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A Comparative Study of Article 5 of the NATO and Article 42(7) Of the Treaty on The European Union: Its Scope and Limits

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Written by Pol Navarro I Serradell
Edited by Alex Marchan
Supervised by Cansu Macit Karaduman

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DIRECTOR'S EDITORIAL

Over the past decades, Europe has enjoyed an extraordinary period of peace, but this has not been achieved without any cost. Indeed, the membership of European states within the European Union and the North Atlantic Treaty Organization has played a key role, primarily through their commitment to mutual defence, contained in Art. 42 (7) of the Treaty of the European Union and Art. 5 NATO Charter.

By establishing such clauses, the signatory parties commit to support each other in case of attack against any of them. Despite their importance in ensuring the security of all allies, scenarios such as the 9/11 terrorist attack on the US or the 2016 terrorist attacks in Paris showed their limitations when the affected states invoked these clauses.

While both clauses have a common objective and show many similarities regarding their content, they also have important differences. These different approaches, as well as the limited experience regarding the invocation of these clauses, make it harder to understand how these organizations can address collective defence in Europe.

Given these realities and the need for European countries to continuously adapt to evolving threats, this paper has shed some light on these issues and addressed the complexities of collective defence. Similarly, this paper attended to those characteristics that according to some scholars made Art. 42 (7) TEU an improved version of Art. 5 NATO, especially regarding its territorial scope.



Mario Blokken

Director PSec

INTRODUCTION

Drafted 60 years ago, Article 42 (7) of the Treaty of the European Union (TEU) and amended by the Lisbon Treaty, provided the European Union with its own Mutual Defence Clause (MDC). This provision, adopted in 2009 and inspired by the WEU's solidarity clause, and Article 5 of the North Atlantic Treaty Organization (NATO), aimed at establishing a duty of aid and assistance towards other member states that are victims of an "armed aggression" in its territory (Article 47 (2) Treaty of the European Union, hereinafter, "TEU"). So far, the invocation of both MDCs has been limited, being each of them triggered once, Article 5 by the U.S. after the 9/11 attacks (NATO, 2023), and Article 42 (7) by France in response to the 2015 terrorist attacks in Paris (European Parliament, 2016). Both are cornerstones of their respective organisations, being crucial to the defence of their member states.

Taking as its precursor Article V of the Western European Union (WEU) and Article 5 of NATO, the EU's MDC has evolved and suffered modifications over the years to become the current Article 42 (7) TEU (Ducheine, P., & Hosang, J. B., 2020). Both served as precedents for the European legislators as a basis

for the establishment of a joint defence framework for the countries of the EU. However, this new clause had been drafted under the specific circumstances of the continent, which was not influenced anymore by the context of the Cold War, which led to the creation of NATO (Department of State).

Despite having remarkable similarities, such as their lack of clarity, they differ in crucial aspects, such as the conditions for activation and the scope of coverage. This makes them unique and complex when it comes to their possible application. Under the basis of these differentiating features between the two and these interpretations of their scope by scholars, this paper aims to take on a comparative analysis between Article 5 of the NATO Treaty and Article 42 (7) of the Treaty of the European Union. This paper will do so by proceeding to undertake a historical revision of both mutual defence clauses and by evaluating the trigger causes of both MDCs and determining their scope of application. Furthermore, this study will analyse aspects that could be seen as "improvements" incorporated by Art. 42 (7) that could solve a possible "NATO's Achilles heel" regarding its territorial scope of application, as well as other deficiencies that it could face.

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HISTORICAL REVIEW OF MUTUAL DEFENSE CLAUSES

The existence of mutual defence clauses is not a recent phenomenon. Indeed, these types of clauses are contained in defence pacts, through which the signatory parties promise to support and defend each other (Krause & Singer, 2001). Historical records trace back the origins of these agreements to as early as the Anglo-Portuguese Treaty of 1373 (Portugal-UK 650, 2023) in the form of a military alliance between the two countries.

