

Uncharted and uncomfortable in European defence

The EU's mutual assistance clause of Article 42(7)

Bob Deen
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Clingendael report



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Executive summary

As the EU steps up its ambition to defend the interests and the security of its member states, it should also come to terms with a treaty article that is unknown to many and uncomfortable to others: Article 42(7) Treaty on European Union (TEU), also known as the 'mutual assistance clause'. Since the Lisbon Treaty adopted an amended version of the article from the now defunct Western European Union, EU member states formally have 'an obligation of aid and assistance by all the means in their power' in case another EU member state becomes the 'victim of armed aggression on its territory'. Article 42(7) remained dormant until France invoked it in 2015 in response to the Bataclan attacks. This sparked debates across the EU about how the article works in practice, how 'armed aggression' and 'territory' should be interpreted and to what extent the article applies to terrorism or to hybrid forms of aggression. In 2020 the Greek foreign minister openly hinted that it could be invoked in response to a confrontation with Turkey, prompting yet more handwringing in Brussels about the possible consequences of one NATO ally invoking the EU mutual assistance clause against another. As the EU prepares to adopt its Strategic Compass in early 2022, some member states have now asked for the article to be 'operationalised'.

This is no small task. Opinions on Article 42(7) diverge sharply across the EU, ranging from member states who prefer to discuss it as little as possible in order not to undermine NATO's primacy of collective defence, all the way to those such as France who see it as part of the EU's ambition to become a geopolitical and security actor of its own. In between are the juridical purists, who stick to strict legal interpretations to try and defuse the tensions inherent in the article; the neutral abstentionists, who are reluctant when it comes to binding commitments on collective defence; and the pragmatists who argue for maximum flexibility or who see added value in the article due to their specific geographic or political context.

In the course of this debate, it is important that Article 42(7) should not be misinterpreted as 'the EU's own Article 5'. It has deliberately been drafted differently from NATO's collective defence clause, in order to take the specific circumstances and concerns of NATO allies and traditionally neutral EU member states into account. It is also more restrictive in terms of its territorial scope, which raises questions about the article's potential application to the maritime domain, cyberspace or space itself.

The EU is neither designed nor currently equipped to operate as a military alliance. For 21 of its member states also member of NATO, the Alliance remains the cornerstone of collective defence in Europe. As a result, the article should be regarded from the point of view of complementarity between both organisations, not competition between

them. The EU also has many other instruments in its toolbox that it can use to respond to threats and crises, such as those linked to the solidarity clause of Article 222 Treaty on the Functioning of the European Union (TFEU). But merely pretending that Article 42(7) does not exist – or attempting to neuter its deeply political character by hiding behind purely legal arguments – are neither realistic nor desirable policy options. Article 42(7) is ‘here to stay’ and needs to be given a place within the wider European security and defence policy.

This report concludes that there are at least three situations in which the EU’s mutual assistance clause could plausibly be invoked: in response to a terrorist attack, against hybrid forms of aggression such as serious cyberattacks, and as a result of a kinetic military attack. There are also EU member states that are not members of NATO and that might want to rely on Article 42(7) as a means of last resort. Some calamitous situations may even be conceivable in which one NATO ally could invoke it against another. As uncomfortable and hypothetical as these scenarios may be, the EU should nonetheless be prepared to respond in case they do materialise. Regular exercises and the drafting of a non-binding document outlining the EU’s response options would be a step in the right direction.

The introduction of cumbersome procedures or negotiations about fictional thresholds will not only be virtually impossible; it may even be counterproductive. Formally, the article is purely member state-driven: no role is foreseen for the EU institutions and no consensus is required to invoke it. But in reality, the European response to an act of armed aggression would gain in strength if the invocation of the article could be affirmed with a declaration of the European Council. Depending on the case at hand the EU institutions could also be given a role by the member states. A Mutual Assistance Task Force could be mandated to act as a clearing house, to coordinate assistance by the various EU agencies and institutions and to communicate externally on the invoking member states’ and the EU’s behalf. But for this to work at short notice in crisis situations the EU and its member states should engage in exercises regularly, both within the Political and Security Committee (PSC), together with other committees such as the Military Committee, and with NATO. For this purpose, further investments in intelligence sharing and secure communications will be required.

Despite the ‘grey zone’ nature of the threats facing the EU and its member states, Article 42(7) is a black-and-white codification of their shared fate and their binding commitment to assist one another in case one EU member state becomes the victim of armed aggression. As such, it is a legal argument buttressing the growing political ambition towards a more strategically autonomous EU that aims to defend its own members and interests in an uncertain and unsafe world. Rather than a reason for handwringing and concern, Article 42(7) should serve as yet another powerful reminder to EU member states that they should reflect seriously, including within the framework of the Strategic Compass, on the threats that they face – and invest considerably more in their preparedness and defence capabilities.

List of abbreviations

COSI	Standing Committee on Internal Security
CSDP	Common Security and Defence Policy
CSDP-CR	Common Security and Defence Policy – Crisis Response
EDC	European Defence Community
EEAS	European External Action Service
EEZ	Exclusive Economic Zone
ENISA	European Union Agency for Cybersecurity
EU	European Union
EUMS	European Union Military Staff
IPCR	Integrated Political Crisis Response
ISP	Integrated Approach for Security and Peace
MATF	Mutual Assistance Task Force
NATO	North Atlantic Treaty Organization
OCT	Overseas countries and territories
OMR	Outermost regions
PESCO	Permanent Structured Cooperation
PSC	Political and Security Committee
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
WEU	Western European Union

1 Introduction

In recent years European Union (EU) officials and pundits have rarely missed an opportunity to point out that Europe finds itself in an increasingly tense and uncertain geopolitical environment – and that the EU should strive for more strategic autonomy in order to defend its own interests and those of its member states. Some EU member states are then often quick to point out that the EU has no role to play in collective defence and that this responsibility rests squarely and solely with the North Atlantic Treaty Organization (NATO). Still others prefer to stick to a position of neutrality.¹ But despite their different views, all EU member states already have ‘an obligation of aid and assistance by all the means in their power’ in case another EU member state becomes the ‘victim of armed aggression on its territory’: Article 42(7) of the Treaty on European Union (TEU), also known as the ‘mutual assistance clause’.²

When the drafters of the Lisbon Treaty incorporated and amended an old article from the dissolving Western European Union (WEU) in 2007, Article 42(7) initially lay dormant. However, in November 2015 France jolted the EU into action by invoking the article for the first time in response to the Bataclan attacks, thereby initiating a discussion about the scope and nature of this article. Now that it was used in response to terrorism, policymakers began to wonder to what extent it would also cover hybrid forms of aggression and cyberattacks. To complicate matters further, already in 2018 some European politicians began to speculate that it could be invoked in response to confrontations with Turkey in the Eastern Mediterranean. The Greek foreign minister openly hinted at this in a letter in 2020, prompting yet more handwringing in Brussels about the possible consequences of one NATO ally invoking an EU treaty article against another.³

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- 1 For an overview see Dick Zandee, Bob Deen, Kimberley Kruijver and Adája Stoitman, “[European Strategic Autonomy in security and defence: Now the going gets tough, it’s time to get going](#),” *Clingendael Report*, (The Hague: December 2020).
 - 2 In publicly available literature and EU documents the article is referred to as both the ‘mutual assistance clause’ and the ‘mutual defence clause’. While strictly speaking the choice of reference to the article has no legal consequence, this report will use the term ‘mutual assistance clause’ to highlight its differences from the collective defence clause in Article 5 of the North Atlantic Treaty.
 - 3 See for example the written questions by the Member of the European Parliament Eleni Teocharous to the European Commission entitled “[Recent provocative moves by Turkey calling into question the sovereign rights of Greece and Cyprus – Implementation of the Treaty of Lisbon – Article 42\(7\)](#),” Question number P-001956-18, (30 March 2018); and the [Letter of Nikos Dendias to Josep Borrell](#), (19 October 2020).

Even though many EU member states would prefer to keep this article in a form of strategic limbo, some prefer to bring it more out into the open and see it as useful to promote stronger European defence cooperation.⁴ It is clear that Article 42(7) is no longer dormant: in May 2020, the Defence Ministers of France, Germany, Italy and Spain called for its 'operationalisation'⁵ and the EU committed itself to 'test it out' during a series of exercises. It also features in discussions on the EU's Strategic Compass, which are to be finalised under the auspices of the French Presidency of the EU in early 2022. This raises questions as to how a treaty article that as an 'ultimo ratio' is rarely meant to be invoked could potentially be operationalised, which strategic considerations should be taken into account, and to what extent this rather traditionally worded Article could also cover modern phenomena such as hybrid threats or cyberattacks.

These discussions take the EU into territory that is both largely unknown and, for many, quite uncomfortable. This report aims to inform these deliberations. Chapter 2 will briefly set out the historical and legal context of Article 42(7) and in particular its relationship to other articles of the EU Treaties, the North Atlantic Treaty and the United Nations (UN) Charter. Chapter 3 will explore its applicability to a number of potentially contested areas that may become of relevance in the future, including cyberspace, space itself and the maritime domain. Based on this analysis Chapter 4 will put forward three sets of situations in which the article could be invoked in the future and illustrates these with brief hypothetical scenarios. Chapter 5 will map out the different opinions and interpretations of EU member states and will set out the procedural and institutional aspects. This includes the potential involvement of the EU institutions, despite the strictly intergovernmental and member state-driven character of the article. It concludes with a set of policy recommendations for the Government of the Netherlands and the EU as a whole.

The research is based on a combination of a review of publicly available literature and a series of interviews with representatives of EU institutions and member states. The report also includes three external contributions by experts from France, Finland and Cyprus, who each explore the strategic considerations of their respective countries and focus on particular dimensions of Article 42(7) that are relevant to their own security context. The authors would like to thank Elie Perot, Dr. Teija Tiilikainen and Dr. Constantinos Adamides for their valuable contributions, which have also informed the analysis of the main report and have been included in its annexes. The views of the external contributors remain exclusively their own.

4 Anne Bakker, Sven Biscop, Margriet Drent and Lennart Landman, "[Spearheading European Defence: Employing the Lisbon Treaty for a Stronger CSDP](#)," *Clingendael Report*, (The Hague: September 2016).

5 "[Letter of the Ministers of Defence of France, Germany, Spain and Italy to Josep Borrell](#)," (29 May 2020), which includes "*Another lesson we collectively identified is the importance of European solidarity to act and react to crises. A key work, in that regard, will be the operationalisation of the Article 42(7) TEU.*"

2 Historical and legal context

Historical context

Article 42, paragraph 7, of the Treaty on European Union (TEU), succinctly Article 42(7) (see *Box 1*), is also known as the EU's "mutual assistance clause" or is sometimes even referred to as its "mutual defence clause". Its origins date back to the early 1950s, and more specifically to the Pleven Plan⁶ for the establishment of the European Defence Community (EDC). Even though this was followed up by the signing of the Treaty establishing the EDC in 1952, the Plan never materialised as the EDC failed.

Box 1 Article 42(7) TEU

"If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

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."

A new attempt, however, turned out to be more successful. In 1954, the Paris Accords led to the drafting of the modified version of the Brussels Treaty (1948), which already contained a mutual defence clause in Article IV. The Paris Accords then paved the way for the establishment of the Western European Union (WEU), which built upon the Brussels Treaty's basis for mutual defence between European states outside the NATO framework. Of particular relevance in this regard is the wording of Article V of the

6 The Pleven Plan was put forward by the French Premier René Pleven with the objective to undertake the re-establishment of the German army within a European structure. The Plan laid down that a European army of 100,000 men was to be created through combining battalions from different European countries, including Germany. Source: CVCE, "[The Plan for an European Defence Community](#)," *Virtual Centre for Knowledge on Europe (CVCE)*, (May 2013).

Modified Brussels Treaty, the mutual defence clause of the WEU (see *Box 2*).⁷ Article V lays down the ‘High Contracting Parties’ obligation to assist any other ‘High Contracting Party’ that becomes the object of an armed attack. Moreover, the Article explicitly refers to ‘military assistance’ as one of the means to be used to assist a state in case of an armed attack. It nonetheless remained dormant, largely because the centre of gravity of European collective defence shifted to NATO.

Box 2 Article V Modified Brussels Treaty

“If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.”

The launching of the European Security and Defence Policy (now the Common Security and Defence Policy, CSDP) in 2000 led to the gradual transfer of WEU institutions into the EU. The forthcoming dissolution of the WEU did confront policymakers with the question of the fate of its mutual assistance clause in Article V. In 2007, the mutual assistance clause was incorporated as Article 42(7) in the Lisbon Treaty, although in an amended form. When the Lisbon Treaty entered into force in 2009, the EU had thereby formally obtained its own mutual assistance clause. Consequently, the Modified Brussels Treaty was terminated.

As compared to the original WEU version, the mutual assistance clause in the TEU slightly differs. Firstly, where the WEU version referred to an ‘armed attack’, the TEU refers to ‘armed aggression’. This begs the question whether Article 42(7) provides a broader scope than its predecessor. However, the reference to ‘armed aggression’ may also simply be the result of a literal translation of the French text. The French text refers to *‘aggression armée’*, the wording of the French version of Article 51 of the UN Charter, which in English refers to an ‘armed attack’.⁸ For the purposes of this report, the two concepts of ‘armed aggression’ and ‘armed attack’ will therefore be used interchangeably. Secondly, the WEU version explicitly mentions ‘military assistance’ as a means to be deployed in case of an armed attack. In contrast, this has been discarded in the TEU version, which only refers to assistance “by all the means in their power”.

7 ‘Article V’, the [“Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence signed at Brussels on March 18, 1948, as amended by the “Protocol Modifying and completing the Brussels Treaty,” \(Paris: 23 October 1954\).](#)

8 Aurel Sari, [“The Mutual Assistance Clauses of the North Atlantic and EU Treaties: The Challenge of Hybrid Threats,”](#) *Harvard National Security Journal* 10, (June 2019): 418.

Even though this may also include military means, the lack of an explicit reference thereto might be a way to meet neutral states like Austria, Ireland and Sweden halfway.⁹ Finally, the article also includes an explicit mention that for those EU member states that are also NATO allies, NATO remains the ‘foundation of their collective defence’. The complex relationship between the EU’s Article 42(7) and NATO’s Article 5 will be further discussed below.

