



The EU's mutual defence clause? Article 42(7) of the Treaty on European Union

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Abstract

The article discusses Article 42(7) of the Treaty on European Union and the principle of mutual defence in general in the EU. Most EU member states base their defence policy around NATO, and thus, there has historically been little appetite to create new overlapping structures for mutual defence. However, during recent years, interest in the further operationalisation and clarification of Article 42(7) has arisen, with the European Parliament and member states such as Finland and France at the forefront of these demands. While the EU's mutual defence is not going to replace or overtake NATO as the cornerstone of Europe's security order, further developing the Common Security and Defence Policy and the EU's mutual defence policy would be beneficial for Europe as a whole.

Keywords

Mutual defence, CSDP, NATO, Finland, Article 42(7), EU

Introduction: the EU's mutual aid and assistance clause

Article 42 of the Treaty on European Union forms the basis of the Union's Common Security and Defence Policy (CSDP). While most of its clauses focus on improving the military capability of the member states and implementing the CSDP, Article 42(7) is more ambitious. This is a mutual defence clause that obliges all member states to render aid to any other member state that becomes a victim of armed aggression on its territory. In this regard, it is very similar to Article 5 of the North Atlantic Treaty, which establishes

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This article was written before Russia launched an unprovoked war against Ukraine on 24 February 2022, and also before the EU Council approved the final version of the Strategic Compass on 21 March 2022. It therefore reflects political realities that preceded these two events.



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the principle of collective defence and the idea that an attack against one member state in Europe or North America is an attack against all.

In practice, the application of Article 42(7) is not so simple. Twenty-one out of the 27 EU member states are members of NATO, which forms the basis of European cooperation in the field of defence. As all the large EU member states are also members of NATO, the will to create new overlapping structures for collective defence has traditionally been lacking, despite the efforts of some non-NATO member states to develop and strengthen EU-based collective defence further. However, with Article 5 of the North Atlantic Treaty already giving NATO member states mutual protection, and the US's key role as a security provider in Europe not likely to change any time soon, there appears to be little appetite for major change.

At least in theory, the EU should be a military powerhouse. The combined military budget of all member states is €168.5 billion (Eurostat 2021), the second largest in the world after the US. With a military of this size, one might think that Europe would have no problem creating and maintaining its own security structures. However, while the combined military budget might seem impressive, simply looking at the amount of money spent does not reveal the organisational weaknesses of European defence cooperation.

One problem with Article 42(7) is that it lacks the level of operationalisation that NATO has. In practice, this means that if a member state were to be attacked, all assistance would have to be organised bilaterally between the attacked country and the country providing the assistance. Even the wording of the article emphasises the fact that it is other member states, not the institutions of the EU, that will provide the aid. While the EU's institutions could theoretically have a role in supporting and organising the aid effort, this is not explicitly mentioned in the EU treaties and there are very few existing structures within the EU that could organise and coordinate the delivery of military aid to an attacked member state.

This contrasts with Article 222 of the Treaty on the Functioning of the European Union, also known as the solidarity clause, that requires the EU and member states to jointly assist any member state that is a victim of a terrorist attack or of a natural or man-made disaster 'in a spirit of solidarity'. This article also requires the EU to mobilise all the instruments at its disposal, including the military resources made available by the member states, to help the member state that is struggling with the disaster. Compared with Article 42(7) of the Treaty on European Union, Article 222 of the Treaty on the Functioning of the European Union attributes a much larger role to the EU.

It would be fair to say that the EU is not fully prepared to organise a collective defence effort should one of its member states face an armed attack. With EU institutions having a very weak role and the type of aid to be given not specified in any treaty, it is clear that a European dimension is sorely lacking. In the end, the aid that a member state might expect to receive in the case of an attack ranges anywhere from actual armed support and troops to humanitarian aid. The decision on what kind of aid to provide would be up to each individual member state.

Broader EU defence cooperation

While it is clear that Article 42(7) leaves a lot to be desired, what about other aspects of the CSDP? In practice, the achievements of the CSDP have also been modest due to the convoluted nature of organising action. There are multiple different initiatives and agencies responsible for the development of European defence integration, ranging from Permanent Structured Cooperation to the EU Military Committee and the European Defence Fund. This makes the coordination and formulation of concrete policies and goals difficult. The aforementioned lack of political will has also hampered the further development of an actual defence union.

During recent years, however, the concept of strategic autonomy has reignited interest in mutual defence. The ability of Europe to assert itself and influence decisions that affect the continent is becoming more and more important in a world of increasing competition between countries such as the US, China and Russia, and new challenges such as the COVID-19 pandemic and climate change. France has been especially influential in promoting the policy of increased strategic autonomy, and with the start of the French Presidency of the Council of the EU during the first half of 2022, it is likely that the topic will be further discussed during the coming months.