Alongside this first mutual defence provisions, there are other noteworthy examples of them which include the Inter-American Treaty of Reciprocal Assistance of 1948 between the United States and many other American countries (Rio Treaty, 1948) the Collective Security Treaty established in 1992 involving Russia and the former Soviet sphere (Ministry of Foreign Affairs of the Republic of Belarus), as well as the Trilateral Security Pact (AUKUS) involving Australia, the United Kingdom, and the United States (U.S. Department of Defense). Beyond these other examples, this study will concentrate on examining two mutual defence pacts that held significance for the European continent and were created at different historical moments, being Article 5 of the 1949 North Atlantic Treaty Organization (NATO) and Article 42.7 of the Treaty on European Union (TEU).

Article 5 of the North Atlantic Treaty Organization:

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.” Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

Origins

In 1949, numerous European nations, along with the United States and Canada, came together to create the North Atlantic Treaty Organization (NATO, 2023), establishing a mutual defence pact (NATO, 2023). Within the Transatlantic alliance, its members committed to guarantee the security of its allies, especially the European countries because they had been punished more by WWII and were facing the constant Soviet threat (NATO, 2023). Based on the two existing models of collective defence pacts, the Washington Treaty became a merger between the Rio Pact of 1947 and the Brussels Treaty of 1948 (Gorka, 2006). The latter, signed by Britain, France, Belgium, the Netherlands, and Luxembourg, contained a clause that stated that its members would need to offer all possible assistance to the party victim of the attack (Krause & Singer, 2001). On the other hand, the Rio Pact signed by American states would require allies

to “assist in meeting the attack” against one of them (Gorka, 2006).

Given these previous clauses, the Washington Treaty elevated Article 5’s collective defence provision as the cornerstone of the Alliance (NATO, 2023). By signing this treaty, European states agreed to locate themselves under the safeguard of the American “nuclear umbrella” (Department of State: North Atlantic Treaty Organization (1949)).

The 9/11 Terrorist Attacks

Following the brutal terrorist attacks against the United States on September 11, 2001, NATO swiftly invoked Article 5 of the North Atlantic Treaty for the first time in less than 24 hours (NATO, 2023). Subsequently, NATO Secretary General Lord Robertson informed the Secretary General of the United Nations about NATO’s decision (NATO, 2023). Despite having already recognised terrorism as a security hazard in NATO’s 1991 Strategic Concept (NATO, 2023), the impact of this attack became an unexpected act of terror for both the United States and member states. The terrorist attacks committed by the Spanish “Euskadi Ta Askatasuna” group (ETA), Abu Nidal Organization in Greece, or the bomb attacks by Real IRA in the UK, had the magnitude of more than 2,500 deaths caused by al-Qaeda (9/11 Memorial & Museum).

In response to these attacks, NATO launched many operations. The first of these, “Eagle Assist” which took place between October 2001 and May 2002, to patrol the skies over the United States (NATO, 2023). Subsequently, they launched “Active Endeavour” to fight against terrorist activity in the Mediterranean (NATO, 2023). In addition, allies established the International Security Assistance Force

(ISAF) at the request of the Afghan authorities and a UN mandate in 2001 (NATO, 2023). With this initiative, military forces of several NATO members were deployed in Afghanistan with the objective that “the country would not again become a haven for international terrorists to attack NATO member countries” (NATO, 2022).

Article 42.7 of the Treaty of the European Union:

“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”.

Origins

The idea of mutual defence among European nations first appeared in the 1950s through what was called the “Pleven Plan” for the European Defence Community (Ducheine, P., & Hosang, J. B., 2020). The objective was to achieve unity among European nations and to support each other in case of attack, independently of the provisions of the Atlantic Treaty. However, this unity did not materialise until 1954 when the Western European Union (WEU) was constituted (Ducheine, P., & Hosang, J. B., 2020). This was followed by the establishment of the Common Security and Defence Policy in the Treaty of Nice (2003) and Lisbon (2007), in which the WEU integrated into the EU (Ducheine, P., & Hosang, J. B., 2023).

It is also worth mentioning the existence of Article 222 of the Treaty on the Functioning

of the European Union, also called the “Solidarity Clause” (Parkes, 2015), which also plays a key role in European security and defence policy. This clause could be invoked in the event of a terrorist attack as well as if any of the members are victims of a natural or a man-made disaster, which would create a duty for all other states to mobilise all the instruments at their disposal, including military ones (Art. 42 (7) TFEU).