Legal context and relationship to other treaty articles

Following France’s invocation of Article 42(7), the Political and Security Committee (PSC) requested the Legal Services of the Council to provide advice on the nature of the obligations arising under Article 42(7).¹⁰ Other scholars have also explored various legal aspects. While this report focuses primarily on strategic considerations around Article 42(7) and does not intend to deliver a comprehensive legal analysis, in their attempts to operationalise the article EU member states should take its relationship to other EU and international treaty articles into account. These particularly concern Article 51 of the UN Charter, the EU’s ‘solidarity clause’ (Article 222 TFEU), and NATO’s Article 5. Each will be briefly discussed in turn.

Relationship with Article 51 of the United Nations Charter

Article 42(7) makes explicit reference to the UN Charter by stating that the assistance provided by the EU member states in case of an invocation of Article 42(7) should be in accordance with Article 51 of the Charter (see *Box 3*). The reason for this explicit reference is that Article 51 is the leading international treaty article that guides the invocation of individual and collective self-defence in the case of an armed attack against a member of the UN. The explicit reference implies that any action that is undertaken by an EU member state in response to the invocation of Article 42(7) will be legally assessed in light of Article 51. As such, the relationship between Article 42(7) and Article 51 is similar to the relationship between Article 5 NATO and Article 51 of the UN Charter: both the EU and NATO provisions are an expression of individual or collective defence against an armed attack as set forth in Article 51¹¹. Hence, the use

9 J.F.R. Boddens Hosang and P.A.L. Ducheine, “[Implementing Article 42\(7\) of the Treaty on European Union: Legal Foundations for Mutual Defence in the Face of Modern Threats](#),” *Amsterdam Center for International Law* 35, (14 December 2020): 4.

10 European Commission, “[Opinion of the Legal Service of the European Council on Article 42\(7\) TEU](#),” 11176/16, (12 July 2016), partially accessible to the public. For a detailed explication of the opinion, see Nicolas Gros-Verheyde, “[La clause d’assistance mutuelle de l’article 42\(7\) expliquée et détaillée](#),” *Bruxelles2*, (3 August 2016).

11 Boddens Hosang and Ducheine, (2020): 6.

of force as an expression of the right to collective self-defence under either Article 5 of NATO or Article 42(7) of the TEU remains subject to international law. This includes the requirements of necessity and proportionality, although these principles are not explicitly part of the UN Charter.¹²

Box 3 Article 51 UN Charter

“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. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security”.

Importantly, Article 51 of the Charter includes the right for states to defend themselves against an imminent attack, which is more commonly referred to as anticipatory self-defence. Anticipatory self-defence should not be confused with pre-emptive self-defence: the former refers to self-defence in case of an imminent attack while the latter entails self-defence that is focused on removing a potential threat before it can manifest itself to the level of an attack. Even though opinions on what constitutes an ‘imminent’ attack diverge, anticipatory self-defence is considered to be legal, subject to certain criteria, while pre-emptive self-defence violates international law.¹³

Moreover, since 9/11, the common view is that international law acknowledges that an armed attack executed by non-state actors might, under specific circumstances, also trigger the invocation of national or collective self-defence. Hence, this argues in favour of the possibility for EU member states to invoke Article 42(7) against an (imminent) attack or aggression by both state and non-state actors, as illustrated by the case of France responding to the Bataclan attacks.¹⁴

12 An act of self-defence, through the use of force, must conform to the requirements of necessity and proportionality. Necessity means that the act of self-defence was necessary in order to recover territory or repel an attack on a state’s forces. Proportionality refers to the fact that the means employed during the act of self-defence should be proportionate to the armed attack, meaning that it should only aim at the neutralisation of the attack. See for a reaffirmation of the requirements of necessity and proportionality the following case by the International Court of Justice: [“Military and Paramilitary Activities in and against Nicaragua \(Nicaragua vs. United States of America\) \(Merits\)”](#), Judgement, *ICJ Reports*, (27 June 1986).

13 Boddens Hosang and Ducheine, (2020): 6, footnote 23.

14 Boddens Hosang and Ducheine, (2020): 6.

Relationship with Article 222 TFEU

Article 222 of the Treaty on the Functioning of the European Union (TFEU) prescribes that EU member states have to act in a spirit of solidarity if a fellow member state becomes the victim of a terrorist attack or a natural or man-made disaster (see *Box 4*). The article is therefore known as the “solidarity clause”. Considering that Article 222 explicitly refers to terrorist attacks, the invocation of Article 42(7) by France after Bataclan in 2015 sparked a debate about the question of in which situation a member state should invoke Article 42(7) TEU or Article 222 TFEU. In essence, this comes down to a choice for the member state concerned about the nature of the threat it faces and the kind of response it wishes to elicit. France’s invocation of Article 42(7) was in response to an attack by non-state actors, thereby establishing a precedent for relying upon Article 42(7) if the perpetrators are non-state actors.¹⁵

Box 4 Article 222(1) TFEU

“The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

(a)

- *prevent the terrorist threat in the territory of the Member States;*
- *protect democratic institutions and the civilian population from any terrorist attack;*
- *assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;*

(b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster”.

There are, however, some important differences between Article 42(7) TEU and Article 222 TFEU, which might affect the decision of member states to invoke either of the articles. Firstly, Articles 222 TFEU and 42(7) TEU differ in the sense that the former explicitly calls upon the Union to mobilise all the instruments at its disposal. Therefore, upon the invocation of Article 222, the EU as an institution is supposed to take the necessary measures. Moreover, the operationalisation of Article 222 is already codified in the ‘*Council Decision on the arrangements or the implementation by the Union of the*

¹⁵ Boddens Hosang and Ducheine, (2020): 4-5.

solidarity clause.¹⁶ In contrast, Article 42(7) is fully member state-driven and there is no formal EU procedure that regulates the involvement of the EU institutions. Instead, the invocation of the article initiates an intergovernmental process in which the responsibility lies squarely with the EU member states themselves, and it is eventually up to them to decide on providing assistance – or to request the involvement of the institutions.¹⁷ This aspect will be further discussed in Chapter 5.

Secondly, an important consideration upon invoking either Article 42(7) or Article 222 revolves around the difference in agency of the affected member state. In case a member state invokes Article 222¹⁸, that state formally acknowledges that it is being overwhelmed by the attack or disaster and admits that it lacks the necessary means to act on its own. For political reasons, this might be unattractive to the member state in question. Considering that Article 42(7) does not have such a clause in its provision and puts the member state in the driving seat, especially the larger EU members might give preference to invoking this article instead.¹⁹ This logic may also work in the inverse for smaller member states, which might need more assistance from EU institutions in the coordination and provision of assistance. Some of the EU's traditionally neutral member states might also prefer to shy away from requesting military means for the purpose of collective defence and would rather solicit assistance of a non-military nature. In both cases the affected member state could consider opting for Article 222 instead.²⁰

Relationship with Article 5 of the North Atlantic Treaty

As mentioned, when the text of the WEU version of the article was amended and included in the Lisbon Treaty as Article 42(7), it was supplemented with an explicit reference to NATO: “*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.*”²¹ By explicitly including this clause in Article 42(7), it is

16 See for the Council Decision: The Council of the European Union, “[Council Decision 2014/415/EU on the EU's implementation of the solidarity clause](#),” *Official Journal of the European Union* L 192/53, (24 June 2014).

17 Boddens Hosang and Ducheine, (2020): 5; Carmen-Cristina Cirlig, “[The EU's mutual assistance clause. First ever activation of Article 42\(7\) TEU](#),” *European Parliament Briefing*, (Brussels: European Parliamentary Research Service, November 2015): 5.

18 This requirement does not derive from Article 222 TFEU per se, but originates from the 2014 Council Decision on the implementation of Article 222 TFEU (Article 4.1), see: [Council Decision of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause, \(2014/415/EU\)](#).

19 Boddens Hosang and Ducheine, (2020): 5.

20 Carmen-Cristina Cirlig, (November 2015): 2, 7.

21 Article 42(7), “[Consolidated version of the Treaty on European Union](#),” *Official Journal of the European Union* C 326, (26 October 2012).

acknowledged that for those EU member states that are also members of NATO, the North Atlantic alliance is the primary organisation for guaranteeing collective defence. However, this does not mean that the EU cannot play a role in collective defence at all, which is in particular relevant to those member states that are not part of NATO. The question therefore remains what the link between the two treaty articles is. It is clear that the invocation of one of these provisions does not automatically result in the invocation of the other. It is up to the member states of both organisations to decide which of the two articles they wish to invoke in case of an attack.²²

Box 5 Article 5 North Atlantic Treaty

“The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area”.

Moreover, there are two important differences between Article 42(7) TEU and Article 5 of the North Atlantic Treaty (see *Box 5*). These differences relate to the obligations in terms of their effect and the scope of both provisions. Firstly, NATO’s mutual defence clause with the phrase “as it deems necessary” leaves more room for national discretion than the EU’s Article 42(7). This implies that, although a response from each member state is required in case of the invocation of Article 5 of the NATO treaty, it is up to the member states to decide the nature of that response. In contrast, the EU’s mutual assistance clause is of a more compelling nature, as it states that member states have “an obligation” to provide “all aid and assistance by all the means in their power”. Secondly, the scope and the applicability of the provisions laid down in Article 42(7) TEU and Article 5 of the North Atlantic Treaty differ. Whereas the latter applies to all NATO member states, Article 42(7) specifically acknowledges the special status of neutrality that some EU member states have with respect to the EU’s security and defence policy (e.g. the Danish opt-out and the neutrality of states like Ireland, Malta and Austria): “This shall not prejudice the specific character of the security and defence policy of certain Member States.”²³ Article 42(7) also has a different and somewhat stricter interpretation of ‘territory’, as will be further discussed in the next chapter.

22 Boddens Hosang and Ducheine, (2020): 6.

23 Article 42(7), “[Consolidated version of the Treaty on European Union](#),” *Official Journal of the European Union* C 326, (26 October 2012).

3 Territorial scope and applicability in new domains

As described in Chapter 2, the origins of Article 42(7) can be traced back to the early 1950s, a period where most threats were still kinetic in nature and there was less reason for disagreement about what is meant by an ‘armed attack’ and ‘territory’. From the perspective of international law it is clear that ‘territory’ refers principally to a state’s land area, its territorial waters and the airspace above. But in the modern era, threats are far more diffuse in nature and states’ key infrastructure may not only be located on their physical territory but also in cyberspace or in space itself. This chapter will therefore discuss some of the key questions facing policymakers when they debate the applicability of Article 42(7) to the digital domain, or to other areas where interpretations of ‘territory’ may diverge but confrontations could nonetheless occur, such as in space, in the maritime domain and on the overseas territories of EU member states.²⁴

Are cyberattacks armed attacks?

In general, cyberattacks are difficult to attribute. While the originators of incoming missiles, bombs and other kinetic hits can be traced relatively easily, cyberattacks consist of computer code that is only visible to digital experts. Moreover, there are no borders in cyberspace and cyberattacks may actually target digital infrastructure such as servers which are physically outside the country’s territory. Yet, the impact that cyberattacks can have on modern societies which heavily rely on digital technologies can be enormous. Already in 2011 the Dutch Advisory Council for International Affairs (AIV) concluded that cyberattacks could amount to ‘armed attacks’ and warrant self-defence if the consequences are similar to those of conventional attacks – or if they seriously disrupt the functioning of the state.²⁵ Although the General Assembly of the UN stated in 2015 that international law in general, and in particular the Charter of the United Nations, is fully applicable to cyberspace just as much as to traditional conflict areas on land, at sea and in the air, the international community is still struggling

24 The authors would like to thank Sico van der Meer for his valuable contribution to this chapter.

25 Adviesraad Internationale Vraagstukken, ‘[Digitale Oorlogvoering](#)’, *Advies no. 77, AIV/No 22, CAVV (in Dutch)*, December 2011.

with this issue.²⁶ The influential ‘Tallinn Manual’ on law and cyberspace argues that a cyber operation that “*seriously injures or kills a number of persons or that causes significant damage to, or destruction of, property*” would meet the scale and effects of an actual armed attack.²⁷

There is an emerging consensus that cyberattacks, within the broader category of hybrid attacks, that exceed a certain threshold of damage could warrant invoking the right of (collective) national self-defence under international law. The problem is, of course, that the wording “significant damage”, often referred to as the “threshold”, may be subject to different opinions. How, for instance, can one measure the damage resulting from an attack on digital systems, if the effects are creating societal chaos instead of actual casualties, and are thus much less directly visible than damage created by bombs and bullets?

Moreover, for an effective response to cyberattacks, convincing attribution of the attack is required. Not all countries have the digital forensic capabilities for this, and even if they have, it often takes too much time and effort to come to conclusions that can be proven beyond reasonable doubt. There is even the risk of so-called ‘false flag operations’ in which cyberattackers behave as *another* actor. The situation is made even more complicated by the trend that state actors increasingly allow or encourage non-state actors to conduct cyberattacks on their behalf with the aim of making attribution and retaliation even more difficult.²⁸

So far, states suffering from large-scale cyberattacks have responded in various ways, varying from legal procedures to economic and political sanctions, and in a few instances even threats of (covert) counterattacks.²⁹ Yet, no examples are known of states qualifying a (series of) cyberattack(s) as an armed attack and consequently invoking the right of national self-defence or of collective defence clauses. NATO has declared on various occasions that cyberattacks could trigger the invocation of Article 5

26 United Nations General Assembly, “[Resolution adopted by the General Assembly on 22 December 2018: Advancing responsible state behaviour in cyberspace in the context of international security](#),” *UN document A/RES/73/266*, (2 January 2019); for a brief overview of the topic, see: Duncan Hollis, “[A brief primer on international law and cyberspace](#),” *Carnegie Endowment for International Peace*, (14 June 2021).

27 Michael N. Schmitt, [Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations](#), NATO Cooperative Cyber Defence Centre of Excellence, 2nd Edition, (Cambridge: Cambridge University Press, February 2017): Rule 71, para. 7.

28 Sico van der Meer, “[How states could respond to non-state cyber-attackers](#),” *Clingendael Policy Brief*, (The Hague: June 2020).

