Court, while concerned with the legality of a use of force has not yet focused on whether it responded to an act which ought to be classified as an armed attack or an aggression (Klabbers 2015: 501). Under this reading, art. 42(7) TEU and art. 51 of the Charter - as well as art. 5 NAT - would be activated by precisely the same set of events. This thesis is further supported not only by the explicit reference to art. 51 within art. 42(7) TEU but also by a possible misunderstanding during the translation. The French version of art. 51 of the UN Charter employs the expression “*agression armée*”, as does the French version of the Brussels Treaty. The earliest drafts of art. 42(7) TEU, written originally in French, intended to draw directly upon the model of the Western European Union. Thus, the term “armed aggression” may have been incorporated into the English version as a literal translation from French, without any deliberate intention to depart from



the legally established concept of “armed attack” (Sari 2019: 418). Nevertheless, the parties were fully aware of the conceptual discrepancy between “armed aggression” and “armed attack” at the time of signing (Sari 2019: 419). In any event, each Member State retains the sovereign prerogative to act in accordance with its own interpretation (Mickonyte 2023: 330).

4. Art. 42(7) TEU and Art. 5 NAT: a comparative analysis

The first difference between the Treaty on the European Union and the North Atlantic Treaty’s mutual defence clauses concerns their geographical scope of application. Art. 42(7) TEU applies to the territory of EU Member States, while art. 5 NAT applies to the territory of NATO Allies in Europe or North America. It is therefore possible to imagine areas where States belonging to both organisations could invoke art. 42(7) TEU but not art. 5 NAT, such as the Spanish enclaves in Morocco or the French overseas departments. The opposite is also conceivable: parties to both organisations may invoke art. 5 NAT but not art. 42(7) TEU for example in cases of attacks against forces, vessels or aircrafts situated in international waters, as explicitly provided by art. 6 NAT.

In addition to the possible divergence between the notions of armed attack, used by both art. 5 NAT and by art. 51 of the UN Charter, and armed aggression, there is another important issue concerning the procedure by which States determine whether an event is sufficiently serious to trigger the mutual defence clause. As experienced in the aftermath of the 2001 terrorist attacks, art. 5 NAT can be activated following a decision of the North Atlantic Council (Verhelst – Trifunovska 2020: 66). On the other hand, the TEU guarantee can be unilaterally activated without any previous involvement of any EU institution (Ali 2015: 49). Under art. 42(7) TEU, the response is one of *reciprocal* defence, based on reciprocal commitments between the State under attack and the assisting State. Whereas, under art. 5 NAT, the response is one of *collective* defence, coordinated and supported by the organisation’s integrated military structure. Bilateral action is possible only when the North Atlantic Council is unable to reach consensus among all allies (Sari 2019: 415). This does not undermine the sovereignty of each State in deciding which form of assistance to provide (Verhelst – Trifunovska 2020: 68). In fact, it is generally accepted that States have greater leeway in choosing the type of assistance under art. 5 NAT than under art. 42(7) TEU (Nad



– Spily 2015: 73). Within NATO, each contracting party deliberately avoids any automatic commitment to military force, binding itself only to the action it deems necessary (Sari 2019: 428). Instead, under the TEU, Member States are required to use «all the means in their power». Only certain Member States, those with a policy of neutrality (and Denmark while it still held its defence opt-out), may unilaterally refuse recourse to military force even when such force would reasonably be necessary to support the State under attack. Every other Member State can only rely on the discretion allowed by the principle of loyal cooperation (art. 4(3) TEU). The EU framework therefore allows less unilateral discretion than NATO (Deen – Zandee – Stoetman 2022: 12), even though it provides different obligations for some Member States, while the NAT clause provides identical duties for all Allies. In any case, neither clause contains a mechanism capable of compelling a reluctant State to provide more help than it is willing to offer (Boddens Hosang - Ducheine 2020: 7), this is why the German Federal Constitutional Court stated that art. 42(7) TEU «does not go beyond» art. 5 of the Washington Treaty (BVerfG 2009: para. 386).

5. Art. 222 TFEU, a third mutual assistance obligation

The Lisbon revision (2007) introduced into the Treaty on the Functioning of the European Union, drawing on the earlier text of the Treaty establishing a Constitution for Europe (Howorth 2004: 11), a second solidarity clause with original characteristics and a partially overlapping area of application, art. 222 TFEU. Its purpose is to give expression to the founding principle of solidarity while preventing and responding to terrorist attacks and assisting communities affected by natural or man-made disasters.

The clause provides for two channels of assistance. The first is a vertical support, from the Union and its supranational institutions, operating in a federal manner. The second is horizontal like art. 42(7) TEU, among Member States, relying on coordination within the Council, in an intergovernmental framework. The first channel is regulated by Council Decision no. 415 of 2014, while the intergovernmental channel is left to the discretion of the Member States, in accordance with Declaration no. 37^{VI} annexed to the Treaties. The Council Decision, however, has «no defence implications» (Council Decision 2014/415/EU: art.2(2)).



In all matters pertaining to art. 222 TFEU, the Court of Justice of the European Union has jurisdiction, except for implications in the field of defence (art. 275 TFEU) and for matters concerning the validity or proportionality of actions carried out by the law enforcement authorities of the Member States (art. 276 TFEU). This means that if, following the invocation of art. 222 TFEU, the response of the Union's institutions or of one or more Member States were inadequate, an infringement procedure could be brought before the Court (Martino 2016: 46).