Hence, depending on the type of threat member states are facing, member states would decide to invoke one Article or another. Specifically, if the attacks are of lesser scope than Art. 42 (7) TEU, Art. 222 TEU would be invoked (Ducheine & Hosang, 2020). As Ducheine and Hosang argue, this debate gained greater relevance when France used Art. 42.7 with the 2016 terrorist attacks (Ducheine & Hosang, 2020).

2016’s Terrorist Attacks in Paris

Like Article 5 of the NATO Treaty, this article has been invoked only once by French President François Holland after the terrorist attacks of 13 November 2015 (European Parliament, 2016). These acts described as “actes de guerre” by the same president (FRANCE 24, 2015), led to the invocation of Art. 42.7 TEU. On 17 November 2015, two days after the attack, EU Defence Ministers in the Foreign Affairs Council in Brussels expressed their unanimous and full support to France and their readiness to provide all the necessary aid and assistance under article 42 (7) TEU (Council of the EU, 2015). In this scenario, France had many bilateral meetings with UK

Prime Minister David Cameron, German Chancellor Angela Merkel, and Italian Prime Minister Matteo Renzi to discuss the support that these countries would provide under 42.7 TEU (European Parliament, 2016).

After the meetings, allied countries helped in two main aspects. First, in the military field. Some countries, like Sweden, approved the sale of military equipment to France and offered logistical support for conducting air-strikes in Syria or Iraq (de Galbert, 2015). In the same way, countries agreed to increase the exchange of intelligence and cooperation in the field of foreign policy (EUROPOL, 2015).

Uncertainties regarding the application of both MDCs:

Despite promptly invoking the collective defence clauses, uncertainties appear to persist concerning various dimensions. These include the conditions that warrant their activation (Sari, 2020), the formal procedures involved, the extent of their territorial coverage, and the obligations they impose on allies. Differing perspectives exist regarding the literal interpretation versus the intended purpose of each clause, leading experts to grapple with different views on how to read these clauses. Consequently, fundamental questions persist regarding the implementation of these clauses, which could potentially undermine a viable response from both NATO members and the European Union if invoking both clauses becomes necessary.

COMPARATIVE ANALYSIS OF THE NATO AND EU MUTUAL DEFENSE CLAUSES

In this section, the study will undertake an analysis of the different vital issues regarding each of the MDC's objects of this study: Article 5 of the NATO, and Article 42 (7) of the TEU. Specifically, it will compare issues such as (i.) their trigger clauses and what circumstances they cover, (ii.) the procedure to be followed in each of the clauses, and finally, (iii.) what type of obligations are created with their invocation and finally.

Trigger Clause and Circumstances Covered

Regarding the trigger clause of Article 5 of the North Atlantic Treaty Organization, it previews that allied countries would be allowed to invoke the mutual defence clause, in case there is an “armed attack” against one or more” of the members (Article 5 NATO). The number of allied countries affected will not have any impact on its application, since the mutual defence clause would consider “an attack against one shall be deemed equivalent to an attack on all” (Gorka, 2006). Beyond this consideration of “attack against the whole Alliance”, the question now arises as to the exact definition or scope of “armed attack”, since these can be carried out by countries, terrorists, or other groups, as well as by individuals. The question that has been left open is: What is the exact scope of this clause? Looking back, the only time this clause has been invoked is after the 9/11 terrorist at

tacks, perpetrated by the international terrorist organization of al-Qaida (Atlamazoglou, 2023). At first, it seems that this clause is envisaged to be used also in the case of terrorist attacks, but on one condition: that the attack was directed from abroad (Buckley, 2006). Indeed, the day after the attacks, the alliance's decision-making body stated that: “If it were determined that this attack was directed from abroad against the United States”, Article 5 of the Washington Treaty (NATO, 2001) could be invoked. On October 2, 2001, after receiving a briefing from US officials regarding the investigation, the North Atlantic Council (NAC) concluded that the attacks were directed from abroad, i.e., from Afghanistan (European Parliament, 2022). Consequently, the NAC confirmed the invocation of Article 5 (European Parliament, 2022).

Having analysed the condition that the attacks must be directed from abroad against any allied country it is important to determine which can be the actors of these. As it has been seen, the attacks susceptible to invoking Article 5 NATO can be launched by state actors as well as by external and not domestic terrorist groups (European Parliament, 2022), such as in the case of 9/11.