29 For various ways of responding, including the dilemmas involved and examples thereof, see: Sico van der Meer, “[State-level responses to massive cyber-attacks: a policy toolbox](#),” *Clingendael Policy Brief*, (The Hague: December 2018).

but is struggling with the concept as well. NATO mostly uses the wording that ‘serious cyberattacks’ may trigger Article 5, but what ‘serious’ concretely means is not at all clear.³⁰ In fact, NATO keeps its language on the threshold deliberately ambiguous by adding that a decision as to when a cyberattack could lead to the invocation of Article 5 ‘would be taken by the North Atlantic Council on a case-by-case basis’.³¹ In its response to the Dutch Advisory Council on International Affairs, the Dutch Government concluded in 2012 that in principle Article 5 could also apply to cyberattacks.³²

Could Article 42(7) be triggered by a cyberattack?

The EU Cyber Security Strategy of 2020 shies away from definite conclusions on this question and instead it intends to “reflect upon the interaction between the cyber diplomacy toolbox and the possible use of Article 42(7) TEU and Article 222 TFEU”.³³ As long as there is no clear common language on the circumstances under which cyberattacks may be used to invoke one of the two articles, it remains up to the victims of such cyberattacks themselves to decide whether or not to invoke either of the articles – or both. Cyberattacks that take place entirely in cyberspace and do not have a direct or indirect impact on the territory or functioning of a state or the physical infrastructure on that state’s territory should in principle not justify the invocation of Article 42(7), considering that territory is by law limited to the physical territory of a state, its territorial waters and the airspace above the two. Moreover, as cyberattacks generally tend to fall below the threshold of an armed attack³⁴, in most cases it would not be warranted to invoke Article 42(7). Nevertheless, there are situations in which a member state considers that a cyberattack does meet the threshold of an armed attack, and then questions could always be raised regarding possible requests for mutual assistance.³⁵

30 For example: Jens Stoltenberg, “[NATO will defend itself](#)”, *NATO*, (29 August 2019); see also: Stephen Jackson, “[NATO Article 5 and Cyber Warfare: NATO’s ambiguous and outdated procedure for determining when cyber aggression qualifies as an armed attack](#),” *Center for Infrastructure Protection & Homeland Security*, (26 August 2016).

31 For example: North Atlantic Treaty Organization, “[Brussels Summit Communiqué](#),” *NATO*, (14 June 2021).

32 “[Kabinetsreactie op AIV/CAVV advies over digitale oorlogsvoering](#),” DVB/VD-319/12 (in Dutch), 6 April 2012.

33 European Commission, “[The EU’s Cybersecurity Strategy for the Digital Decade](#),” *JOIN* 18, (Brussels: 16 December 2020).

34 See for an overview of when cyberattacks can fall within the scope of an armed attack: François Delerue, “[6 - The Threshold of Cyber Warfare: from Use of Cyber Force to Cyber Armed Attack](#),” in *Cyber Operations and International Law*, (Cambridge: Cambridge University Press, 2020): 273-342.

35 Boddens Hosang and Ducheine, (2020): 17.

Finally, it is unclear how convincing the attribution should be when any countermeasures are deliberated³⁶; it could be assumed that cooperation in attribution is also an important part of the mutual defence efforts, but this is not clearly stated anywhere. From that perspective, improved cooperation in the EU context to increase common attribution capabilities of cyberattacks could be seen as a welcome step that may even have some deterrent value of its own.

Are space-based assets covered by Article 42(7)?

Space will undoubtedly be one of the next areas of competition between states. In many countries, both in Europe and beyond, 'space' is becoming an area that is receiving an increasing amount of attention, making it a "contested and congested political and technological arena".³⁷ This raises the question of to what extent collective defence and mutual assistance commitments extend to space-based assets. Even though international law does not formally define the boundaries, there is a broad consensus that a state's airspace ends exactly where a satellite's orbit begins, the so-called Kármán Line at a height of 62 miles above the earth's surface.³⁸ But as with cyber, the boundaries are becoming blurred and political statements are introducing ambiguity. For example, during the June 2021 Brussels Summit, NATO leaders declared that "attacks to, from, or within space present a clear challenge to the security of the Alliance, the impact of which could threaten national and Euro-Atlantic prosperity, security, and stability, and could be as harmful to modern societies as a conventional attack"³⁹. Therefore, attacks to, from or within space could theoretically lead to the invocation of Article 5 of the North Atlantic Treaty, in particular when they would affect the critical infrastructure on a state's territory or the functioning of the state itself.

So far, there does not appear to be consensus within the EU to consider space as a new operational domain and it remains unclear whether an armed attack on a space-based asset could trigger the invocation of Article 42(7). Most would agree that armed forms of aggression in space – such as attacks on satellites – should have direct consequences for key infrastructure on a state's territory in order to meet the requirements of the article. Nevertheless, taking into account the militarisation of space and the implications this might have for Europe's security generally and critical space infrastructure specifically, the possible applicability of Article 42(7) to space-based assets of the EU

36 See for example Annegret Bendiek and Matthias Schulze, "[Attribution: A Major Challenge for EU Cyber Sanctions](#)," *SWP Research Paper*, (16 December 2021).

37 Daniel Fiott, "[Securing the Heavens. How can space support the EU's Strategic Compass?](#)," *European Union Institute for Security Studies* 9, (April 2021).

38 Eric Betz, "[The Kármán Line: Where does space begin?](#)," *Astronomy*, (5 March 2021).

39 North Atlantic Treaty Organization, "[Brussels Summit Communiqué](#)," *NATO*, (14 June 2021).

or its member states should be explored in the years to come. One could think of, in this regard, a variety of scenario exercises but also explore the possibility of incorporating new domains such as space and cyberspace into EU law. Moreover, it would be helpful if the EU outlines a roadmap for the protection of its space-based assets, taking into account the potential applicability of Article 42(7). The EU Strategic Compass draft text of November 2021 calls for the development of an EU space strategy for security and defence. This could provide the context for discussing the applicability of Article 42(7) to space.

Does the territorial scope of Article 42(7) extend to overseas territories?

To determine whether Article 42(7) is also applicable to the overseas territories of EU member states, one should look at the general applicability of EU treaty law to these territories. In that regard it is important to note that the EU distinguishes between two types of overseas territories: the EU's outermost regions (OMRs)⁴⁰ and the EU's overseas countries and territories (OCTs)⁴¹. The EU counts nine OMRs, which are very distant from the European continent. The OMRs form an integral part of the EU, and therefore EU treaty law applies to these regions. In contrast, the 13 OCTs of the EU do not form part of the EU territory and the Single Market. As a result, EU treaty law, including Article 42(7), does not apply to these countries and territories. In the context of the overseas countries and territories of the Netherlands, this means that an armed attack on one of the three countries or special municipalities cannot trigger the invocation of Article 42(7). This is only reserved for the OMRs. There are also certain territories located outside of continental Europe such as the Spanish cities of Ceuta and Melilla that are considered an integral part of the EU and that would therefore be covered by Article 42(7) – which is not the case under the provisions of the North Atlantic Treaty.⁴²

40 The EU's outermost regions include: French Guiana, Guadeloupe, Martinique, Mayotte, Reunion Island and Saint-Martin (all FR), the Azores and Madeira (PT), and the Canary Islands (ES).

41 The EU's overseas countries and territories include: Aruba (NL), Bonaire (NL), Curaçao (NL), French Polynesia (FR), French Southern and Antarctic Territories (FR), Greenland (DK), New Caledonia and Dependencies (FR), Saba (NL), Saint Barthélemy (FR), Sint Eustatius (NL), Sint Maarten (NL), St. Pierre and Miquelon (FR), Wallis and Futuna Islands (FR).

42 The [North Atlantic Treaty](#) specifically restricts its geographic scope in its Article 6: *"For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack: on the territory of any of the Parties in Europe or North America, on the Algerian Departments of France, on the territory of Turkey or on the Islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer;"*.

Applicability of Article 42(7) to the maritime domain

Article 42(7) covers the land areas, airspace and internal and territorial waters of the various EU member states. If an armed attack would occur within the scope of these areas, an EU member state could, without hesitation, invoke Article 42(7). Relying upon the maritime zones as defined in the UN Convention on the Law of the Sea, this implies that the territorial scope of Article 42(7) does not extend to the exclusive economic zone (EEZ)⁴³ of a country. This is an important qualification that is of particular relevance given the maritime disputes between Greece, Cyprus and Turkey in the Eastern Mediterranean.⁴⁴ Even though the EEZ would fall outside the scope of Article 42(7), there is still the matter of disputed territorial waters around the Aegean Islands where Greece might claim that the Article should apply. The specific situation of the Eastern Mediterranean is further discussed in more detail in [Annex 3](#) to this report.

Finally, the maritime domain harbours another area where misunderstandings might arise with reference to the applicability of Article 42(7): ships sailing under the flag of an EU member state in international waters, or critical infrastructure belonging to an EU member state. As described above, it is evident that the internal and territorial waters fall within the scope of Article 42(7). But as Article 42(7) is only applicable to the territory of the EU member states, which is limited to the land areas, territorial waters and the airspace above them, the article does not extend to international waters. This means that an EU member state cannot invoke Article 42(7) if ships sailing under its flag in international waters would become the victim of an armed attack. This is again markedly different from NATO's Article 6, which expands the territorial scope of the collective defence clause of the North Atlantic Treaty to "the forces, vessels, aircraft of any of the parties in (...) the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer". This more restrictive wording of Article 42(7) is yet another indication of how the EU differs from NATO as a military alliance. Chapter 4 will discuss this further as part of the considerations of member states to potentially invoke both articles in various situations.

43 The exclusive economic zone is a maritime zone which may extend up to 200 nautical miles from the coast. In this area the coastal state has sovereign rights in terms of exploration and economic exploitation.

44 See the contribution of Constantinos Adamides to this report in Annex 3, as well as Elie Perot, "[Solidarity and deterrence in the Eastern Mediterranean. An analysis of the delicate question of collective defence between EU member states vis-à-vis Turkey](#)," *Fondation pour la Recherche stratégique* 13, (30 June 2021): 19-20.

4 Possible situations in which Article 42(7) could be invoked

Based on the above review of the scope of Article 42(7) and a series of interviews with policymakers across various countries in the EU, a picture emerges of three distinct but not mutually exclusive situations in which Article 42(7) could plausibly be invoked. First, the precedent set by France has made it clear that Article 42(7) could again be invoked in response to a terrorist attack on the territory of an EU member state, not dissimilar to NATO's invocation of Article 5 in response to 9/11. Second, given the increased prominence of hybrid threats, the article could be invoked in response to forms of armed aggression such as cyberattacks that remain below the threshold of a conventional military attack, but that nonetheless inflict significant damage on an EU member state. Finally, and politically the most sensitive, the article could be invoked as a form of collective defence in response to a conventional military attack on an EU member state. The latter becomes particularly complex if the article is invoked by an EU member state *against* a NATO ally, but there are also plausible scenarios in which a non-NATO EU member state could invoke the article. Each of these three situations, their potential ramifications and related strategic considerations will be discussed in turn and illustrated with a brief fictional scenario.

Bataclan 2.0: responding to a terrorist attack

When France invoked Article 42(7) in response to the Bataclan attacks, it did so both as a political statement on the need for EU solidarity and as a genuine call for assistance in its fight against Islamic terrorism.⁴⁵ The attack had taken place on French soil and was partially conducted by EU-born assailants, but was claimed by the Islamic State (IS) in retaliation for French airstrikes on targets in Syria and Iraq. In response, EU member states supported French forces in their military operations against IS in the Levant as well as their operations in Africa. They also provided non-military support such as the sharing of intelligence.⁴⁶ It is most probable that an EU member state that suffers from a significant terrorist attack orchestrated by an external actor would again invoke

45 Niklas Nováky, "[The Invocation of the European Union's Mutual Assistance Clause: A Call for Enforced Solidarity](#)," *European Foreign Affairs Review* 22, no. 3, (2017): 357–376.

46 For a good overview of the French invocation of Article 42(7) and the response by other EU member states, see Suzana Elena Anghel and Carmen-Cristina Cirlig, "[Activation of Article 42\(7\) TEU: France's request for assistance and Member States' responses](#)," *European Parliament Briefing*, (Brussels: European Parliamentary Research Service July 2016).

the Article against a *non-state* entity, as illustrated with the example of Scenario 1. This would be a political call to action for EU member states to join military operations and provide other forms of support such as intelligence sharing or political, diplomatic and economic measures against terrorist movements in conflict-stricken or fragile states that either lack the will or the ability to take action themselves.

Scenario 1 – “Bataclan 2.0”

It is February 2022. Sweden is rocked by a series of simultaneous bombings in Stockholm, Gothenburg and Malmö that kill more than 80 people. The attacks are claimed by the Islamic State in the Greater Sahara as retaliation for Sweden’s leading role in the command of Task Force Takuba in the Sahel. After days of consultations in the Political and Security Committee, Sweden formally invokes Article 42(7) TEU and asks other EU member states for military support and all possible capabilities to reinforce Task Force Takuba.

In this scenario of a major terrorist attack, the relationship between Article 42(7) and Article 222 depends on the political aims and capacity of the invoking country. As described in chapter 2, a large EU member state may well prefer *only* to invoke Article 42(7), which would squarely put it in control of the eventual response – as France did in 2015. A smaller EU member state that is overwhelmed by the damage caused by the attack could opt instead to invoke Article 222 and call in support from the EU and its institutions. The main factor determining the state’s choice between the two articles is whether or not the afflicted country primarily expects assistance in *retaliating* against the attack or in *dealing with its consequences*. The potential role of the EU institutions will be further discussed in chapter 5.