The provision of the TFEU may be activated in cases of disasters or terrorist attacks, as defined by the Council Decision (art. 3), and for the prevention of the latter. These events may occur on the territory of the Member States covered by the Treaties or concern infrastructures such as offshore oil and gas extraction plants located in the territorial waters, in the Exclusive Economic Zone, or on the continental shelf of a Member State (Council Decision 2014/415/EU: art. 2(1)).

The most critical aspect is the rule laid down in art. 4(1) of Council Decision 2014/415/EU concerning the invocation of the clause. It provides that a State may invoke it «only if, after having exploited the possibilities offered by existing means and tools at national and Union level, it considers that the crisis clearly overwhelms the response capabilities available to it». This provision does not apply to preventive actions, which are carried out using the Union's own instruments. In practice, the Council Decision requires that, when invoking art. 222 TFEU, the political authorities of the Member State implicitly acknowledge the inability of its own means to provide an adequate response, making its activation much more politically burdensome (Berchtold 2020: 60 et seq.).

Once the solidarity clause is activated, the Union, acting through its institutions, must mobilise all the instruments at its disposal. According to the procedure defined in secondary legislation, the Commission and the High Representative deploy the ordinary non-military means (Council Decision 2014/415/EU: art. 5(2)). If they prove insufficient, extraordinary means may be activated following a Council decision adopted on a proposal from the Commission and the High Representative (Council Decision 2014/415/EU: art. 5(3)). Member States, for their part, are required to choose the most appropriate means to provide solidarity. They enjoy discretion, but not arbitrariness, in determining the form and extent of their assistance. If the seriousness of the circumstances requires it, they may even be compelled to use military means, pursuant to the principle of solidarity (Sari 2019: 438). It



should also be noted that the duty of solidarity among Member States arises only after the request is made by the political authorities of the State affected by the disaster or terrorist attack, whereas the obligation for the Union to mobilise its own resources arises as soon as the overwhelming events occur (Sari 2019: 438).

A further relevant aspect is the possibility that EU-NATO States may make military means available to the Union or use such means themselves. In this case, art. 222 TFEU, unlike art. 42(7) TEU, does not require compatibility with NATO commitments, and such compatibility is not demanded by the more general provision of art. 42(2) TEU, since art. 222 TFEU is not part of the Common Security and Defence Policy.

6. *Casus foederis* of the clauses: interactions and overlapping

The three clauses considered, art. 5 NAT, art. 42(7) TEU and art. 222 TFEU, cover a wide range of hypotheses. The NATO provision applies in the narrowest set of circumstances, those which amount to an armed attack (see, *supra*, §3). Art. 42(7) TEU, depending on the interpretation adopted, may be activated either in response to the same acts or in a broader range of cases. Art. 222 TFEU probably applies in all scenarios in which the other two clauses apply, in cases of uses of force of lesser intensity, terrorist acts and natural disasters. Secondary legislation defines a disaster as «any situation which has or may have a severe impact on people, the environment or property, including cultural heritage» (Council Decision 2014/415/EU: art. 3). In principle, even an armed attack could fall within this definition, although art. 222 TFEU was not designed for this eventuality.

An interesting scenario is the interaction among the provisions in the case of an armed attack against an EU–NATO Member State, in which all three clauses could theoretically be invoked. It is unlikely that the State concerned would rely on art. 222 TFEU, as this would subject it to review by the EU Court of Justice and would signify the admission that the attacked State is unable to face the attack on its own. As for the other two clauses, they may be invoked alternatively or jointly. In the latter scenario, it is likely, considering the subordination of commitments arising from CFSP to those arising from NATO and the military-alliance nature of the North Atlantic Treaty Organisation, that the operational response would be carried out mainly through NATO. From a strategic perspective, the



added value resulting from the bilateral solidarity obligation that follows the simultaneous activation of art. 42(7) TEU could be linked to diplomatic advantages, the involvement of intelligence structures, availability of civilian tools or commitments not directly connected to the crisis at hand, such as civilian assistance, reconstruction or the redeployment of the attacked State's troops from a peacekeeping mission to the theatre of crisis, combined with the rotation or replacement of such troops by other allied States (Biscop 2016: 121).

Regarding the geographical scope of application, the provision of the North Atlantic Treaty applies to the territory of the Allies located in Europe and North America, as well as to the situations provided for in art. 6 of the Treaty, such as the case of a military ship in international waters. Art. 42(7) TEU applies to the territory of EU Member States^{VII}. Art. 222 TFEU applies to the territory of EU Member States «to which the Treaties apply» and to infrastructures located in territorial waters, the Exclusive Economic Zone or the continental shelf of a Member State (Council Decision 2014/415/EU: art. 2(1)). Some authors (for example, Deen – Zandee – Stoetman 2022: 17) argue that the scope of art. 42(7) TEU is also limited to territories ordinarily subject to EU law, excluding the Overseas Countries and Territories. Others strongly affirm the applicability of art. 42(7) TEU to OCTs (please cf. Perot 2019: 49; Geursen 2024: 138). In view of the purely intergovernmental nature of the clause and the absence of an implementing procedural decision comparable to Decision 2014/415/EU, it seems appropriate to consider this element as an interpretative space left open to the discretion of the Member States.