As to the types of attacks, not only military attacks by states against member states are included together with those carried out by terrorist groups, but also cyber and hybrid warfare. Since 2002, and later in 2014 with the Wales Summit Declaration, the possibil-

ity that cyber-attacks could trigger Article 5 (NATO, 2014) was acknowledged. Further, at the Warsaw 2016 Summit, the allies recognised “cyberspace as a domain of operations in which NATO must defend itself as effectively as it does in the air, on land, and at sea” (NATO, 2016). On the other hand, allies declared space as an operational domain for NATO during the 2019 London Summit Declaration (NATO, 2019) as well as in the 2021 Brussels Summit Communiqué, which recognised that “such attacks could give rise to the invocation of Article 5 (NATO, 2021). Likewise, in the case of hybrid attacks, it was also recognised in the 2021 Brussels Summit Communiqué that “in cases of hybrid warfare, the Council could decide to invoke Article 5 of the Washington Treaty, as it would be equivalent to an “armed attack”.

In contrast, and regarding Article 42 (7) of the TEU, this mutual defence clause would be invoked in case “a member state is the victim of armed aggression in its territory”. Unlike Article 5 and the previous text of the WEU, the new Article 42 (7) speaks of “armed aggression” instead of “armed attack” (Art. 42 (7) TEU). While the TEU does not define what is “armed aggression”, the expression appears in many articles of the UN Charter such as in articles 1(1), 39, and 53 (1) (Sari, 2019). According to what can be implied by these articles, an “aggression” would be the use of an unlawful armed force by a state against the sovereignty, territorial integrity, or political independence of another state (U.N Charter). Scholars and experts are divided on the implications of how the trigger clause has been established. On the one hand, some scholars interpret that the concept of “aggression” is

broader than that of “armed attack”, so it includes more circumstances and compliance with the requirements for its application is much “easier” than in the case of armed attack.” (Sari, 2019). On the other hand, experts equate “armed aggression” to “armed attack”, with the exact requirements as they state that the English version appears to be a direct translation of the French text of the predecessor of Article 42 (7), included in the Treaty Establishing a Constitution for Europe in 2003 (Howorth, 2004). Thus, it seems that both wordings would be equal in terms of the scope for the invoking of the MDC.

Concerning the recognition of a circumstance susceptible to activating this mechanism, the article “The Mutual Assistance Clauses of the North Atlantic and EU Treaties: The Challenge of Hybrid Threats” by Aurel Sari sheds light on the matter. Thus, Sari states that Article 42 (7) omits some basic aspects, such as who is entitled to decide whether a member state has become the victim of armed aggression on its territory (Sari, 2019). Beyond the interpretation by each contracting party of whether the requirements for activating this mechanism are met, Sari notes that Article 42 (7) is not subject to the jurisdiction of the Court of Justice of the European Union (CJEU), which could give a binding interpretation in this regard (TEU, *supra* note 1, art. 24 (1)). Given this omission, and even if the European Council or the Council of the European Union could provide a formal decision on the applicability of Article 42 (7), the author claims that any decision that has implications for the defence of the Union or its member states must be taken unanimously (84 TEU, *supra* note 1, art. 31(4)).

Procedures to be followed.

In the case of Article 5, there are no major formalities regarding the procedure to be followed in case it is invoked. As can be seen from the experience gained with the invocation of Article 5 during the 9/11 attacks in the United States (Daley, 2001), the state can invoke Article 5 if it believes that the conditions are met. Also, once invoked, allied countries will enter a round of consultations to determine that the conditions of Article 5 are met, in the case of 9/11, it had to be determined that the attack “was directed from abroad against the United States” (NATO, 2023). Once this condition is fulfilled, the decision to invoke such a clause would be referred to the NATO Secretary General (NATO, 2023).

Regarding the validity of the reason for invoking the clause, Article 42 (7) does not determine who is entitled to decide whether a member state has become the victim of armed aggression on its territory (Sari, 2019). Therefore, there is no clear answer on how this decision would be undertaken. On the other hand, discussing the procedure to follow Article 42 (7) TEU, ‘no formal decision or conclusion by the Council’ is legally required to activate the mutual assistance clause. This lack of rigidity in terms of the procedure to be followed has been perceived as a sign of flexibility and as an opportunity to accelerate the decision-making process (European Parliament, 2016). And likewise, it has provoked some criticism.