Testing the threshold – Article 42(7) in response to hybrid threats

As described in chapter 2, the wording of Article 42(7) originated in the late 1940s and early 1950s, just like NATO’s Article 5. As such, its genesis far predates the emergence of new types of threats that a) emerge in the ‘grey zone’ below the threshold of conventional kinetic attacks; b) that blend together military and non-military means to destabilise an adversary; c) that are delivered in de-territorialised environments such as space or the digital domain; d) that make attribution difficult; and e) that have adversaries move up and down the escalation ladder.⁴⁷ While extensive

47 For a discussion on deterrence against hybrid threats across various domains, see Tim Sweijts, Samuel Zilincik, Frank Bekkers and Rick Meessen, “[A Framework for Cross-Domain Strategies against Hybrid Threats](#),” *HCSS Report*, (The Hague: January 2021).

discussions have taken place in recent years on the applicability of NATO's Article 5 to cyberattacks or other hybrid forms of aggression⁴⁸, such discussions have only recently and somewhat reluctantly begun within the EU on the applicability of Article 42(7). Federica Mogherini's call in 2016 for the EU member states to develop a 'common operational protocol' to clarify the use of the article in case of a 'wide-ranged and serious hybrid threat' has largely remained unanswered.⁴⁹ In November 2021, in the context of the upcoming Strategic Compass, the Dutch Parliament called upon the government to advocate for the applicability of Article 42(7) to hybrid threats and to clarify the available response options and instruments.⁵⁰

Scenario 2 – “Testing the threshold”

It is November 2022. Germany's new 'Ampel' coalition has taken a tougher stance against the Russian Federation and has still not certified the Nordstream 2 pipeline, citing regulatory concerns that Russia interprets as political in nature. A large-scale cyberattack paralyses the German harbour of Hamburg, leading to significant economic damage. Subsequent electricity failures also affect primary healthcare services, in the middle of a new wave of Covid infections that have already seen intensive care wards across the country stretched to the limit.

The attack is accompanied by a disinformation campaign blaming the German authorities for incompetence, insufficient maintenance of the energy infrastructure and short-sightedness in securing energy supplies. German security services claim to have traced the cyberattack to APT 'Turla', a group of hackers operating from within the Russian Federation. Germany invokes Article 42(7), asking other EU member states and the EU Agency for Cybersecurity (ENISA) for assistance in repelling the continuous cyberattacks and – if the Russian Government does not cooperate in stopping the attacks – further economic sanctions against Russia. Germany also asks the EU member states and institutions for support for its healthcare system and energy infrastructure.

48 As recently reinforced by the alliance's [Brussels Summit Communiqué](#) of 14 June 2021, which states, among other things, that “Allies recognise that the impact of significant malicious cumulative cyber activities might, in certain circumstances, be considered as amounting to an armed attack.”

49 European Commission, [“Joint Framework on Countering Hybrid Threats: A European Union Response,”](#) JOIN 18, (6 April 2016): 18. The document concludes that “As regards preventing, responding to and recovering from hybrid threats, it is proposed to examine the feasibility of applying the Solidarity Clause Article 222 TFEU (as specified in the relevant Decision) and Art. 42(7) TEU, in case a wide-ranging and serious hybrid attack occurs. Strategic decision making capacity could be enhanced by establishing a common operational protocol.” (emphasis added).

50 Parliamentary Motion by the MPs Piri et al., 35 925 V, nr. 32, 18 November 2021.

From interviews it becomes clear that for most EU member states hybrid threats are seen as both most relevant for a potential invocation of Article 42(7), and as most unclear as to which responses would be appropriate. A series of exercises conducted by the European External Action Service (EEAS) in a PSC format throughout 2021 have explored various scenarios, including responses to a large-scale cyberattack, various forms of disinformation campaigns, an influx of refugees and the involvement of unidentified armed actors.⁵¹

While there is generally a broad consensus emerging among EU member states that Article 42(7) could legitimately be invoked in response to hybrid forms of aggression, several thorny issues remain. The first is the debate over the threshold, a perennial conundrum in all forms of credible deterrence due to the preference to retain strategic ambiguity and not signal clearly to a potential adversary what the 'red lines' are, nor how transgressions of these lines will be responded to.⁵² Like NATO allies, EU member states prefer to deliberately keep the threshold undefined and will decide on a case-by-case basis whether or not the article is to be invoked.⁵³ The EU also often remains ambiguous in matters of European defence "to deliberately leave room for interpretation so that potential supporters can project their wishes onto an idea, even if there is no consensus on its actual meaning".⁵⁴ While this ambiguity is both prudent from a deterrence perspective and politically expedient to circumvent disagreements, it does make it harder for EU member states to align their perceptions and the expectations of one another. This could lead to a situation where some states could question the legitimacy of the invocation of the article and subsequently refrain from rendering meaningful assistance. This makes it imperative to run regular tabletop exercises and simulations, which help to create a common frame of reference among EU member states without embarking on counterproductive negotiations on purely hypothetical thresholds.

Second, it is as yet unclear which role EU institutions could – and should – play to counter hybrid forms of aggression. Unlike countering conventional military threats, where the EU is far less equipped to act in comparison to NATO, the EU has a wide-ranging toolbox at its disposal to respond to various forms of hybrid threats.⁵⁵ These include several of its specialised agencies and departments, such as the EU Agency for Cybersecurity (ENISA) in the case of cyberattacks, the Strategic

51 Clingendael interviews, (October–November 2021).

52 See for example Thomas G. Mahnken and Gillian Evans, "[Ambiguity, Risk, and Limited Great Power Conflict](#)," *Strategic Studies Quarterly*, (Winter 2019): 57-77.

53 Clingendael interviews, (October–November 2021).

54 See Clara Sophie Cramer and Ulrike Franke, "[Ambiguous Alliance: Neutrality, Opt-Outs and European Defence](#)," *ECFR Essay Collection*, (28 June 2021).

55 For a good overview, see Gustav Gressel, "[Protecting Europe against Hybrid Threats](#)," *ECFR Policy Brief*, (June 2019).

Communications and Information Analysis Division of the EEAS that has expertise in countering disinformation campaigns, or the Frontex agency which could help to counter the 'weaponisation' of migration flows. The EU could also impose economic sanctions against states that it deems responsible for hybrid aggression, as it threatened to do against Belarus in 2021 in response to the migrant crisis engineered by Alexander Lukashenka. These can already be activated *without* resorting to Article 42(7).

However, given the strictly intergovernmental and member state-driven character of Article 42(7), it would be up to the affected member state to decide whether or not to make use of these EU instruments. Due to the sheer amount of EU institutions, departments and task forces that could potentially be involved it may be unclear to member states which instruments they could best resort to and invoke, especially in times of crisis when decisions have to be taken at extremely short notice and national institutions may be overwhelmed. In this regard the development of a 'hybrid toolbox', as set out in the draft Strategic Compass and as advocated by the Netherlands, could be beneficial to further clarify the available instruments that could be deployed and could help to promote coherence in the EU's response to counter and deter hybrid threats.⁵⁶ Nevertheless, it remains an open question *who* would coordinate the provision of support in such instances, in particular *between* different EU agencies and institutions. This co-ordination challenge will be further touched upon in chapter 5.

Finally, for those 21 EU member states that are also members of NATO, the acknowledgment that both Article 42(7) and Article 5 of NATO apply to severe hybrid threats is yet another reason why there should be closer EU-NATO cooperation in countering these threats. Although this has been identified by both organisations as a key area for future cooperation and countering hybrid threats makes up roughly one-third of all the initiatives on their mutually agreed lists of concrete joint initiatives, in reality progress has been modest at best and many challenges remain. Key among these are longstanding difficulties in sharing classified information and moving beyond merely promoting staff-to-staff contacts, which would require a more strategic vision and strategic dialogue between both organisations – as well as secure communication infrastructure.⁵⁷

56 Ministry of Defence and Ministry of Foreign Affairs of the Netherlands, '[Kamerbrief Kabinetsappreciatie concept Strategisch Kompas](#)', number BS2021026358, 10 December 2021.

57 Dick Zandee, Sico van der Meer and Adája Stoitman, '[Countering Hybrid Threats: Steps for improving EU-NATO cooperation](#),' *Clingendael Report*, (The Hague: October 2021).

Cavalcade of calamity – Invoking Article 42(7) against a conventional military attack

Most EU member states make it abundantly clear that they do not see Article 42(7) as the EU's equivalent of NATO's Article 5 and prefer to underline the difference between 'mutual assistance' and 'collective defence'. Those EU member states that are *also* NATO member states will first and foremost look to NATO for collective defence, in particular when it concerns defending their territory against a powerful adversary such as the Russian Federation. It is highly unlikely that a NATO ally will *only* invoke Article 42(7) in case it comes under a conventional military attack from a non-NATO ally, not least because most NATO allies attach great importance to the involvement of non-EU members such as the United States and the United Kingdom in such scenarios. This makes Article 42(7) particularly relevant for those EU member states that are *not* members of NATO but that are in close proximity to the Russian Federation, such as Finland and Sweden. There could in theory also be situations in which countries invoke both articles: Article 5 for collective defence by NATO allies, and Article 42(7) to ask for the assistance of other EU member states.

Scenario 3 – “Cavalcade of calamity”

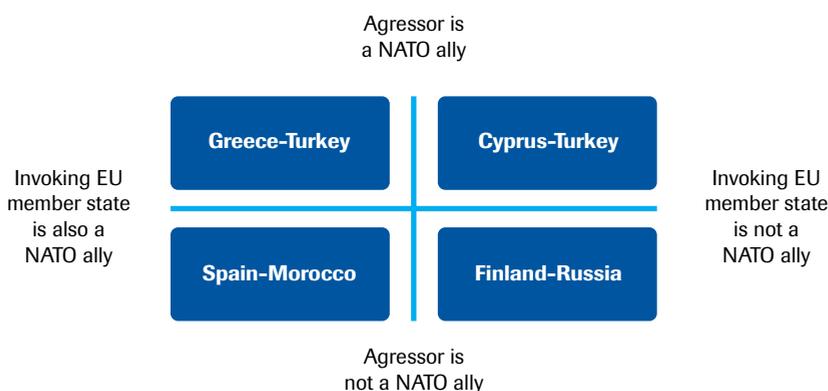
It is August 2022. Tensions are high in the Eastern Mediterranean, related to both gas exploration and a new influx of migrants. After several near-misses and incidents between Turkish and Greek vessels, a Turkish navy vessel accidentally rams a ship belonging to the Greek coastguard. Turkey claims that the ships were both in Turkish territorial waters; Greece claims that they were in Greek territorial waters. Tempers run high in Athens and Ankara, with spillover effects on Cyprus. Greece orders its naval forces to open fire next time a Turkish ship crosses into Greek territorial waters; a day later, a Greek warning shot accidentally hits a Turkish ship. The situation rapidly escalates as Turkish jets bomb a Greek naval base in retaliation and hostilities erupt along the contact line on Cyprus.

Cyprus and Greece jointly invoke Article 42(7), asking EU member states for military assistance to repel Turkish naval forces, to strengthen the UN peace-keeping mission in Cyprus (UNFICYP), to enforce a ceasefire and a no-fly zone over the Eastern Mediterranean, as well as demanding crippling EU sanctions against Turkey. NATO is utterly paralysed and goes through one of the deepest crises in its history as two of its allies face off against one another.

It is also possible, however, that an EU member state would invoke Article 42(7) against a NATO ally; interviews, recent studies and political statements by Greek leaders all point towards an unlikely but plausible scenario that either Greece or Cyprus

could invoke the article against Turkey after a military confrontation in the Eastern Mediterranean.⁵⁸ Some interviewees also indicated that it is plausible that an EU member state that is a member of NATO could still invoke Article 42(7) in response to an attack on their territory that is *not* covered by the North Atlantic Treaty; the two Spanish cities of Ceuta and Melilla in Africa would be an example. Operating from this assumption and taking geographical and geopolitical factors into account, there are theoretically four sets of situations in which the article could be plausibly invoked against a conventional military attack by a state actor (see *figure 1*).

Figure 1 Hypothetical scenarios for invoking Article 42(7) against an external aggressor



There is no clear playbook that can shed light on what would happen in such calamitous scenarios. EU member states would each decide on a case-by-case basis, depending on the political and military context. Such decisions would be up to the Heads of State and Government and, most likely, legal aspects would only play a relatively limited role in their calculations. Despite all discussions about European strategic autonomy, in the case of a major security crisis on the European continent its leaders are still more likely to look towards Washington than towards the EU quarter in Brussels when making their strategic considerations. The EU would most likely be seen more as an instrument to impose economic sanctions on an aggressor than as a vehicle for a credible military response. The expected responses therefore remain – and *should* remain – shrouded in mystery. But what is clear from all interviews and studies to date is that all sides see the invocation of Article 42(7) in all four of the abovementioned cases in the third scenario as the *ultimo ratio*, the article of last resort.

58 See the contribution of Constantinos Adamides in Annex 3 of this report, as well as Elie Perot, “[Solidarity and deterrence in the Eastern Mediterranean: An analysis of the delicate question of collective defence between EU member states vis-à-vis Turkey](#),” *Fondation pour la Recherche Stratégique* 13 (30 June 2021).

In the case of a non-NATO EU member state, it would already test the limits of solidarity within the EU if its members would effectively be expected to go to war against a major adversary in order to defend a fellow EU member state. The EU is neither designed nor presently equipped to handle such confrontations in the upper part of the spectrum of violence, and most likely its member states would seek security assistance in regional or ad hoc formats, possibly drawing in the United States and/or the United Kingdom through bilateral or regional security arrangements.

To make matters worse, a NATO ally invoking Article 42(7) against *another* NATO ally would put the alliance under immense political and diplomatic strain, a situation described in an interview as 'catastrophic'. NATO has tried to contribute towards de-escalation between its allies in order to avoid such an existential crisis from materialising. A lack of American leadership is mentioned by some as one of the reasons why relations between Greece and Turkey could deteriorate up to the point where one NATO ally threatens to invoke an EU article against another.⁵⁹ But NATO's attempts to mediate, including personal efforts by the Secretary General, are complicated by the fact that the alliance is designed for collective defence and lacks institutional mechanisms to adjudicate and resolve disputes between allies. It is therefore highly likely that NATO would be institutionally and politically paralysed in the case of a serious military confrontation between two of its members. This has made it imperative for most NATO allies to make all efforts to avoid such an existential crisis from ever materialising in the first place – and has therefore made Article 42(7) a powerful tool in the hands of Greece to spur the EU into action against Turkey. There are some signs that this has paid off; in fact, as discussed further in [Annex 1](#) to this report, France's recent step to reassure Greece by engaging in a bilateral security pact is explicitly designed to *avoid* Greece from having to invoke the article in the first place; and as discussed in [Annex 3](#), both Athens and Nicosia have little "faith in the EU's ability to provide the necessary deterrence force required to stabilize the Eastern Mediterranean". Article 42(7) therefore serves not only as a reminder of the EU member states' binding security commitment towards one another, but also as yet another important reason for the early and peaceful resolution of disputes between NATO allies.