7. Applicability in the case of a cyberattack

Today, the use of digital means for hostile or military purposes is critical to the effectiveness of the protection provided by mutual defence clauses. The United Nations consider international law fully applicable to cyberspace (UNGA Resolution A/RES/73/266, 2018: 2). It follows that a cyber operation may constitute an armed attack when it reaches the threshold of gravity set out in the *Nicaragua* judgment (ICJ 1986). A cyberattack against a country's critical infrastructure may reach such a threshold if it is capable of seriously undermining the State's ability to perform its essential functions or its economic, political or social stability over an extended timespan. For many States, this may



be possible even without direct physical damage (Boddens Hosang – Ducheine 2020: 12). The same reasoning applies to the right of self-defence under art. 51 of the UN Charter and may also justify activation of art. 5 NAT, but it does not automatically extend to the clauses of the EU Treaties. With respect to art. 42(7) TEU, if “armed aggression” is to be interpreted as a concept broader than “armed attack”, then one could imagine that the threshold of necessary damage might be lower. Nevertheless, in almost all cases, a physical effect on the victim State’s territory would likely still be necessary (Deen – Zandee – Stoetman 2022: 15).

Art. 222 TFEU, on the other hand, appears to be a more suitable instrument. Given its much broader scope, it could plausibly encompass severe cyber operations under the category of “man-made disasters” (Boddens Hosang – Ducheine 2020: 14).

NATO has so far affirmed that responses to cyber threats will be evaluated on a case-by-case basis, with the possible invocation of art. 5 NAT (NATO Strategic Concept 2022: para. 25), and recognised cyberspace as an operational domain since 2018 (Deen – Zandee – Stoetman 2022: 14). The European Union, on the other hand, may seem better equipped, having adopted a cybersecurity strategy as early as 2013, regularly updated. Various legislative acts have been adopted under this framework, including the EU Cybersecurity Act of 2019, with explicit references to the mutual assistance clauses, especially art. 222 TFEU. Moreover, the EU Agency for Cybersecurity, established in 2004, now works within the ‘European Union Military Vision and Strategy on Cyberspace as a Domain of Operations’ (Fazio 2025b). Recently, the EU adopted CFSP Decision 2019/797 concerning the establishment of sanctions in response to cyberattacks carried out by actors located outside the Union. These sanctions, which also serve a deterrent function, consist of freezing assets and imposing travel bans and do not exclude the possibility of measures being adopted at the national level, within the exclusive competence of each government to protect national security (Art. 4(2) TEU) (Poli – Sommario 2023: 523).

8. The 2015 French invocation of Art. 42(7) TEU

The first and only invocation of the EU mutual defence clause occurred in the aftermath of the terrorist attacks in Paris and Saint-Denis on 13th November 2015. President Hollande chose art. 42(7) TEU over art. 5 NAT, already invoked by the USA in 2001, and art. 222



TFEU, specifically designed to counter terrorist attacks, mainly to maintain the greatest possible control over the coordinated response (Puglierin 2016)^{viii}. In fact, choosing NATO would have meant relinquishing leadership to Washington, due to the United States' preeminent role in the alliance, with minimal advantage, considering the US' already ongoing engagement in combat against ISIS in Syria and Iraq. On the other hand, France was the only EU Member State involved in Syria, and opting for art. 42(7) TEU over art. 222 TFEU allowed Paris to bilaterally negotiate the other Member States' support, instead of involving the EU institutions and politically admitting France's inability to respond, as provided by Decision 2014/415/EU (Biscop 2016). The same Council decision (art. 2) limits the scope of the response under art. 222 TFEU to the Member States' territory, while Paris' goals were in the Middle East (Cimiotta 2016: 167)^{ix}.

Despite the unanimous political support, only Germany and the United Kingdom significantly changed their national policies following their bilateral negotiations with Paris^x, and the UK Government justified its new engagement without even mentioning art. 42(7) TEU^{xi}. While this outcome could be explained with President Hollande's mainly diplomatic goals, it established a precedent in which, following the invocation of the mutual defence clause, although in atypical circumstances, many countries did little to nothing^{xii} (Autio 2024). The urge to overcome this precedent explains the continued calls by the Commission and the European Parliament^{xiii} to 'operationalise' art. 42(7) TEU, *i.e.* adopting an act containing a procedure and tangible commitments.

9. The event of a conflict between an EU and NATO Member State and a State with only NATO membership

The possibility of invoking the mutual defence clause of art. 42(7) TEU in the context of a conflict between a State part of both the European Union and NATO and a State belonging to NATO but not to the EU presented itself following the deterioration of relations between Greece and Turkey in 2020 and 2021. Even more recently it came up in light of the expansionist intentions expressed by US President Trump regarding Danish Greenland. However, the latter case involves an additional element of complexity, because it concerns a territory outside EU law's ordinary scope of application (see, *infra*, §10).



The natural forum in which one might imagine the resolution of a dispute between States that are both NATO members is NATO itself. However, the North Atlantic Alliance has been designed to address external threats, primarily from the Soviet Union, and to build a system of collective defence, without focusing on the resolution of disputes between Allies or on collective security in its broader, not strictly military, meaning (Perot 2021: 5). The Treaty signed in Washington entrusts the peaceful resolution of disputes among NATO members to the United Nations (art. 1 NAT). No sanctions, suspensions, or expulsion mechanisms are provided for cases in which a NATO member harms another Ally. Peace within the Alliance has so far been guaranteed less by the organisation's structures and more by the influence of the United States. For instance, the escalation between Greece and Turkey in 1995–1996 was halted by the intervention of President Clinton (Perot 2021). What made the crisis in the Eastern Mediterranean of 2020 particularly severe was the absence of an American role. When it occurred, President Trump was engaged in an electoral campaign and was in open conflict with Turkish President Erdogan, following Turkey's purchase of Russian missile systems and the resulting imposition of American sanctions. The situation did not improve significantly with the election of President Biden, who remained highly critical of Erdogan's authoritarian posture (Perot 2021).