For instance, Professor Alexander Mattelaer, speaking to Parliament’s Sub-Committee on Security and Defence (SEDE) on 1 December 2015, has pointed out that Article 42.7 is about mutual defence, and thus about the

possibility of considering joint armed action by the EU, i.e., going to war (European Parliament, 2016). Thus, the lack of debate at the European Council about the activation of Article 42 (7) would prevent the EU from being able to go to war through the application of that provision (European Parliament, 2016). If any action by the Union would imply any decisions having military or defence implications, such as entering war against a third party, it should be taken unanimously by the Council of Europe (Sari, 2019).

Type of Obligations That It Entails

Article 5 MDC establishes that each of the parties will assist the party attacked, individually or in concert with the other parties, with the actions it deems necessary, including the use of armed force (Art. NATO). This provision issues an obligation of assistance to each of the members beyond the objective of “restoring and maintaining the security of the North Atlantic area”. Each of the allies will be able to determine politically what form of assistance it will provide.

Since there are differences between countries and their capabilities, NATO decided to respect “the will of its member states and allowed them the freedom to choose the nature of the response best suited to their own situation” (Gorka, 2006). Thus, for example, countries such as Iceland, which cannot provide a military response against a possible attack on an ally, would be allowed to decide how to contribute to the collective defence objective (Gorka, 2006). This flexibility offers greater individual freedom to its members, which contrasts with the alliance created by the Soviet Union through the Warsaw Treaty Organization, in which the will of its mem-

bers was superseded by those of Moscow (Gorka, 2006).

On the other hand, Article 42 (7) establishes that “other Member States shall have towards it an obligation of aid and assistance by all the means in their power” towards the party victim of the “armed aggression” (Art 42 (7) TEU). In this case, the objective of restoring the security of the country itself is not mentioned. Still, it seems already explicitly provided for in terms of the obligation of aid and assistance with all available means of each of its members (Ducheine, P., & Hosang, J. B., 2020). Thus, each of its members must provide “all” the aid and assistance at its disposal, including the option of military assistance (Ducheine, P., & Hosang, J. B., 2020).

However, and along the same lines as in the previous case, Article 42 (7) offers a high degree of flexibility as to how this “aid and

assistance” should be provided. Thus, EU countries shall comply with such obligation “with prejudice to the specific character of the security and defence policy of certain Member States” (Art 42 (7) TEU). It is in this way that countries such as Ireland, with a long tradition of neutrality about their security and defence position in certain areas, may have greater flexibility in terms of the means they must provide to fulfil their obligations towards the countries concerned (Ducheine, P., & Hosang, J. B., 2020). As stated by Article 42(7), any aid or assistance must be provided “by Article 51 of the UN Charter” (TEU). Therefore, if the attack on the member country is not an “armed attack,” the other countries may provide non-military assistance to contribute to their right to self-defence, such action being outside the scope of Art. 51 UN Charter (O’Connor, 2016).

AN INDEEP STUDY OF THE TERRITORIAL SCOPE

The differences regarding the territorial scope of both MDCs may be the aspect with the most relevant implications, as it implies a distinction between which territories are under NATO and/or EU protection and which are not.

Territorial Scope of Article 5

In the case of NATO, it should be noted that Article 5 itself does not place great emphasis on the territorial limitation of “collective self-defence” among the allies since it states that such an attack must be committed against “one or more of them in Europe or

North America” (Art 5 NATO). However, this article is complemented by Article 6 of NATO, which will state the following:

Article 6 NATO

For 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. on the forces, vessels, or aircraft of any of the Parties,

when in or over these territories or any other area in Europe in which occupation forces of any of the Parties were stationed on the date when the Treaty entered into force or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer.”

According to the first paragraph of Article 6, for Article 5 to be invoked, the “attack” must be directed against a territory located in continental Europe or North America, the French territories in Algeria, the Turkish islands, or the Islands of any country in the North Atlantic and North of the Tropic of Cancer (Art 6 NATO, para 1). On the other hand, and considering the second paragraph of the same article, Article 5 can also be invoked if the attack is directed against “the forces of an ally which would be operating on “the Mediterranean Sea or the North Atlantic area of the Tropic of Cancer” (Article 6 NATO).