59 Perot, (2021): 6; see also [Annex 3](#) to this report.

5 Views from member states and the role of EU institutions

The discussions on Article 42(7) as well as the practice so far – the invocation by France in 2015 – show that member states have different views on the scope and applicability of the article. Furthermore, the role of the EU institutions is unclear, in terms of decision-making and coordination if one or more member states would ask for assistance from 'Brussels'. In this chapter the EU member states are grouped in different categories with regard to their views on the scope and applicability of Article 42(7), based on literature and interviews. Next, the chapter zooms in on the question of what role the EU institutions could play in the case of the invocation of Article 42(7) and what procedures might be needed for that purpose.

A scattered landscape of national views

One of the reasons why the topic of Article 42(7) has been given limited attention in the run-up to the release of the draft text of the EU Strategic Compass in November 2021 is the divergency of views among the member states. Chapter 4 already alluded to this problem. Although it is always difficult to definitively categorise EU member states due to the specificity and nuance of national views, the different positions can roughly be grouped as follows:

'NATO first' adherents: this group is largely composed of Eastern European member states with the Baltic States and Poland forming the core. These countries view Article 42(7) as potentially undermining NATO's Article 5, and fear that it might endanger the American security guarantee. Therefore, their objective is to minimise the role and applicability of Article 42(7) and, preferably, not to discuss the matter at all. They do not object to conducting exercises, as long as these remain hypothetical in nature. They see no need for additional guidance or handbooks beyond the Opinion of the Legal Service of the Council.

The neutral abstentionists: EU member states not belonging to NATO due to a long tradition of neutrality and non-alignment – Austria and Ireland in particular – are hesitant concerning Article 42(7) for different reasons. While they acknowledge that they have binding commitments in providing aid and assistance to EU member states when they invoke the article, they will rely on the explicit reference to their specific

situation and will show reluctance when the request includes military means to be made available to the requesting EU member state(s). Their interests in keeping the article largely 'off the table' and out of policy discussions coincide with those of the abovementioned 'NATO first' adherents.

The legalists: this group is constituted by member states such as Germany which place particular emphasis on the legal dimension of Article 42(7), in particular concerning the definitions of 'territory' and the threshold for 'armed aggression'. It should be noted that legal arguments can and will be used by these countries in the context of a political reluctance to engage in discussions on the bandwidth and ramifications of Article 42(7). There is a degree of overlap between the legalists and the 'NATO first' adherents. The former are less reluctant to engage in policy discussions on the operationalisation of Article 42(7) than the latter, but they will want to avoid any conceptual and legal inflation of the article's key conditions.

The pragmatists: this group hosts a variety of member states that see some merit in Article 42(7) as a potential tool when facing a crisis directly affecting their national security, in particular because they may lack other options. In the case of Finland and Sweden – non-NATO members – it is the threat from Russia that influences their views on Article 42(7), even if they are realistic about the differences between what the EU can deliver compared to a military alliance such as NATO. They will also spearhead efforts to discuss the article's applicability to hybrid threats, as further discussed by Teija Tiilikainen in [Annex 2](#). For Cyprus and Greece, the challenge posed by Turkey is dominant; they particularly see the utility of this article as a way to put pressure on other EU member states to take their concerns seriously, even if they are acutely aware of the risks involved – as further discussed by Constantinos Adamides in [Annex 3](#). Spain might well regard Article 42(7) as a useful 'backup option' to plug certain gaps in its other collective self-defence arrangements, in particular since the NATO Treaty does not apply to the Spanish enclaves in Morocco (Ceuta and Melilla). Outside those who see a direct potential benefit for themselves, there are many member states which can be placed in this group and which are in principle willing to consider the scope and applicability of the article in order to gain more clarity – or to prevent future surprises if member states invoke Article 42(7).

The principled proponents: France practically constitutes this group all by itself. For Paris, there are principled political reasons for the article's existence, namely the aim of European strategic autonomy and of the EU becoming a geopolitical actor in its own right. It is an often held misunderstanding that France wants to *replace* NATO (Article 5) with the EU's Article 42(7). As pointed out by Elie Perot in [Annex 1](#), Paris still regards NATO as the preferred option for the security and defence of Europe. On the other hand, France sees Article 42(7) as a European alternative if NATO becomes dysfunctional and if one or more EU member states are facing serious threats to their national security. In that case, France remains of the opinion that other EU member states should assist

the member state under attack, if needed with military means. Paris is acutely aware that it is in a minority position in this regard and realises that it needs to tread carefully, including during its presidency of the EU in early 2022. It is also concluding bilateral and regional security arrangements with specific countries that are particularly concerned, which may also help to avoid the calamitous scenario of one NATO ally invoking Article 42(7) against another.

Commonalities and potential convergence

At first glance there seems little common ground between those groups, but there are some commonalities. None of the EU member states wants to replace NATO (Article 5) with the EU (Article 42(7)) and turn the EU into a collective defence arrangement. This agreement in principle offers room for convergence, even between the two groups most apart from each other, the NATO first adherents and the principled proponents.

Secondly, there seems to be little or no objection to providing military aid and assistance in support of operations outside the EU, as was the case after the Bataclan attack in Paris in 2015 ('backfilling' for Operation Serval in Mali and for French contingents in Afghanistan and Iraq). Clearly, this offers scope for future situations, in particular if terrorist or other non-state attacks would force an EU member state to reduce the number of forces deployed in operations outside the EU in order to free up capacity for security operations at home. The mutual assistance clause serves in this context as yet another reminder of the need for closer EU defence cooperation.

Thirdly, if NATO considers non-military aggression such as serious cyberattacks as constituting a potential Article 5 situation, it is difficult to argue that the EU should exclude these under Article 42(7) – all the more because the EU may have a much larger role to play in mitigating the damage caused by cyberattacks. The name of the game here is not 'NATO or the EU', but how to arrange a sensible division of potential types of assistance that both organisations could deliver in cases of member states asking for help. The upcoming EU-NATO Declaration should address this topic of how to define the mutually reinforcing assistance to member states in case of cyberattacks.⁶⁰

60 Dick Zandee, Sico van der Meer and Adája Stoetman, "[Countering Hybrid Threats: Steps for improving EU-NATO cooperation](#)," *Clingendael Report*, (The Hague: October 2021).

The role of the EU institutions

The invocation of Article 42(7) by France in 2015 has created a precedent regarding the role of the Council, in which the topic was discussed but without any formal decision being taken. The Council Outcome even states that such a decision is not required at all: *“Ministers expressed their unanimous and full support for France and their readiness to provide all the necessary aid and assistance. (...) No formal decision or conclusion by the Council will be required to implement article 42(7). The High Representative underlined that this is not a CSDP operation, but an activation of bilateral aid and assistance.”*⁶¹ Hence, it demonstrated that (a) the member states unanimously held that support for France was warranted and thus would fulfil their legal obligations of assistance, (b) it was the common understanding among the EU member states that neither a formal Council decision nor Council Conclusions are needed to invoke Article 42(7), and (c) the High Representative holds the view that in the French case assistance was not considered as a CSDP operation but as bilateral aid and assistance.

The downside of this precedent is the risk that any member state invoking Article 42(7) could in theory enforce support from EU member states by introducing the invocation almost by surprise in the Council or perhaps even without bringing it to the Council's attention.⁶² In practice, such *faits accomplis* are unlikely to occur; as further discussed in [Annex 3](#), countries such as Cyprus that may consider invoking the article are acutely aware of the risks involved. The political reality within the EU is one of extensive consultations prior to major decisions, exactly in order to avoid unpleasant surprises. While a Council decision is, strictly speaking, not needed in order to ‘activate’ the article, member states will nonetheless strongly prefer to see their invocation supported and affirmed by a public statement from the Council. They therefore have an incentive to consult widely prior to ‘throwing the article on the table’, including within the Political and Security Committee. This makes regular exercises in this format even more important to align expectations on the scope and applicability of Article 42(7).

Connected to the question of the role of the Council is the issue of what role the supporting structures should play. Formally, the EU institutions have no role whatsoever regarding Article 42(7), unless they are requested to engage by the member state itself. It is the member state that is in the driving seat. In the 2015 case, France approached selected EU member states’ capitals to ask for aid and assistance, based on a list of needs defined by Paris. As already stated in this report, other member states might be

61 Council of the European Union, [“Outcome of the Council meeting,”](#) EU document 14120/15, (Brussels: 16-17 November 2015).

62 Clingendael interviews, (October–November 2021). See also Sven Biscop, [“The European Union and Mutual Assistance: More than Defence,”](#) The International Spectator (vol. 51, 2016), pp. 119–125.

looking for assistance in formulating the request and could ask the EU institutions to take up that role. Such coordination structures would have to be pre-arranged in order to be activated quickly if such a request would arrive from one or more capitals.

One of the tools that could potentially be used to support coordination efforts upon the invocation of Article 42(7) is the Integrated Political Crisis Response (IPCR) mechanism of the European Council.⁶³ It can be activated by either the Presidency of the Council or a member state invoking Article 222 TFEU “to coordinate the political response to major cross sectoral and complex crises”.⁶⁴ There are, however, a few downsides to using this mechanism. Firstly, the IPCR can only be activated by the Council Presidency, which sits uneasy with the member state-driven character of Article 42(7). Consequently, much will depend on which country holds the Presidency at the time of the crisis as well as its relations with the affected state. Secondly, the capabilities of the IPCR are relatively limited and designed for crises of a non-military nature. The IPCR mainly plays an anticipatory and coordinating role and has largely been called in to cope with crises within the EU, while responding to an armed attack originating from outside the EU that falls within the scope of Article 42(7) might require additional and more advanced capacities, in particular in foreign and defence policy.

Given the limitations of the IPCR, and depending on the characteristics of the request from the victim member state, it may be more suitable to create a *Mutual Assistance Task Force* (MATF) with a leading role for the EEAS. Some member states may harbour reservations in involving the European External Action Service in matters affecting their *internal* security.⁶⁵ Highlighting the double-hatted post of the High Representative for Foreign Policy and the Vice-President of the Commission may offer a creative way out of this conundrum. He could delegate his role to the EEAS Deputy Secretary-General responsible for CSDP and Crisis Response (CSDP-CR), supported by other EEAS departments such as StratCom, Security and Defence Policy (SECDEFPOL) and the Integrated Approach for Security and Peace (ISP). The involvement of the Commission is a necessity as specialised EU Agencies (e.g. Frontex, ENISA) could play a role in assisting member states in addressing particular threats but also for other reasons, such as the unlocking of budgetary instruments. In case of a request for military assistance, the EU Military Staff (EUMS) would be involved.

63 See for an extensive discussion of the IPCR in relation to Article 42(7): Anne Bakker, Sven Biscop, Margriet Drent & Lennart Landman, “[Spearheading European Defence. Employing the Lisbon Treaty for a Stronger CSDP](#),” *Clingendael Report*, (The Hague: September 2016): 27.

64 Council of the European Union, “[How does the Integrated Political Crisis Response \(IPCR\) Mechanism work?](#),” *Factsheet*, (2018).

65 Clingendael interviews, (October–November 2021).

If the EU institutions were to be given a predefined role by the member states, what should it be? Here, the EU enters truly uncharted territory as no such request has ever been made. Based on interviews, member states could consider endowing a MATF with the following roles:

- **An internal coordination role:** in this case the task force would – in close cooperation with and upon the request of the member state(s) invoking Article 42(7) – develop a list of required aid and assistance, contact capitals and construct an aid and assistance package fulfilling as much as possible the needs of the requesting member state(s). The MATF could also follow up on the commitments and support provided and serve as a ‘clearing house’ both between member states and between other EU institutions in order to limit either duplication or gaps in the assistance provided.
- **An external coordination role towards other organisations or third countries:** the affected member state could ask the task force to communicate externally on behalf of the EU as a whole, in particular towards other multilateral organisations such as NATO and the United Nations. The task force could then make use of existing cooperation formats.
- **An active own contribution by the EU institutions:** such aid and assistance could consist of sending EU personnel to the member state(s) concerned, for example cyber security, strategic communications or intelligence experts. Given the broad range of tools in the EU’s ‘toolbox’, the coordination challenge is particularly acute here and the task force could be of use to assist the member states in making full use of the EU’s available instruments.

The latter point stresses the importance for member states to be aware of the various mechanisms and instruments at their disposal in the run-up to a potential Article 42(7) situation. As a result of the exercises held within the PSC, the EEAS is in the process of preparing a document which would shed some light on this matter. In this regard it is important to keep the procedures flexible, in particular as the nature of the requests under Article 42(7) may differ. The rigidity of ‘who should do what’ will be detrimental in coordinating the required aid and assistance in the most timely and effective manner. Although procedures could make up part of the document, perhaps it could also be used for starting a discussion on a common understanding of situations in which Article 42(7) could be invoked. Again, not a fixed list of criteria is needed but rather a catalogue of potential cases to which others could be added as required. Instead of defining the scope and applicability of Article 42(7) it should therefore be an operational options paper, serving the purpose of identifying response options.

Exercises could help to test both the procedures but also the development of a catalogue of potential aid and assistance in order to be better prepared if the occasion would arise in reality. NATO could be involved in exercises where coordination with other organisations would be needed. Hybrid attack scenarios should be part of an

Article 42(7) exercise schedule. No additional structures will be needed: the MATF can be constituted from existing EU institutional elements. With regard to the preparatory bodies under the Council, the Political and Security Committee would certainly play a key role but combined sessions with the Standing Committee on Internal Security (COSI) and the Military Committee could be helpful too, depending on the nature of the scenario and of the requested aid and assistance. No formal Council decision would be needed – unless particular circumstances would require this, e.g. for launching a CSDP operation triggered by the invocation of Article 42(7). However, given the importance of displaying unity and resolve to the outside world, it would be beneficial to follow up on a member state's request with a strong Council statement – which would indeed require unanimity.