This helps explain Greece's decision to turn to the European Union in search of support against Turkey's provocations, going so far as to refer, for the first time, to the potential use of art. 42(7) TEU against a fellow NATO member, including in a letter sent by the Greek Foreign Minister Dendias to the High Representative for Foreign Affairs and Security Policy Borrell in October 2020 (ref. E/219). To understand why this happened, it might be appropriate to briefly retrace the stages of the escalation.

The recent tensions originated with the discovery of hydrocarbon deposits in the Eastern Mediterranean. Turkey decided to conduct exploration within the Exclusive Economic Zone of the Republic of Cyprus – also an EU Member State (see, *infra*, §11) –, which Ankara does not recognise, and to obstruct the operations of companies holding licences issued by Nicosia (Grigoriadis 2021: 4). Tensions reached their peak in the summer of 2020, when the Turkish vessel *Oruç Reis* was conducting surveys in areas that Greece and Cyprus considered part of their Exclusive Economic Zones or continental shelves, escorted by the Turkish navy. In response, Greece concluded agreements with Italy and Egypt concerning the delimitation of their respective Exclusive Economic Zones (Grigoriadis 2021). France sent ships in



support of the Greek fleet, and President Macron organised a meeting on 10th September 2020 with Greece, Cyprus, Italy, Malta, Spain and Portugal (Grigoriadis 2021). Turkey retrieved the *Oruç Reis* shortly thereafter, only to resume its activities a month later. At that moment, Greek authorities made explicit references to the mutual defence clause of the TEU. Several Member States and institutions of the Union had offered only lukewarm support to Athens and Nicosia, and the Council, constrained by the requirement of unanimity, could not go beyond individual sanctions. It is worth noting, however, the key role of the German Council Presidency, which sought to promote diplomatic negotiations by adopting a conciliatory stance towards Ankara, while Greece, Cyprus, France and later Italy conducted joint military exercises. Tensions continued to rise until January 2021, when Turkey ended its unlawful explorations and resumed diplomatic talks (Perot 2021: 7).

Regarding the legitimacy of a hypothetical invocation by Greece of art. 42(7) TEU against Turkey, beyond the question of Turkey's actions amounting to the *casus foederis*, three issues arise: the reference to NATO included in the clause itself, the agreement concluded by the Western European Union on this matter and the geographical scope of the provision.

Art. 42(7) TEU provides that «commitments and cooperation in this area [reciprocal defence] shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation». The text of the article does not address the possibility of a dispute between EU and NATO Member States. It should therefore be considered that, in the absence of an official declaration providing the contrary, the mutual defence clause may be invoked for any armed aggression, even if carried out by a NATO member (Vellano 2025: 6)^{xiv}. One may refer here to the 1992 Petersberg Declaration, in which the Member States of the Western European Union undertook not to activate art. V of the revised Brussels Treaty against their Atlantic allies. A similar provision was extended to the European Union in the conclusions of the European Council of Brussels in October 2002, which are not legally binding (Perot 2021: 7). Moreover, although art. 42(7) TEU may be regarded politically as the successor to art. V of the Brussels Treaty, there is no legal continuity between the two. Therefore, declarations made by States regarding the application of the latter cannot be extended to the former. The only relevant commitments are those undertaken after the Treaty of Lisbon (2007). Even assuming that the 2002 Council conclusions retain some relevance, they were adopted at a time when the EU had no mutual



defence clause and only possessed instruments for crisis management. Moreover, the commitment was reciprocal and subject to compliance with the UN Charter. Armed aggression constitutes a violation of the UN Charter, hence art. 42(7) TEU would be fully applicable, even against a NATO ally; in fact, the conditions set out in the 2002 conclusions would be respected too (Perot 2021: 7 et seq).

Turning back to the Greek-Turkish conflict, a further geographical difficulty emerges. The maritime areas at the centre of the dispute include territorial waters, the Exclusive Economic Zone and the continental shelf. Art. 42(7) TEU refers to the territory of the Member States. The United Nations Convention on the Law of the Sea (UNCLOS, Montego Bay, 1982) does not include the Exclusive Economic Zone or the continental shelf within the definition of territory, being these areas part of a State's jurisdiction but not part of its territory. If an armed aggression were to occur in the Exclusive Economic Zone or the continental shelf of a Member State, art. 42(7) TEU would not be applicable^{xv}. Territorial waters, to which the clause does apply, may be unilaterally extended up to 12 nautical miles from the coast, pursuant to the Montego Bay Convention (UNCLOS 1982: art. 3). Turkey has not yet ratified UNCLOS; however, it is bound by this rule which is to be regarded customary (ICJ 2012: para. 174). Nonetheless, Greece has chosen to maintain a limit of 6 nautical miles in most of its waters, aware that an extension to 12 nautical miles would likely provoke a hostile reaction from Ankara (Perot 2021: 20). Between 2020 and 2021 Greece extended its territorial waters in the Ionian Sea from 6 to 12 nautical miles, thereby increasing by 10 per cent the portion of Greek territory covered by art. 42(7) TEU. The same extension would be legally possible in the Aegean Sea.

In the episode discussed above, it appears that the actors involved did not consider art. 42(7) TEU decisive in practice. After the Greek Government referred to the mutual defence clause, its relevance was neither reaffirmed nor mentioned by fellow Member States, and in a bilateral agreement signed on 28th September 2021, Greece and France felt compelled to include a mutual defence clause (art. 2) that added nothing to the obligations already arising between the parties from the Treaty on European Union (Tertrais 2021).