Following these two points literally, it is reflected in the attempt by the members of the Alliance not to include European colonial holding within the scope of Article 5 (Perot, 2019). This has led to the fact that there are currently many territories of allied countries that find protection under NATO’s MDC. Among the territories excluded from a possible defence by the rest of the NATO countries, we technically count on a variety of US territories such as Hawaii, American Samoa, Guam, Puerto Rico, the US Virgin Islands, the Northern Mariana Islands, as well as European territories such as Guadeloupe, Martinique, Saint-Martin (France), Aruba, Curaçao, Bonaire, Saba, Sint Maarten (Netherlands), as well as some of the Spanish terri-

ories in North Africa such as Ceuta, Melilla which despite being above the Tropic of Cancer are not equally protected because they are “enclaves” and not “islands”. These are just a few examples of the territories of some NATO countries which do not fall under the umbrella of Article 5.

Similarly, the second paragraph of Article 6 states that a possible invocation of Article 5 of NATO would only occur in case there is an “armed attack” against forces, vessels, and aircraft of any of the Parties” that are located within the territorial scope previously mentioned (Article 6 NATO).

What if Article 5 NATO cannot be invoked? In the cases above in which the invocation of Article 5 does not seem plausible, the possibility of invoking Article 4 of NATO would remain. In this case, if the territorial integrity, political independence, or security of any of the Parties is threatened, “the Parties will consult together whenever in the opinion of any of them” (Article 4 NATO).

Consultation among members has been key to surpassing and going through difficult times for any of the parties. Furthermore, it empowers NATO to play a proactive role in preventive diplomacy, thereby equipping it with the tools to mitigate the risk of armed conflicts (NATO, 2023). This article has been invoked several times in the recent past, for example, by Turkey in June 2012 after one of its jets was shot down by Syrian forces, as well as by Poland in 2014 due to the increased tension following Russia’s aggressive actions in Ukraine (NATO, 2023).

Territorial Scope of Article 42 (7) TEU

Beyond the scope of application of NATO Article 5, Article 42 (7) TEU could include in its umbrella of protection some of the territories excluded in the former (Perot, 2019). This is so because, unlike Article 5, Article 42.7 states that it can be triggered “if a member is a victim of an armed aggression in its territory” Art. 42.7 TEU). The possibility of invoking this clause would, therefore not be limited to armed aggression within the European continent, but it could imply EU member’s territories outside of it (Perot, 2019). Regarding the many territories outside of the European continent, there is a distinction made between the Outermost Regions (OMR), and the Overseas Countries and Ter-

ritories (OCT) (Perot, 2019). The difference is that in the former, EU law applies with some exceptions (Art. 349 TFEU), while in the latter, EU law does not apply since they are not considered EU territories as stated by Art. 198-204 TFEU (Perot, 2019). Therefore, it should be confirmed that only the territories are considered EU territories, and where EU treaties apply to them, OMRs will be subject to the protection of Article 42.7 TEU (Perot, 2019). As indicated by the same author, Elie Perot, in “The Aachen Mutual Defense Clause: A Closer Look at the Franco-German Treaty” this is an interpretation although it is not clear since Art. 42 (7) makes no mention of it.

IMPLICATIONS REGARDING THE TERRITORIAL SCOPE

As analysed in the previous sections, despite the many similarities in the structure and implications of the two mutual defence clauses, they have clear differences, one of the most notable being their territorial scope.

Art. 42 (7): a broader territorial scope

After having compared the basic aspects of both clauses, it is evident how Article. 42 (7) has a territorial scope different from that of Art. 5 of NATO. Indeed, as it was previously stated, Article 5 could only be invoked in the cases covered by Art. 6 NATO, being in the European or North American continent and other cases such as the islands above the Tropic of Cancer. Article 42 (7) offers, in the opinion of this article, a broader scope. It is clear

then how European countries have changed the wording of the MDC to include the entire territory of the member states, without distinguishing between continental territories or any other European overseas territory. As stated before, this scope of Article 42(7) could be solving the “Achilles heel” of the NATO Charter because it would include in its scope all European overseas territories.