6 Conclusions and recommendations

As a clause that is meant to be invoked only as the *ultima ratio* in response to an act of armed aggression, Article 42(7) TEU will never be a popular part of the EU treaties. Many member states are reluctant to engage in difficult discussions to operationalise their binding commitments towards one another. They are right to point out that the EU is neither designed nor currently equipped to operate as a military alliance. For 21 of its member states also member of NATO, the Alliance remains the cornerstone of collective defence in Europe. Article 42(7) is not the EU's direct equivalent of NATO's Article 5 and should not be misinterpreted as such. It is deliberately drafted in a different manner and it refers explicitly to NATO and the policy of neutrality of some EU member states. Instead of strictly positioning Article 42(7) as a competitor to NATO's Article 5, for states that are members of both organisations it would be more logical to look at the article from the perspective of complementarity, based on the growing realisation that framing the dilemma as 'EU or NATO' is not only outdated but even harmful for both organisations. Instead, more cooperation between both organisations that draws on the strengths of both is essential to ward off modern threats.

In addition, an article rooted in the concept of collective self-defence should never be invoked lightly, should not be misused for short-term political purposes and the response to an invocation of Article 42(7) should always comply with Article 51 of the UN Charter and the internationally agreed principles of necessity and proportionality. The EU has many other instruments at its disposal that can be used to respond to a variety of threats and crises. One of these instruments is the solidarity clause of Article 222, even if that article might not be very appealing to certain member states due to the requirement to admit that they are overwhelmed.

Article 42(7) presents the EU with additional challenges. Among others, the threshold for what amounts to 'armed aggression' is deliberately kept ambiguous; moreover, the article has its roots in the early 1950s and its strict limitation to 'territory' raises questions as to its applicability to modern threats in cyberspace – or space itself.

But merely pretending that Article 42(7) does not exist – or attempting to neuter its deeply political character by hiding behind purely legal arguments – are neither realistic nor desirable policy options. The cases of France invoking it in 2015 and Greece's consideration to do so in 2020 show that the EU's mutual assistance clause is likely to be 'here to stay'. If anything, it is a legal argument buttressing the growing political ambition towards a more strategically autonomous European Union that aims to defend

its own members and interests in an uncertain and unsafe world. Rather than a cause for handwringing and concern, Article 42(7) is therefore yet another reason for the EU to reflect seriously, including within the process of the Strategic Compass, on the threats that its members face – and to accordingly increase their preparedness to assist one another in case of an act of armed aggression.

This paper concludes that there are at least three plausible sets of situations in which Article 42(7) TEU could legitimately be invoked: in response to a terrorist attack, against hybrid forms of aggression such as cyberattacks, and as a result of a conventional military attack. There are EU member states that are not members of NATO which might want to rely on the Article as a means of last resort, or there are even some calamitous cases that are thinkable in which one NATO ally could invoke it against another. As uncomfortable and hypothetical as these scenarios may be, the EU should nonetheless be prepared to respond in case they do materialise. The following policy recommendations could therefore be considered by the Government of the Netherlands and other EU member states:

- Although some member states would like to see more clarity on the conditions under which Article 42(7) could be invoked, it is ultimately a *political* choice for a member state to resort to it – and for others to choose what assistance they provide. Everything really does depend on the political and security context at the time, as clichéd and unsatisfactory as this may be. **Flexibility and a degree of strategic ambiguity are therefore essential.** The Netherlands should acknowledge that clarifying and operationalising the article by way of a Council Decision with the introduction of cumbersome procedures or negotiations on fictional thresholds will not only be virtually impossible, it may even be counterproductive.
- That said, strategic ambiguity and context dependency should not be a fig leaf for EU member states to hide behind to avoid discussing the article altogether. Instead, due to the hypothetical ‘what if’ nature of the article, **scenario-based discussions, tabletop and live exercises** such as those organised by the PSC throughout 2021 can serve as a means to align the expectations that EU member states have of one another. These exercises can contribute to more preparedness and awareness, and can thereby ideally lead to a gradual convergence of positions that now still seem far apart. The exercises should not be confined to the PSC; they could also be conducted jointly with the EU Military Committee. Ideally, the possible invocation of Article 42(7) should be incorporated in other EU exercises, including in responding to cyberattacks and/or other forms of hybrid threats. The Netherlands could take a leading role in this regard by advocating more and better integrated EU tabletop and live exercises, including jointly with NATO.

- A proactive and appropriate response to many of the hybrid threats that could lead to an eventual invocation of Article 42(7) would require more **sharing of intelligence** among EU member states, which would depend, among other things, on developing a trusting relationship. Better infrastructure for secure communications of classified information is essential in this regard. Improved cooperation in the EU context to increase common attribution capabilities of cyberattacks would also be helpful, including to increase the deterrent value of Article 42(7) towards perpetrators. In addition, the Netherlands could push for addressing the matter of mutually reinforcing assistance to member states in case of cyberattacks in an eventual new EU-NATO Declaration.
- Acknowledging that the EU has a vast toolbox at its disposal to respond to various threats, including in the context of Article 42(7), the EU member states – including the Netherlands – should actively contribute to and make maximum use of the **non-binding document** that is being developed by the EEAS based on the scenario-based discussions held in 2021. This document should not become a strict set of definitions and procedures or a re-run of the 2016 Legal Opinion of the Council's Legal Services but should instead serve as an operational tool that member states can use to identify which EU institutions and instruments they could potentially involve and how they could do so in practice. This should include potential responses to the invocation of the article in the face of serious hybrid threats, as already suggested by Federica Mogherini in 2016 and by the Dutch Parliament in 2021.
- As a treaty commitment of EU member states towards one another, Article 42(7) is and should remain **strictly member state-driven**. This is not to say that the EU institutions should never have a role to play. For example, the invoking member state or the European Council can endow them with a mandate to act as 1) a 'clearing house' that keeps track of assistance provided by other member states, 2) a coordination mechanism for support from various EU institutions, or 3) an external communicator towards other multilateral organisations. Their exact role will depend on the context, the type of aggression faced by the member state and its request. No new EU structures need to be created for this purpose, but the Netherlands could advocate that existing structures should be prepared in case a request in the context of Article 42(7) is made. A **Mutual Assistance Task Force (MATF)** can be established and led by the EEAS Deputy Secretary-General for CSDP and Crisis Response with the participation of the EU Military Staff, relevant Commission agencies such as Frontex and ENISA and other EEAS departments such as ISP, StratCom and SECDEFPOL. To increase preparedness, it would be beneficial for such a task force to convene regularly and take part in relevant exercises.

- Although the EU has no ‘NATO Article 4’ consultation mechanism, the **invocation of Article 42(7) should not come as a surprise** to other member states. Strictly speaking the European Council only has to take note of the invocation of the article. Unlike NATO’s Article 5, it does not need to be formally activated by a unanimous decision. Legal principles aside, a swift, credible and united EU response should nonetheless ideally be articulated through a statement by the European Council, which would still require consensus. If time allows, it is therefore far preferable for member states to **engage in bilateral and multilateral consultations prior to the invocation of the article**, in particular within the PSC. The Netherlands could suggest models of how the PSC and other relevant committees could be convened at the shortest possible notice for this purpose and could promote preparedness through the abovementioned exercises.
- Finally, Article 42(7) deserves a modest but nonetheless visible place within the broader discussions on European security and defence, especially in the context of the Strategic Compass and related investments such as within Permanent Structured Cooperation (PESCO). Despite the ‘grey zone’ nature of the threats facing the EU member states, the article is a black-and-white codification of their shared fate and their binding commitment to assist one another in the case of armed aggression. As such, **Article 42(7) should serve as yet another powerful reminder to EU member states that they should invest considerably more in their defence capabilities**. This acutely applies to the Netherlands, which not only lags behind in meeting its defence expenditure commitments but is also rather modest when it comes to its contributions to CSDP missions and operations. Capabilities are key to the credibility of mutual assistance arrangements. While policymakers and citizens across the entire European Union may prefer that the article would never be invoked again and may continue to hope for the best, it is better to prepare for the worst.

Annex 1 France and Article 42(7) TEU: great expectations

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In recent years France has been at the forefront of the debates over the role which should be assigned to Article 42(7) of the Treaty on European Union (TEU) – a clause which provides in principle for solidarity between EU member states in the case of armed aggression against one of them. In August 2018, President Emmanuel Macron called in particular for ‘giving more substance’ to this provision, arguing that ‘Europe [could] no longer entrust its security to the United States alone’ and that ‘it [was] up to us to assume our responsibilities and to guarantee European security and thereby sovereignty.’⁶⁶ A few days later, the French head of state further explained that such an initiative should lead, in his view, to ‘a kind of strengthened Article 5 [a reference to NATO’s own collective defence clause] marking a very strong solidarity between EU countries in terms of defence.’⁶⁷

French ambitions regarding Article 42(7) TEU should not come as a surprise. Strengthening this clause is an objective that is indeed very much in line with traditional French thinking regarding EU security and defence policy, which, in the eyes of Paris, should aim for a high level of military ambition while remaining essentially intergovernmental in nature. It should be remembered, moreover, that it was France, together with Germany, that pushed in the first place, during the Intergovernmental Conference preparing the Treaty establishing a Constitution for Europe, for the adoption of a mutual defence clause at the EU level – a provision which eventually entered into force in December 2009, with the Lisbon Treaty.⁶⁸

66 Emmanuel Macron, [“Speech by President Emmanuel Macron – Ambassadors’ Conference 2018,”](#) (27 August 2018).

67 Emmanuel Macron, [“Déclaration de M. Emmanuel Macron, Président de la République, sur la défense européenne, à Helsinki le 30 août 2018,”](#) (Helsinki: 30 August 2018).

68 Jolyon Howorth, [“The European Draft Constitutional Treaty and the Future of the European Defence Initiative: A Question of Flexibility,”](#) *European Foreign Affairs Review* 9, No. 4, (2004): 492-496.

The legacy of November 2015: the only country to have invoked the EU mutual defence clause thus far

Yet, beyond these long-standing political and institutional preferences, France's unique experience with Article 42(7) TEU can also explain why the country today arguably attaches more importance to this provision than most of its EU partners. France indeed remains the first and so far the only EU member state to have invoked this clause, in the wake of the terrorist attacks that took place in and around Paris in November 2015.

At the time, the French authorities did not expect that very concrete results (such as the launching of a new military operation) would follow from their request for assistance. France's European partners nonetheless made tangible, even if often limited, additional contributions to the fight against terrorism in response. Some, such as the United Kingdom and Germany, did so directly, by stepping up their military actions in Iraq and Syria against the Islamic State group, and others indirectly, by increasing their participation in other international missions, for instance in the Sahel or the Levant, so as to free up French military resources for redeployment elsewhere.⁶⁹

But the main effect sought by the French government in invoking Article 42(7) TEU was political, not military. The immediate goal was to raise Europeans' awareness of the common threat posed by Islamist terrorism, as President François Hollande had argued that 'the enemy [was] not an enemy of France' but 'an enemy of Europe'.⁷⁰ At the same time, the invocation of the EU mutual defence clause (rather than NATO's Article 5 in particular) served to send a broader signal to Europeans that they needed to assume greater responsibility for their own defence. Finally, it was deemed useful to demonstrate, if only symbolically, that the rest of the EU unanimously stood by France in times of need. Thus, as Jean-Yves Le Drian, then the French defence minister, admitted, France's decision to invoke Article 42(7) of the TEU in November 2015 was 'a political act above all'.⁷¹

Lessons learned: the need to operationalise Article 42(7) TEU

Since then, Paris has repeatedly stressed that lessons needed to be drawn from this seminal episode. The first invocation of Article 42(7) TEU indeed highlighted the total absence of practical planning at the EU level and, therefore, the risk that the EU mutual defence clause could prove to be an empty commitment in times of crisis – especially in

69 Suzana Elena Anghel and Carmen-Cristina Cirlig, (2016).

70 François Hollande, "[Déclaration de M. François Hollande, Président de la République, devant le Parlement réuni en Congrès à la suite des attaques terroristes perpétrées à Paris et en Seine-Saint-Denis, Versailles le 16 novembre 2015.](#)" (Paris: 13, 16 November 2015).

71 Jean-Yves Le Drian and Federica Mogherini, "[Remarques introductives de la Haute Représentante et Vice-Présidente Federica Mogherini lors de la conférence de presse avec Jean Yves Le Drian, Ministre de la Défense Français, 17 novembre 2015.](#)" *European External Action Service*, (17 November 2015).

the event of a larger-scale armed aggression or if the next target were to be a smaller member state without enough resources to coordinate the assistance provided by its European partners.⁷²

French policymakers have accordingly argued in recent years for the EU mutual defence clause to be made more operational. In addition to President Macron's calls to strengthen Article 42(7) TEU, the French Senate, for instance, suggested in a report published in July 2019 that one should reflect on the future circumstances in which this provision could be invoked and the possible modalities of assistance, not only on a bilateral basis but also at the EU level, recommending, moreover, to give an information and coordination role to an EU institution, such as the High Representative, in case of a new activation of this provision.⁷³ In a similar vein, in May 2020 the French defence minister Florence Parly, in a joint letter with her counterparts from Germany, Italy and Spain, stressed 'the importance of European solidarity to act and react to crises', indicating that '[a] key work, in that regard, will be the operationalisation of the Article 42(7) of the TEU.'⁷⁴ The four defence ministers further stated that '[r]egular scenario-based discussions, wargames and exercises could help reach a common perspective on the possible threats and bolster the political interactions among our capitals', arguing that '[s]uch tabletop exercises should cover all possible worst-case scenarios of crisis.'⁷⁵

The French Presidency of the Council in 2022: an important milestone, but not the end of the debate

The concerns highlighted by France and its partners regarding the lack of operationalisation of Article 42(7) TEU have begun to be addressed at the EU level. Various table-top exercises and scenario-based policy discussions have thus been organised in recent months to generate a better common understanding among EU member states of the role that Article. 42(7) TEU could play in addressing future contingencies.⁷⁶

72 Council of the EU, "Article 42(7) TEU scoping paper," *EU document 14321/19*, (29 November 2019).

This document is available via: Nicolas Gros-Verheyde, "[A défaut d'article 5 de l'OTAN peut-on utiliser l'article 42-7 de l'UE? Faut-il l'encadrer?](#)" *Bruxelles2*, (8 October 2021).

73 Ronan Le Gleut and Hélène Conway-Mouret, "[European Defence: The Challenge of Strategic Autonomy](#)," *Information Report 626*, (3 July 2019): 42-43.