10. Art. 42(7) TEU applicability to Member States' territories where EU law ordinarily does not apply

US President Trump's recent remarks about Greenland sparked a renewed debate about mutual defence clauses and their feasibility to defend the Danish Kingdom. Leaving aside the political implications of a similar hypothesis, it would bring about the legal consequences under the NAT already briefly discussed in the previous section. The EU framework therefore stands as even more important.

Since 1985, Greenland, notwithstanding its special constitutional relationship with a Member State, has no longer been a territory ordinarily subject to EU law. It is now classified as one of the Overseas Countries and Territories, which, unlike the Outermost Regions, are generally excluded from the application of EU law (Kobza 2016: 134 - 139). Art. 42(7) TEU applicability has been debated because on the one hand the clause refers to the territory of the Member States, but on the other hand EU law applies to the Overseas Countries and Territories only to the extent necessary for the implementation of the association agreements (Baetens 2017). Following the removal of the opting-out that precluded Copenhagen's involvement in CSDP in 2022, the final assessment about the applicability of the clause to this OCT rests with each Member State's interpretation, amid an unsettled scholarly debate (cf. §6, the opposite interpretations of Perot 2019 and Deen – Zandee – Stoetman 2022). However, the European Commission has expressed the view that the clause would apply, and the same position has been taken in recent public statements by some governments, including that of Denmark^{XVI}. It is worth recalling the intergovernmental nature of art. 42(7) TEU, national security being «the sole responsibility of each Member State» (art. 4(2) TEU). Moreover, Greenlanders are EU citizens (ECJ 2006: para. 27) and there is a direct link between citizenship and the principle of solidarity (ECJ 2025: para. 93, 97), on which the mutual defence duty is founded.

It should also be observed that the European Council, pursuant to art. 355(6) TFEU, may - as it did in 2012 for Mayotte (European Council Decision 2012/419/EU) - convert Greenland into an Outermost Region without modifying the Treaties. In that case, Greenland would become EU territory and would therefore fall unequivocally within the scope of art. 42(7) TEU (Fazio 2025a).



11. Art. 42(7) TEU applicability to occupied territories

A further question concerns the possibility of invoking art. 42(7) TEU in relation to events occurring in territories that are internationally recognised as part of a Member State's territory but that have been under the occupation of a third party ever since the country joined the European Union. Today, this is the Republic of Cyprus' reality, an EU Member State but not a NATO Ally, which does not control the territory of the self-proclaimed Turkish Republic of Northern Cyprus. The issue has regained the spotlight in the context of a potential accession of Ukraine to the Union, possibly after an armistice that, while preserving the country's territorial integrity formally untouched, could leave certain regions outside Kyiv's effective control.

Regarding the current situation in Cyprus, the legal status of the occupied territories under EU law is governed by Protocol No. 10 annexed to the 2003 Act of Accession. Art. 1 of the Protocol states that the application of EU law is suspended in the areas of the Republic of Cyprus in which the Government of Cyprus does not exercise effective control. The inhabitants of Northern Cyprus are *de jure* citizens of the Union, but not *de facto*, as they cannot enjoy any of the rights normally associated with Union citizenship (Sotiropoulou 2024: 3). The line dividing the two parts of Cyprus is not a border but a ceasefire line; it is therefore not considered an external border of the Union, even though it separates an economy that is part of the single market from one that is not (Sotiropoulou 2024: 3). For the future, it is envisaged that, without amending the Treaties, the *acquis communautaire* may be extended to Northern Cyprus once a final settlement is reached between the parties. Returning to the initial question, concerning whether Cyprus could invoke the mutual defence clause for aggression occurring in or originating from the occupied territories, the answer, in the absence of an agreement similar to Council Decision 2014/415/EU, mirrors the reasoning applied to Greenland. The issue depends on whether one adopts the interpretation that emphasises the clause's intergovernmental nature and considers "the territory of the Member State" to include all areas that Member States regard as their own territory, or whether one excludes territories where the EU Treaties do not normally apply. Ultimately, the decision rests with each Member State's interpretation.



These considerations become remarkably meaningful when set against certain hypothetical solutions to the war in Ukraine. In the event of an armistice or peace agreement between Russia and Ukraine, it is possible that one of the conditions could be the adoption of a status of neutrality for Ukraine. This may preclude, at least in the short term, Ukraine's accession to NATO, a military alliance, but not its accession to the European Union. This would enable Ukrainians to benefit immediately from security and solidarity guarantees, especially those expressed in art. 42(7) TEU and in art. 222 TFEU (Weller 2022). However, in the event of an armistice, the issue of occupied territories would arise, significantly increasing the probability of an invocation of the mutual defence clause. Assuming that the occupied Ukrainian territories would be treated similarly to those addressed in the Cyprus Protocol, two solutions could be envisaged: clarifying that art. 42(7) TEU applies only to the territory subject to EU law, as has already been done for art. 222 TFEU, or including specific provisions in the Ukrainian Act of Accession, following the model of existing association agreements concerning occupied territories (Mickonyte 2023: 335).

Another aspect worth clarifying pertains to the deployment of troops from EU countries in Ukraine. Art. 42(7) TEU's sole reference to the territory of the invoking Member State excludes from the clause's scope of application said troops, an opposite conclusion to the one that can be drawn about the invocability of art. 5 NAT (Fazio 2025b: 9).