French President Emmanuel Macron addressed this topic in his speech to the European Parliament in January 2022 as the President of the Council of the EU. He stated that the EU must have the capability to block attempts to destabilise Europe, in particular from Russia, and effectively punish those who violate international rules (Macron 2022). He also observed that Europe cannot simply be content with responding to international crises—rather it should be proactive, and able to effectively influence and alter events that affect Europe (Macron 2022). Macron's statements are indicative of the fact that France has historically been one of the key supporters of the concept of strategic autonomy in the EU.

As well as France, Finland has also been a key supporter of stronger European mutual defence. During his tenure as President of the Republic, Sauli Niinistö, who is also responsible for leading Finnish foreign policy together with the Cabinet, has on numerous occasions mentioned his desire for more comprehensive and developed security and defence cooperation for Europe. In a speech in November 2021 at Berlin's Humboldt University, he urged that the EU have a frank discussion on whether it can maintain its values and also preserve its security, and lamented the fact that Europe has the tools but not the willpower to use them when it comes to security policy (Niinistö 2021). Further clarifying the somewhat ambiguous wording of Article 42(7) has also been high on his agenda.

It should be noted that as well as individual member states, the European Parliament also actively promotes the need to develop a flexible and non-binding plan for the activation of Article 42(7) in its annual reports on the implementation of the CSDP. The most recent report also contains a demand for the creation of a more ambitious common understanding of the operationalisation of Article 42(7) (European Parliament 2021). The Council and the European External Action Service, however, have been slow to respond to these demands.

Despite this, it seems unlikely that the drive for strategic autonomy will lead to a true European defensive union like NATO in the near future. Instead, the focus will most likely be on deepening and strengthening existing areas of cooperation such as cybersecurity, health security, counter-terrorism, military mobility and border protection, as well as introducing the new EU Rapid Deployment Capacity of 5,000 troops. This common EU military force has been in the planning in some form or another for a long time, but its establishment and expansion have to date been met with indifference from member states. Thus far, the existing EU Battlegroups established in 2005 have never seen actual combat, although the Union has deployed multiple coalitions-of-the-willing-type military operations on an ad hoc basis since the CSDP became operational in 2003.

Another key development would be the abolition of the unanimity requirement when it comes to decisions related to the CSDP. At the moment, decisions such as those on the use of sanctions and the establishment of crisis-management operations require the agreement of all member states, which often leads to watered-down statements and decisions, or even to the inability to make a decision at all. Removing the unanimity requirement would enable the pursuit of a more robust and ambitious foreign policy and this would allow Europe to effectively influence world affairs and promote a multilateral and rule-based international order.

Most of these objectives were outlined in the first draft of the EU's forthcoming Strategic Compass that was presented to the Council in November 2021 and will be adopted in March 2022. However, the draft Compass left a lot to be desired when it comes to Article 42(7) and mutual defence. It was supposed to clarify the practical application of the article, but the focus of the final document is narrow. Article 42(7) is only mentioned briefly, in the context of regular exercises to strengthen mutual assistance and develop cyber defences. While the focus on cyber affairs is understandable, and the draft Compass was welcomed by the Finnish government, it is clear that the end result was not as comprehensive as many had hoped for. This is a shortcoming that should be fixed in the final version of the Strategic Compass.

This lack of comprehensiveness was to be expected due to the unanimity requirement mentioned above, which inevitably leads to decisions being based on the lowest common denominator. While consensus is important, applying unanimity to foreign and defence policy delivers unsatisfactory results that please no one. The draft Strategic Compass is, in general, lacking in ambition, but this is especially the case when it comes to Article 42(7). European mutual defence and the CSDP have the potential to be much more effective, but at the moment this potential remains under-utilised due to the aforementioned requirement. This change is also something that the European Parliament and the European People's Party group have long advocated. The removal of the unanimity requirement in foreign affairs is the way forward.

Conclusion

It is clear that NATO will remain the key European defence solution for most of the member states. European defence will continue to rely on the US in the future too; the

creation of overlapping structures and organisations would not be useful and nor is there the political will for it. For now, European defence is best handled by NATO, complemented by an EU that is more independent and functional in general foreign and security policy, as well as in sectors not covered by NATO.

However, I also agree that the operationalisation of Article 42(7) must be discussed further, and concrete guidelines and methods for its activation should be created. It should not be just a clause empty of meaning, but an actual, realistic way to aid member states facing an attack, with pre-planned rules and regulations on how it is activated and operationalised. Despite this, we should not be naive and expect Article 42(7) to provide a realistic alternative to NATO membership, at least for Finland.

While for historical reasons some member states, such as Finland, have chosen to stay outside of NATO, for Finland at least, membership would be highly beneficial and would promote increased stability and security in Northern Europe. While it remains the choice of each nation to join NATO or not, everyone should be aware that, at least for now, Article 42(7) is no substitute for NATO's Article 5.

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