74 Florence Parly, Annegret Kramp-Karrenbauer, Margarita Robles Fernández and Lorenzo Guerini, "[At the heart of our European Union](#)," *The Letter of Defence Ministers*, (29 May 2020).

75 Florence Parly, Annegret Kramp-Karrenbauer, Margarita Robles Fernández and Lorenzo Guerini, (2020).

76 Council of the EU, "[Council Conclusions on Security and Defence](#)," *EU document 8396/21*, (10 May 2021).

The French Presidency of the Council in the first half of 2022 could also constitute an important milestone in this respect. It is indeed during that period that EU member states are expected to adopt the 'Strategic Compass', a politico-military strategy which should provide guidance, inter alia, on the issue of Article 42(7) TEU, as part of the EU's objective to improve its resilience to future threats.⁷⁷ There has been talk, in addition, of the possibility of adopting a separate declaration during the French Presidency that would be specifically devoted to Article 42(7) TEU.⁷⁸ The possible content of this declaration as well as its relation with the Strategic Compass remain rather vague to date, however, since almost nothing has been officially disclosed in this regard – even on the part of France, which is said to be the origin of this initiative.

In any case, it is unlikely that the French Presidency of the Council will mark the end of the debate surrounding Article 42(7) TEU between France and its European partners.

There is, first of all, the difficult question of the division of labour to be achieved with NATO. Should the EU mutual defence clause indeed focus solely on terrorist, cyber or hybrid attacks, thereby leaving *de facto* more serious scenarios to NATO?⁷⁹ Or should Article 42(7) TEU also be geared towards responding to situations in which the Atlantic Alliance cannot play a role, for example in the event of armed aggression against non-NATO EU members such as Finland or Cyprus or in the case of a deadlock within NATO, bearing in mind that such an orientation could logically lead the EU to have to prepare for high-intensity warfare? While France may be willing to explore both options, it is likely that many of its European partners are, by contrast, only comfortable at present with the first option, either because they consider that 'real' collective defence should only be discussed within NATO, or because they wish to preserve their tradition of military neutrality.

Even more controversial, however, is the question of what should be done in case of an intra-NATO conflict between an EU member state and a non-member. Such a situation may seem far-fetched, but this is precisely the scenario that arose in the summer of 2020, when Greece and Turkey were on the brink of war in the Eastern Mediterranean.⁸⁰ In these tense circumstances, the Greek government explicitly referred to Article 42(7)

77 Tania Latici and Elena Lazarou, "[Where will the EU's Strategic Compass point?.](#)" *European Parliament Briefing*, (Brussels: Parliamentary Research Service, October 2021).

78 Martin Quencez and Sophia Besch, "[The Challenges Ahead for EU Defence Cooperation.](#)" *The German Marshall Fund of the United States* 2, (January 2020): 4.

79 Sven Biscop, "[EU and NATO Strategy: A Compass, a Concept, and a Concordat.](#)" *Security Policy Brief* No. 141, (Egmont Institute, March 2021).

80 Perot, (2021).

TEU.⁸¹ Yet, with the exception of France, which sent warships and fighter aircraft to the region, few EU member states seemed prepared at the time to defend Athens against Ankara if push came to shove. This, in turn, probably goes some way to explaining why France and Greece decided to sign a ‘strategic partnership’ in September 2021 which, quite remarkably, includes a bilateral collective defence clause.⁸² Although such a clause can be presented, as Greek Prime Minister Kyriakos Mitsotakis and President Macron have done, as paving the way for stronger solidarity among European countries in the realm of collective defence, this can also be seen as a way for Greece and France to circumvent Article 42(7) TEU because of the difficulties that would almost certainly arise in mobilising other European countries in the event of conflict with Turkey.

A catalyst for a broader debate

Finally, it is important to realise that Article 42(7) TEU, beyond its technical aspects, may also serve in France as a catalyst for a broader debate about the *finalité* of the European Union.

President Macron, in particular, seems to consider that the EU will only be complete as a political project once strong mechanisms of solidarity in the defence domain will have been established as well. In August 2018 the French head of state indeed justified his proposal to strengthen the EU mutual defence clause by stating that this represented in his opinion ‘what we owe to each other and what we owe to Europe to make it a reality for each member state and each of our citizens’.⁸³ Likewise, during a trip to the Baltic states and Poland in February 2020, the French leader argued that he would ‘be happy the day when Poles say to themselves: “the day I am attacked, I know that Europe will protect me”, because then the attachment to Europe [*le sentiment européen*] will be indestructible.’⁸⁴

It is true that European integration has so far moved forward by carefully avoiding any clear-cut answer as to its final purpose. When it comes to defence, however, one should count on the French to keep putting the issue on the table.

81 Aurélie Pugnet, “Face à la Turquie, la Grèce invoque une “vraie” solidarité... et la clause d’assistance mutuelle de l’article 42(7). La lettre de Dendias à Borrell,” *Bruxelles2*, (20 October 2020).

82 “France and Greece hedge their bets with a new defence pact,” *The Economist*, (2 October 2021).

83 Emmanuel Macron, “Déclaration de M. Emmanuel Macron, Président de la République, sur la défense européenne, à Helsinki le 30 août 2018,” (Helsinki: 30 August 2018).

84 Emmanuel Macron, “Déclaration conjointe du Président Emmanuel Macron et de M. Andrzej DUDA, Président de la République de Pologne,” (3 February 2020).

Annex 2 Finland's constructive approach to TEU Article 42(7)

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Finland's policy on the EU's mutual defence clause reflects its general positive approach vis-à-vis the Union's security and defence policy. Expectations concerning the security policy implications of its EU membership have always been high, which reflects Finland's political culture as well as its not being a NATO member. Both the mutual defence clause and the solidarity clause (TFEU Article 222) are often mentioned as important mechanisms enshrining solidarity among the EU's member states and citizens⁸⁵. Finland's expectations concerning both clauses are concrete and there is a willingness to enhance their role in the EU's security and defence policy.

The EU's significance for Finland's security policy is firmly emphasized and the country shows strong support for deepening the EU's competence and capabilities in security and defence policy. It is obvious that its expectations concerning the EU's tasks go well beyond external crisis management capabilities, which for a long time formed the core of the Union's common security and defence policy. Finland stresses the EU's need to take responsibility for its own territorial security and realises that a stronger role for the Union would also benefit its cooperation with NATO⁸⁶.

As a part of this ambitious policy the Finnish expectations concerning the EU's mutual defence clause have been clearly articulated. During the early years of the emergence of the defence clause, Finland signalled its commitment to the clause in order to clarify its position. The reference that had been added to the clause stressing that 'the specific character of the security and defence policy of certain member states' would not be affected by the clause created some ambiguity about the role of the non-aligned states (Finland, Sweden, Austria and Ireland). The Finnish interpretation was that the clause created an equal obligation for all EU members: Finland would be ready to provide assistance to other EU members and expected itself to be supported if it became a target for armed aggression⁸⁷.

85 Government Report on Finnish Foreign and Security Policy 9/2016, p. 20; Government Report on Finnish Foreign and Security Policy 32/2020, p. 28; Government Report on EU Policy 5/2021, pp. 33-34.

86 Government Report on EU Policy 5/2021, p. 33.

87 Government Report on Finnish Foreign and Security Policy 9/2016, p. 20.

As further proof of its commitment, Finland also launched a major legislative process in 2016 to ensure full compliance with the clause⁸⁸. The goal of this process was to enable Finland to provide and receive international assistance in different forms including also military assistance. The EU's mutual defence and solidarity clauses (TFEU Article 222) provided the main framework for the amendments which were, however, considered to be needed also for other frameworks of international cooperation.

The amendments coming into force in 2017 enabled Finland to provide military assistance to another state or another actor with combat forces, which had earlier not been possible. The amendments also specified the decision-making rules among state institutions when providing or asking for international military assistance.

The scope of TEU Article 42(7)

Finland stresses the intergovernmental character of TEU Article 42(7) and the fact that, as such, it does not create competences for the EU and its institutions. When it is used, the clause implies that member states agree bilaterally on the forms of assistance. During the early years of the mutual defence clause Finland's point of view was that due to its character an invocation of the clause would not require unanimity among EU members but that its bilateral mechanisms rather allowed for more flexibility in terms of decision-making. Currently there is not complete clarity on the official Finnish view on the means of decision-making required for the invocation of TEU Article 42(7) as this question has not been explicitly addressed in the most recent policy reports on security and defence policy.

Over the years, Finland has, however, signalled a need to specify the rules concerning the implementation of the mutual defence clause. The Finnish government has tried to steer the role of the clause into a concrete operational direction by stressing, for instance, its relation to the development of the Union's joint capabilities or command structures including the projects of permanent structured cooperation⁸⁹. This reflects an understanding according to which EU institutions and structures should play a role in support of the implementation of the clause despite its intergovernmental character. Finland has also stressed the need for a stronger common preparedness for the use of the clause, for which joint exercises and practice are helpful.

The roles of the solidarity and mutual defence clauses are seen to be closely interlinked which might mean an invocation of both treaty provisions in a serious conflict situation⁹⁰.

88 Legislation on the provision and reception of international assistance 2016; Act on the Making of Decisions Concerning the Provision of and Request for International Assistance (418/2017).

89 Government Report on EU Policy 5/2021, pp. 33.

90 Legislation on the provision and reception of international assistance 2016, p. 45.

Finland already ensured its legislative preparedness to act in accordance with the solidarity clause in 2006 by amending its law on defence forces⁹¹.

Finland, in general, has been in favour of a flexible interpretation of TEU Article 42(7). Finland supported the invocation of the defence clause in the context of the Paris terrorist attacks of 2015 and provided support to France by enhancing its participation in crisis management operations in Iraq and Lebanon. Later on, Finland has underlined the flexible nature of both the mutual defence clause and the solidarity clause as this would allow their application in the case of a serious hybrid attack⁹². The value of both clauses in preventing possible conflicts, i.e. their deterrent function, is recognized in official documents. Finland is a strong promoter of the view that the EU should strengthen its joint policies and instruments in countering hybrid threats and should create a strong toolbox for that purpose⁹³. Both the mutual defence clause and the solidarity clause play a role in that toolbox. The more specific parameters for the invocation of the clauses are not further elaborated in governmental documents.

When it comes to the other parts of the EU's hybrid threat toolbox a recent governmental report refers to the need to enhance common situational awareness, to improve crisis resilience, to prepare for new threats and to develop existing tools to counter hybrid threats. Tasks such as intelligence analysis cooperation, the protection of critical infrastructure, the development of cyber security standards and capacities, democratic resilience against disinformation and election interference and strengthening the security arrangements and culture of EU institutions are mentioned as well.

Conclusion

It is fairly unproblematic for the Finnish government to support a deepening of the EU's security and defence policy as this enjoys broad support among civil society. The mutual defence clause has constantly been the subject of public interest not least due to the fact that it is the first post-war mutual defence obligation that Finland has entered into. Some distrust has also been voiced concerning its significance due to the lack of common EU command structures or joint defence planning.

The deterioration of Finland's security environment has called for a strengthening of its multilateral and bilateral defence cooperation. An enhanced opportunity partnership with NATO, bilateral defence cooperation with key NATO and EU members as well as the full utilization of the possibilities provided by the EU treaties are the specific contexts in which the Union's mutual defence clause must be seen.

91 Law on Defence Forces 551/2007.

92 Legislation on the provision and reception of international assistance 2016, p. 53.

93 Government Report on Finnish Foreign and Security Policy 32/2020, p. 35.

Annex 3 Article 42(7) as an insufficient tool of last resort for Eastern Mediterranean stability

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The ongoing attempts at greater EU strategic autonomy inevitably revolve around its ability and, perhaps more importantly, the EU's willingness to act independently on issues of defence and security. In 2016 the Implementation Plan on Security and Defence (for the implementation of the EU Global Strategy) clearly highlighted the need to 'develop a stronger Union in security and defence, which is able to tackle today's threats and challenges more effectively', with a clear reference to the importance of Mutual Assistance and/or Solidarity in line with Article 42(7) TEU and Article 222 TFEU.⁹⁴

During a talk on the US-China confrontation, Josep Borrell noted in May 2020 that 'we [the EU] have to keep a certain degree of autonomy in order to defend our interests', concurrently acknowledging that the EU does not yet have what it takes. In his words, the EU must 'have strategic autonomy on practical terms, [which] means being able to respond to a crisis by our own means and we don't have these means'.⁹⁵ In a similar spirit, Nathalie Tocci, one of the key individuals in developing the concept of strategic autonomy, highlights the 'lack of EU responsibility and above all risk-taking when security comes into play',⁹⁶ also noting the absence of capabilities, decision-making mechanisms and strategic culture to cope with such challenges. There is also a lack of sufficient solidarity, and ultimately collective willingness, to handle crises, especially regional ones, which together ultimately challenge the EU's potential role as an autonomous security provider. Indeed, the global, and perhaps more pressingly the regional, challenges highlight the need for a more strategically autonomous EU, but unfortunately the expectations-capabilities gap is still wide, and the goal remains rather elusive.

94 Council of the European Union, "[Implementation Plan on Security and Defence](#)," 14392/16 annex, (Brussels: 14 November 2016).

95 Eszter Zalan, "[Borrell: EU doesn't need to choose between US and China](#)," *EUobserver*, (2 June 2020).

96 Nathalie Tocci, "[European Strategic Autonomy: What It Is, Why We Need It, How to Achieve It](#)," *Instituto Affari Internazionali*, (2021).

Admittedly, fundamental changes when it comes to issues of defence and security are not expected to occur quickly or efficiently. But given the momentous transformation of the international system and the EU's self-proclaimed goal to become more influential and more autonomous, this requires concrete actions. Article 42(7) TEU is such an action and an important step towards the correct direction, but its effectiveness is yet to be seriously tested. Indeed, discounting domestic or international terrorist attacks, currently the only realistic threat of a Member State (MS) being a victim of armed aggression – which would potentially justify the invocation of Article 42(7) TEU – is either from Russia or from Turkey in the Eastern Mediterranean. The focus here is on the latter, and more specifically on the Republic of Cyprus (RoC) and to a lesser degree Greece.