12. Protection from hybrid threats

Another major development to which the security architecture must adapt is hybrid warfare. The term generally refers to the simultaneous use of coercive and non-coercive measures by State and non-State actors in order to target the political, military, economic, social, informational and infrastructural vulnerabilities of a State or international organisation, with the aim of harming the target State while reinforcing the aggressor's position, without resorting to open warfare (Sari 2019: 441). The 2014 Russian invasion of Crimea is widely considered a classic example of hybrid warfare. The traditional military intervention was prepared, *inter alia*, through covert support to pro-Russian rebels, the infiltration of unmarked soldiers and the dissemination of disinformation intended to



confuse public opinion in the victim State, as well as among the international community (Di Loreto 2023).

One of the most concerning aspects of hybrid warfare is its capacity to circumvent the norms of *jus ad bellum*. For example, according to the jurisprudence of the International Court of Justice, the use of military force under art. 51 of the UN Charter would very probably not be lawful against a State that has trained and equipped terrorists, transported them into another State's territory, provided them with intelligence and weapons, and coordinated its military activities on the basis of their movements, if that State avoided directly controlling the terrorists' decision-making processes (ICJ 2005: para. 118 - 147). Hybrid warfare may also undermine mutual defence mechanisms even when the legal threshold is met, because disinformation efforts may erode political consensus among the public and policymakers concerning the legitimacy and necessity of intervening to defend an allied State under attack (Sari 2019: 446).

The challenge is thus to create alliances in which the *casus foederis* is not triggered only when it is too late, circumvented by increasingly sophisticated hybrid tactics. Eliminating grey zones is crucial, closing the gap between a traditional armed attack and other hostile conduct that may precede or substitute it. In practical terms, a State subject to hybrid threats may need assistance from its allies before a traditional armed attack occurs. NATO addresses this issue through art. 4 NAT, according to which parties shall consult whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the parties is threatened. The provision is highly flexible, but it does not impose any obligation of assistance and therefore offers no guarantee or corresponding deterrent effect. The European Union, by contrast, offers more robust mechanisms, particularly through art. 42(7) TEU, whose threshold of armed aggression may close significant grey zones depending on the interpretation adopted, and through art. 222 TFEU, whose scope is considerably broader (Sari 2019: 456). Nonetheless, serious limitations remain, such as the strictly bilateral implementation of art. 42(7) TEU and the requirement under art. 222 TFEU that the affected State acknowledge its inability to respond independently. However, these limitations are not structural and may be remedied without amending the treaties. Moreover, the EU could be better equipped than NATO as regards preventative measures, not only because art. 222 TFEU explicitly provides a legal basis for autonomous action by the supranational institutions, but also because the Union can rely on many civilian instruments.



Given the extremely broad definition of hybrid threat, it may be useful to summarise the role of the three mutual defence clauses, in light of the considerations made above. Currently, if predominantly military structures are not affected, only art. 222 TFEU, assuming the threat overwhelms national capabilities, may be invoked. If military structures are affected, the broader interpretation of art. 42(7) TEU may allow recourse to that clause. In the case of armed attack, all three provisions, including art. 5 NAT, are available (Boddens Hosang – Ducheine 2020: 21).

13. Conclusion

Art. 42(7) TEU is a legal obligation more binding than that of the Atlantic Alliance – «an obligation of aid and assistance by all the means in their [Member States] power» (art. 42(7) TEU) instead of the actions each party «deems necessary» (art. 5 NAT) –, toned down by a subordination to commitments under NATO and a *caveat* for neutral States. It is a pledge with the potential to lay the foundations for an European security architecture with its core in the European Union, thanks to the characteristics and functions investigated throughout this paper and its anchorage into an organisation with a much broader toolbox than that of a strictly military alliance, at a time when cyberattacks and hybrid warfare are core threats. The key issue holding art. 42(7) TEU's potential back is its reputation as weak. One of the main reasons for how it is currently regarded, including by the twenty-seven Member States, are the subdued application precedents, the response to the 2015 French invocation as well as the 2020 crisis in the Eastern Mediterranean. A possible solution could be adopting secondary legislation reinforcing the commitment and laying down a procedure. Another explanation for art. 42(7) TEU being often overlooked can be the absence of a major and predominant military player, as the US is in NATO. This limit cannot be overcome through legislation, even though two things could help: a more European role for the French nuclear deterrent^{XVII} and the will to translate the duty of solidarity into operational guarantees.

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¹ On 17th March 1948 the United Kingdom, France, the Netherlands, Luxembourg and Belgium signed the Brussels Treaty establishing the Western Union, with a mutual defence clause (art. 4). On 4th April 1949 the



Treaty of Washington established the North Atlantic Treaty Organisation, with its mutual defence clause (art. 5) that will be considered throughout this paper. At the beginning of the 1950s, entering the Cold War, the United States wanted West Germany to rearm, but France remained reluctant (Autio 2024). A solution came from Jean Monnet through French Prime Minister Pleven's plan to create a common army of the six countries which already came together in the European Coal and Steel Community. The plan failed in 1954 due to the French National Assembly opposition. In the same year the Paris Agreements were signed, replacing the Western Union with the Western European Union. Two new members joined the WEU: Italy and Germany, that could now rearm. The organisation relied on an intergovernmental structure, operating through NATO, and provided a mutual defence clause (art. V) (Risi 2016: 23 et seq.). In 1992 (Maastricht Treaty), the Western European Union became the instrument for the implementation of the Common Foreign and Security Policy of the European Union (Cellerino 2022: 13). After the perceived failure of the European Union's role in the disintegration of Yugoslavia, with the Treaty of Amsterdam (1997) a plan for WEU's incorporation into the EU was conceived and agreed upon in the Nice Treaty (2001). The WEU ceased to exist in 2011 (Blockmans 2013: 246).