However, as Perot has commented in his article, it is unclear whether it will be applicable in all territories or only in the Outermost Regions, the doubt would be resolved if a member state requires its application to such territories.

The possible double invocation of the

clauses

Currently, most EU countries are members of NATO, except a few, such as Austria, Cyprus, Ireland, Malta, and Sweden (Tidey, 2022). This membership of most European countries in both the EU and NATO gives them a possible duality in terms of the possible innovation of the CDMs. In the first place, the possibility would remain open that in the event of an attack or aggression against an EU state that is also a member of NATO, it could invoke either of the two CDMs or both at the same time. A priori, according to the provisions of each of the clauses as well as the respective treaties, does not impede a state from seeking assistance through both clauses simultaneously.

On the other hand, and despite this absence of prohibition of the duplicity of clauses, it is worth remembering the nature of both organisations. While NATO is a purely military

alliance, the EU is an especially political and economic union. Based on this distinction, scholars such as Rafael Loss have stated that there is an implicit pact whereby “NATO is in charge of territorial defense in Europe and the EU does crisis management to some extent and this is not exclusive of course” (Tidey, 2022). Thus, although both clauses are a priori invocable in the same scenarios, NATO’s long history, as well as the desire of the allies to preserve this alliance, would give them a “preference” in terms of their possible application.

Notwithstanding the implied understanding of the scope of each clause and the latent preference towards using Article 5 in the mostly relevant defence matters, it appears that some experts such as Aylin Matlé believe that the wording of Article 42.7 is much stronger in comparison to Article 5 as it creates a clearer obligation of assistance (Tidey, 2022).

CONCLUDING REMARKS

By comparing Article 5 of NATO and Article 42 (7) TEU it is clear how there are notable similarities but, at the same time, some central differences in how these organisations approach collective defence. While Article 5 has become the cornerstone of security in Europe over the last decades, some member states have pushed Article 42 (7) to achieve a more autonomous security and defence policy in Europe in an evolving international sphere. Additionally, for some scholars, it has become an “improved” and stronger version of Article

5 as it includes a stronger duty to assist if it is invoked. It also improved the territorial scope of its application, protecting territories that are not covered by Article 5.

The presence of both clauses highlights the complexity of Europe’s security policy and the necessity to adapt continuously to the threats the continent faces. Although there are still certain doubts and uncertainties regarding some key aspects, those will be only resolved when its members invoke it for another time.

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Created in 1953, the Finabel committee is the oldest military organisation for cooperation between European Armies: it was conceived as a forum for reflections, exchange studies, and proposals on common interest topics for the future of its members. Finabel, the only organisation at this level, strives at:

- Promoting interoperability and cooperation of armies, while seeking to bring together concepts, doctrines and procedures;
- Contributing to a common European understanding of land defence issues. Finabel focuses on doctrines, trainings, and the joint environment.

Finabel aims to be a multinational-, independent-, and apolitical actor for the European Armies of the EU Member States. The Finabel informal forum is based on consensus and equality of member states. Finabel favours fruitful contact among member states' officers and Chiefs of Staff in a spirit of open and mutual understanding via annual meetings.

Finabel contributes to reinforce interoperability among its member states in the framework of the North Atlantic Treaty Organisation (NATO), the EU, and *ad hoc* coalition; Finabel neither competes nor duplicates NATO or EU military structures but contributes to these organisations in its unique way. Initially focused on cooperation in armament's programmes, Finabel quickly shifted to the harmonisation of land doctrines. Consequently, before hoping to reach a shared capability approach and common equipment, a shared vision of force-engagement on the terrain should be obtained.

In the current setting, Finabel allows its member states to form Expert Task Groups for situations that require short-term solutions. In addition, Finabel is also a think tank that elaborates on current events concerning the operations of the land forces and provides comments by creating "Food for Thought papers" to address the topics. Finabel studies and Food for Thoughts are recommendations freely applied by its member, whose aim is to facilitate interoperability and improve the daily tasks of preparation, training, exercises, and engagement.



Tel: +32 (0)2 441 79 05 – GSM: +32 (0)483 712 193
E-mail: info@finabel.org

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