A closer analysis of the tensions in the Eastern Mediterranean demonstrates that while Article 42(7) could, theoretically at least, be an important tool for deterrence, practically it may have an inadvertent negative impact. Namely, it could potentially push aggressive and revisionist states to engage in hybrid hostile actions that lead to instability and the development of grey areas, without however crossing the threshold of what would be seen as armed aggression. This brief article explores why this is the case and why Article 42(7) TEU is a useful, albeit insufficient, 'deterrence tool' for the RoC and Greece for dealing with the tensions in the Eastern Mediterranean.

For Cyprus, or Greece, invoking Article 42(7) is not a decision to be taken lightly. It is not just the numerous unclear elements in the article that generate doubts as to its useability. It is also the complexity of the sub-Regional Security Complex (s-RSC) of the Eastern Mediterranean with disputes, *inter alia*, among a triangle consisting of one EU and NATO member (Greece), one NATO but non-EU member (Turkey), and one EU but non-NATO member (RoC). Energized by the regional hydrocarbon discoveries, coupled with the relative withdrawal of the US from the Middle East, the East Med. s-RSC became an increasingly dynamic region without a clear security provider and with a notable power gap. Unsurprisingly, Turkey, as an aspiring hegemon, wishes to fill the gap and attempts to assert its dominant position in the region. However, Turkey's revisionist approaches inevitably triggered balancing actions by neighbouring states, manifested through numerous bilateral, trilateral, and quadrilateral agreements among, primarily, the RoC, Greece, Israel, and Egypt. The deteriorating bilateral relations between Turkey, on the one hand, and Israel and Egypt, on the other, facilitated the development of the aforementioned agreements, which only exacerbated the Turkish feeling of encirclement. This feeling intensified with the deepening and broadening of the regional activities with the most notable development being the East Mediterranean Gas Forum (EMGF) with the participation of almost all regional states and two important extraregional states (France and Italy), but not Turkey. Similarly, the participation of extraregional actors such as France, the United Arab Emirates and Saudi Arabia in common military exercises with Greece, the RoC, Egypt, and Cyprus heightened the Turkish perception of exclusion and encirclement, which in turn led to more aggressive and escalatory actions, mostly against the RoC and Greece.

So far it has been *controlled* escalation with the ultimate dual goal being grey areas, on the one hand, and slowing down developments that would worsen the Turkish position vis-à-vis the RoC and Greece, on the other. Controlled escalation is not just an uneasy and costly setting, but also particularly worrying for the actors involved as well as other regional stakeholders, as the situation may become uncontrolled, especially in the event of an accident. Provided that neither party wishes to see uncontrolled development, there is still some room for diplomacy. That said, and despite the fact that the diplomatic avenue is Greece's primary option, it must be noted that it also has the military capacity to fend off military threats, as was for instance the case with the naval standoff between the two neighbours in August 2020⁹⁷ and on numerous other occasions when the Greek and Turkish navy and air force had 'close encounters'. This is not necessarily the case with the RoC, whose deterrence options rest primarily on the implementation of International Law and its EU membership. Thus, for the RoC diplomacy and collective support is a one-way path. It is in this context that Article 42(7) TEU is examined as a potential strategic tool and as a deterrence mechanism, or in the undesirable extreme scenario, as a tool of mutual assistance for defence purposes.

Whether or not, or perhaps more importantly when, Article 42(7) TEU can serve this purpose is unclear. There is only one precedent – with France in 2015 after the terrorist attacks – and in that case the reasoning was political rather than defensive. It is not surprising, therefore, that France chose this option over NATO. France's goal for invoking the article was not to defend itself against domestic terrorism, but rather for MS contributions to counterattack in Syria and Iraq, and the requested contribution was achieved through bilateral arrangements between France and willing and capable member states. Thus, the only case we have so far cannot provide sufficient evidence of how it can be implemented in the Eastern Mediterranean where the threats are more traditional and largely inter-state.

Despite the absence of concrete evidence as to its implementation efficiency, Article 42(7) *may* act as a deterrence tool albeit only against the gravest of threats, namely armed aggression on an EU member state's territory. Unfortunately, it seems less able to do the same for threats that fall below the threshold of armed aggression, and even less so for threats in maritime areas. Indeed, it is evident that Turkey is not particularly deterred and continues to threaten with, and engage in, destabilizing actions in the Cypriot EEZ and the Aegean.

A further complicating factor is the source of the threat, namely a NATO member state. This complicates the possible options under the specific article, especially considering the historical intertwined security arrangements between NATO and the EU. While

97 Michele Kambas and Tuvan Gumrukcu, "[Greek, Turkish warships in 'mini collision' Ankara calls provocative](#)," *Reuters* (14 August 2020).

NATO may be one of the most important deterring variables for external threats, it is not particularly well equipped to deal with or prevent intra-NATO disputes, short of facilitating de-conflicting negotiations. How well equipped the EU can be under this article to take actions against a NATO (but non-EU) member in the case of aggression against either an EU-NATO member or an EU-non-NATO member is very unclear, if not doubtful. Given that 21 of the 27 EU members are also NATO members is bound to have an impact on the effectiveness of Article 42(7) TEU against a NATO member as a deterrent force, or as a defence contributor, if Greece or the RoC invoked it due to Turkish actions.

Perhaps the most relevant question for the region is whether the Turkish actions in the Eastern Mediterranean ‘allow’ for the invocation of Article 42(7). And if not, why not, given that the EU acknowledges Turkey’s actions as illegal and escalatory.⁹⁸ Turkey’s actions in the Cypriot EEZ and in the Aegean are testing the reaction limits of the RoC, Greece, as well as that of the international community, and more importantly those of the EU. While Turkey’s actions may be intimidating, in violation of international law, and certainly against any good neighbour principle, it is debatable whether they qualify as armed aggression. More importantly they are unlikely to qualify as armed aggression on an EU MS’s territory, as they mostly take place in maritime areas disputed by Turkey. The article’s clear mention of armed aggression against a MS on its *territory* casts doubts as to its applicability in maritime zones – Exclusive Economic Zones (EEZ) and continental shelves – which is where most of the hostile activities have occurred. The fact that there are no delimitation agreements between Turkey, on the one hand, and Greece and Cyprus, on the other, is an additional complicating factor as Turkey does not accept that it is in violation of any international law claiming that all actions take place on its own EEZ/continental shelf.

Furthermore, the issue may become much more complicated regarding the article’s implementation depending on the intensity of the incident. Turkey’s seemingly controlled escalation tactics could easily become uncontrolled in the event of an accident, as was the case in mid-August 2020 after the collision between a Greek and a Turkish frigate.⁹⁹ Had the incident been more serious, or had there been casualties, would that justify the invocation of Article 42(7)? How easy or possible would it be for the EU to reject such a Greek request – because the incident would not be territorial – without a massive credibility loss as a security provider?

98 See for instance: European Parliament, [“European Parliament resolution of 17 September 2020 on the preparation of the special European Council summit focusing on the dangerous escalation and the role of Turkey in the Eastern Mediterranean,”](#) *Official Journal of the European Union* C 385/117, (22 September 2021).

99 Yaroslav Trofimov and David Gauthier-Villars, [“Turkish, Greek Frigates Collide in the Mediterranean Sea,”](#) *The Wall Street Journal*, (14 August 2020).

Lastly, the article's ambiguity is not only vis-à-vis the successful invocation prospects, but also regarding the actual follow-up actions by the EU. According to the article, in the event of armed aggression (on MS territory), 'the other Member States shall have towards it an obligation of aid and assistance by all the means in their power'. The assumption is that it is not the EU as a whole – hence the absence of the words 'EU institutions' – but rather individual states that are expected to aid the state in need. Furthermore, the article provides a way out for states that are traditionally neutral or are unwilling to engage in military disputes,¹⁰⁰ which subsequently means that any aid essentially boils down to the capabilities, and more importantly, the willingness of specific states to help. Similarly, the phrase 'all means in their power' may also be subject to different interpretations as it does not provide clear guidance, and subsequently clear expectations, on how Article 42(7) TEU would be implemented.

There are, therefore, significant grey areas, both in terms of literally the area in which the destabilising actions occur, but also in terms of the interpretation of the article. The fact that the article is ill-equipped to deal with these grey areas reduces its usability and essentially renders it a rather weak deterrence tool for hybrid harmful actions or any non-territory-based military actions. Thus, it may be a fairly unusable tool in most cases – if not dangerous due to a potentially inadvertent negative impact – for countries like Cyprus and Greece. Specifically, there is a risk of invoking the article if the outcome is unclear. It is not simply the case that the states in need of assistance will not receive the help that they have requested. A failure to act under the article once invoked may embolden the aggressor which may feel more empowered and legitimised given the absence of concrete deterrent actions. At best, the aggressor will continue to grey the area to further reduce the prospects for any collective action, and at worst, feeling empowered by the unwillingness to engage in collective action, it will intensify its escalatory actions to improve its regional position.

As a result, Article 42(7) may potentially minimise the possibility, and the threats, of very severe military actions against EU territory, but it may, at the same time, inadvertently render hybrid actions that occur below the threshold that would justify the article's invocation as the preferred pathway for escalation and destabilisation. At the same time, the lack of clarity regarding serious, albeit non-territorial aggressive actions, can easily cast shadows on the article's functionality, as well as on the EU's credibility as a security provider for the region. Indeed, these ambiguities further highlight the EU 'expectations-capabilities gap' regarding the EU's role as a global actor and as a potential international security provider.

100 Article 42(7) (TEU) clearly 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 Article 51 of the United Nations Charter. *This shall not prejudice the specific character of the security and defence policy of certain Member States.*" [emphasis added].

With the above in mind, Cyprus and Greece consider Article 42(7) to be a potential strategic option for the naval confrontations in the East Med., but mostly as a tool of last resort. Indeed, the invocation of the article will not resolve the root causes of the tension in the East Med., so as a security mechanism it does not provide a sustainable solution to the problem at hand. And to be fair, it was never designed to do so. Thus, if it cannot eliminate, or even diminish the impact, of the root causes, it is unlikely to be considered as a *strategic* option for the normalisation of the region, discounting its potential use as a strategic defence option in the unwanted event of a fully-fledged conflict.

The risk emanating from the article's ambiguity, as well as the risk of an emboldened Turkey should the article be invoked but without the expected outcome, reduces the usefulness of the article as a short-term tactical tool that can be used for either leverage or de-escalation. However, given that the RoC primarily relies on International Law and EU solidarity to counter Turkey's destabilising actions, it is willing to use all its diplomatic weapons in its arsenal to minimise the impact of Turkey's actions, including the invocation of Article 42(7). However, unlike the use of sanctions (or the threat of their use) which can be gradual and adjustable based on the developments, the invocation of the article is in and of itself an indication that developments have escalated to a critical point and de-escalation may become much more challenging. Similarly, it will push EU-Turkey relations further down a slippery slope; an outcome that neither the EU, nor Turkey, or, indeed, Greece or Cyprus wishes to see.

It should be noted that the non-invocation of the article does not connote that Greece or Cyprus have doubts as to whether the EU perceives Turkey's actions as illegal; this has been clearly acknowledged on numerous occasions. EU sanctions, or the prospects thereof, and other diplomatic measures are the current preferred path to deal with these tensions. The prospects of sanctions do not just attempt to curb escalation, but also to register unequivocally the EU's position concerning the Eastern Mediterranean developments. Evidently and unsurprisingly, sanctions alone are insufficient to fully deter Turkey, but their presence at least demonstrates that the EU does support its Member States' positions, while it concurrently keeps the door open for de-escalation and normalization through the removal of sanctions when developments allow for this.

Given that a naval confrontation between Greece and Turkey is more likely, compared to between Turkey and Cyprus, Greece is the one that is most likely to invoke or warn that it could invoke the article. Indeed in the autumn of 2020 PM Mitsotakis reiterated that Article 42(7) TEU exists (and is therefore on the table as an option), also noting that "[he] wished that the country will never have to activate the clause".¹⁰¹ Similarly, during the same period the Greek Minister of Foreign Affairs, Nikos Dendias, in a

101 The expression in [Greek](#) was "Εύχομαι ότι δεν πρόκειται ποτέ η χώρα να χρειαστεί αυτή τη ρήτρα να την ενεργοποιήσει."

letter to Josep Borrell noted that '[...] the only way forward for the EU is to stick to its principles – especially on internal solidarity and mutual assistance between its Members, as enshrined in EU Treaties, including 42(7) TEU [...]'.¹⁰² Cyprus, on the other hand, seems to be much more reluctant to raise this possibility given the risks and ambiguities mentioned earlier, but also because the risk of an actual military confrontation on the sea is much less likely between the RoC and Turkey.

That said, in the RoC's and Greece's strategic calculations, Article 42(7) TEU can be conceptualised as a hybrid – diplomatic and hard defence – option of last resort, which can be used not only in the event of armed conflict, but also to intensify diplomatic pressure and to induce more concrete EU actions to curb Turkey's actions, as the invocation of the article would place the EU and numerous MS in a difficult position. Thus, while both Greece and the RoC recognise the article as a potential tool, they know that it is not easy for the EU to drastically corner Turkey, and invoking Article 42(7) would do precisely that. This would unquestionably have a negative impact as it would further push Turkey away from the West. This would be negative not only because Turkey is a significant NATO member – and a further rift between the West and Turkey could easily be utilised by non-friendly states – but also because it is an important trading partner for many states in Europe. What is more important is Turkey's size and geostrategic location, which is key for Europe as it can act as a buffer against the turbulent region of the Middle East. Being well aware of its importance, it is well known that Turkey leverages its position by, among other things, weaponising immigration. Thus, Turkey's importance and leverage further complicate the Cypriot (and Greek) decision-making calculus regarding the invocation of Article 42(7) TEU against the former.

Turkey's importance coupled with the aforementioned ambiguities regarding potential implementation render Article 42(7) TEU an important tool, albeit a theoretical and a last resource option, for Greece or Cyprus. Thus, both states have sought parallel, if not alternative, options to enhance their security, namely through bilateral defence agreements. While the latter are not mutually exclusive with Article 42(7) TEU, they also indicate that there is not much faith in the EU's ability to provide the necessary deterrent force required to stabilise the Eastern Mediterranean.

102 Nikos Dendias, "[Letter of the Greek Minister of Foreign Affairs to H.E. Mr. Josep Borrell](#)," (Athens: 19 October 2020).