^{II} Also, the NATO Treaty contains an obligation not to sign any contradicting commitment (art. 8 NAT). Cf. art. 351 TFEU, par. 1: «The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties».

^{III} Furthermore, obligations stemming from EU law should always be interpreted as consistent with international law, coherently with art. 3(5) and 21(1) TEU, as established by the European Court of Justice in *Anklagemyndigheden v. Peter Michael Poulsen and Diva Navigation Corp.* (ECJ 1992: para. 9) and *Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change* (ECJ 2011: para. 101, 102, 107).

^{IV} The ability of non-State actors acting on behalf of States to perform armed attacks has been recognised by both art. 3, para. (g) of UNGA Resolution 3314/1974 and para. 195 of the *Nicaragua* judgement (ICJ 1986). However, the capacity of non-State actors not controlled by any State to carry out an armed attack under the meaning of art. 51 of the UN Charter, from the territory of a State which did not make itself complicit in their actions, can still be considered controversial. The International Court of Justice, according to most interpreters, in the advisory opinion *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) and in the *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda 2005)* judgement has signalled that the exercise of the right of self-defence against a non-State actor is lawful in these circumstances as long as the innocent hosting State's infrastructures are not targeted (Trapp, 2015: 689). However, it should be noted that the Court's language is ambiguous, since its concern is assessing whether an action is legal, not if it is to be defined as a response to an aggression or an armed attack (Klabbers, 2015: 501). Many countries, and the UNSC Resolutions 1368 and 1373, admit the 'unwilling or unable' doctrine, which allows striking infrastructure of the innocent host State, as long as it is necessary to fight the non-State actor which the hosting State is not able or not willing to rein in itself (Trapp 2015: 690 et seq.). On the question of the ability of terrorist groups to mount armed attacks please see, *infra*, footnote viii.

^V Art. 42(7) TEU applies to an attack from airspace or space targeting the territory of a Member State. A literal reading wouldn't, instead, allow EU astronauts or structures in space to be protected under the TEU guarantee. Nevertheless, the 2023 EU Space Strategy for Security and Defence, Council Decision (CFSP) 2023/598 of 14 March 2023 amending Decision (CFSP) 2021/698 and the EU Space Act, proposed in 2025, suggest a broader interpretation (Fazio 2025b).

^{VI} Not legally binding, its text reads: «without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State which is the object of a terrorist attack or the victim of natural or man-made disaster, none of the provisions of art. 222 is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.»

^{VII} With some issues addressed in §10, 11.

^{VIII} To assess the legitimacy of France's 2015 invocation of art. 42(7) TEU, it is necessary to determine whether France had suffered an armed aggression in its own territory. In answering this question, the issue of defining "armed aggression" resurfaces. Assuming its identity with "armed attack", the relevant threshold would be identical to that of art. 51 of the UN Charter and art. 5 of the NATO Treaty, which had already been activated following a terrorist attack, the 11th September 2001 attacks.

As previously observed, no conventional definition of "armed attack" exists. In the *Nicaragua* judgment (1986), the International Court of Justice held that only the heaviest uses of force constitute an armed attack. Another issue arises from the nature of the aggressors, not States but terrorists operating within States. Terrorist attacks also pose difficulties due to their episodic nature. In the case of an invasion, it is relatively straightforward to



determine when the danger is present and when the right to self-defence comes into play. Intervening militarily against a terrorist organisation located in another State's territory can be regarded as a necessary defensive action aimed at restoring peace, or rather as an unlawful reprisal, given that art. 51 of the UN Charter authorises the use of force solely when necessary to repel an armed attack and only to the extent that is proportionate to this purpose? (Cannizzaro 2023: 48 et seq.) When faced with an armed attack consisting of a terrorist act, which, by definition, is episodic, the need is not for military force to repel it but for measures to suppress the criminal act and deter future ones. Such action, within the UN Charter system, should fall under the Organisation's monopoly on the legitimate use of international force, not under unilateral recourse—intended by the UN's architects to be as limited as possible—to the natural rights of States (art. 51) (Kelsen 1951: 792). In practice, however, the United Nations has failed to assume the role of worldwide guarantor of collective security, resulting in an increasingly broad and frequent reliance on self-defence.

A turning point in addressing these issues is represented by the attacks of 11th September 2001. In the aftermath, the UN Security Council adopted Resolution 1368, recognising the United States' right to self-defence under art. 51 of the Charter against Al-Qaeda. The attacks met the gravity threshold to be considered an "armed attack" within the meaning of the *Nicaragua* judgement (ICJ 1986), but recognising the right of self-defence of the USA led to the invasion of Afghanistan, whose authorities did not control Al-Qaeda, a non-state actor (Scharf 2016: 23 et seq.). However, the Afghan government was deemed unwilling or unable to neutralise the terrorist cells operating on its territory. In 1949, in the *Corfu Channel* case, the International Court of Justice held that a State may be considered responsible for acts contrary to international law committed within its territory against other States when it has been negligent in preventing such activities.

It should also be noted that ISIS proclaimed itself an Islamic State and, for a significant period, exhibited many characteristics typical of a state entity, most notably territorial control. The self-proclaimed caliphate in fact controlled vast areas of Syria and Iraq over which the two States had lost all effective authority (Lonardo 2017: 894).

Following the attacks in Paris and Saint-Denis, the UN Security Council adopted Resolution 2249 (2015), which confirmed the legitimacy of operations against ISIS, including in Syria, although it did not explicitly refer to the inherent right to self-defence under art. 51, as it had in 2001. The Resolution merely endorses action taken outside the UN collective security system (Cimiotta 2016: 171).

In light of the considerations made above, France's invocation of the TEU mutual defence clause and the classification of the 13th November 2015 attacks as an armed attack appear well grounded. Nevertheless, the wording of the Treaty on European Union refers to "armed aggression," and equating this notion with that of "armed attack" is only one of the possible interpretations. It is indeed plausible that "armed aggression" establishes a lower threshold than art. 51 of the UN Charter. In that case, France could have legitimately invoked art. 42(7) TEU even if the terrorists were responsible for a crime not amounting to an armed attack. However, this would have prevented fellow Member States, in fulfilling their duty of solidarity, from lawfully employing military force based on collective self-defence under art. 51 of the UN Charter.

^{IX} The French requests to the other twenty-seven Member States regarded the long-standing asks for a support in France's abroad missions, against ISIS in Syria and Iraq, as well as in Africa, but also support for legislative proposal at the EU level concerning EU's external borders control, weapons trade and passengers' data management system (European PNR) (Hollande's speech before a Joint Session of the French Parliament on 16th November 2015). The French requests were, therefore, quite different from those typical of a clause shaped to protect against a military aggression on a country, *i.e.* an invasion.

^X The United Kingdom, already fighting ISIS in Iraq, a few weeks after France's invocation of art. 42(7) TEU began bombing Syria and granted the French army access to the Akrotiri base in Cyprus (Anghel – Cirlig 2016: 3). Germany deployed 1200 soldiers, a frigate and six reconnaissance aircrafts in the Middle East. Moreover, Germany supplied France intelligence data and provided additional forces for the already ongoing missions in Africa (Puglierin 2016: 3).

^{XI} Referring instead to the bilateral Lancaster House Treaties of 2010 (Puglierin 2016).

^{XII} Concluding the overview of the national responses to France's invocation of art. 42(7) TEU, besides Germany and the United Kingdom (see footnote x), the Visegrad's group contribution is quite interesting. Poland, Hungary, Slovakia and the Czech Republic jointly negotiated with France and were sceptical to any diversion of forces from the task of deterring Russia, given the recent invasion of Crimea. Paris asked for the Visegrad Battlegroup to be deployed in the Central African Republic. After significant hesitation Poland instead agreed to deploy 230 soldiers in the Middle East under US command and later into 2016 agreed to a training mission for the Iraqi army, employing 160 soldiers and four F-16s (Puglierin 2016: 3 et seq.). Significant contributions also came from Belgium, which made a frigate available to France, took part in airstrikes in Syria, and increased its commitment to missions in Africa. The Netherlands joined the coalition in Syria and increased



the resources deployed in Iraq and in the Sahel region (Anghel – Cirlig 2016: 5 et seq). Finland and Sweden—highly interested in seeing art. 42(7) TEU in action, given they could not rely, at the time, on the NATO guarantee—contributed with logistical support in Iraq and troops to ongoing UN and EU missions. The States not yet mentioned contributed minimally, providing logistical support in the Middle East or a very limited number of soldiers to ongoing UN or EU missions (Anghel – Cirlig 2016: 5 et seq). Italy is part of the latter group, despite being one of the continent's major military powers. Italy, already engaged in the anti-ISIS coalition in Iraq, chose not to increase its efforts there, ruled out intervening in Syria, increased its personnel by 100–150 units in the UN mission in Lebanon (UNIFIL) and made no contribution in Africa (Anghel – Cirlig 2016: 5 et seq). Prime Minister Renzi justified this stance by citing the desire to follow US leadership on military matters and to find a shared solution in the Middle East that would also include Russia (his speech is available here: <https://www.eunews.it/2015/11/17/siria-renzi-esclude-per-ora-intervento-italiano-contro-lisis/>).

^{xiii} The latest being European Parliament Resolution 2025/2565(RSP), but cf. also, in the aftermath of the French invocation Resolution 2015/3034(RSP), and before it Resolution 2012/2223(INI). The latest call from the Commission is the 2025 Communication on the European Preparedness Union Strategy (JOIN(2025) 130 final). The need to change the status quo is also signalled by Finland and Sweden PMs' letters to High Representative Borrell highlighting the importance of the TEU mutual defence clause, just twelve days after Russia's invasion of Ukraine, on 8th March 2022. Finland and Sweden applied for NATO membership two months later, after inconclusive attempts to make art. 42(7) "operational" (Perot 2024). Still in 2026, Defence Commission Kubilius and many MEPs repeatedly called for art. 42(7) TEU to become "operational" (among the many accounts available in the press, see for example: <https://www.euractiv.com/news/european-parliament-calls-for-an-operational-eu-mutual-defence-clause/>).

^{xiv} This both due to the general norms used in interpreting a treaty (Vienna Convention on the Law of the Treaties 1969: art. 31) and the principle of loyal collaboration enshrined in EU law by art. 4(3) TEU.

^{xv} A different conclusion should be reached about infrastructures, not boats under art. 222 TFEU (Council Decision 2014/415/EU: art. 2(1)).

^{xvi} See, for example: Johnston, I., Klasa, A., Chassany, A., Foy, H., Milne, R., 2025, 'EU leaders warn Donald Trump not to meddle with Europe's borders', in *Financial Times*, <https://on.ft.com/40anZ3y>.

^{xvii} It should be understood that nothing legally prevents France from deploying its nuclear arsenal as military assistance to a fellow Member State that had invoked the reciprocal defence clause of the TEU. Nevertheless, clarifying this possibility, as well as sharing the burden of managing the nuclear weapons with other EU countries, would have a game-changing impact on art. 42(7) TEU deterrence. (Tertrais 2021).

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