

Editorial Comment

Cooperation under Article 42(7) of the Treaty on European Union in Reaction to the Paris Attacks

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The terror attacks occurring on 13 November 2015 in Paris have shaken the European Union (EU) into action. The European Council officially declared four days after the events that the attack on France was an attack on all the Member States, and that therefore, in accordance with Article 42(7) of the Treaty on EU, all would aid France in the fight against terror at home as well as abroad. Since it was the first time in the history of the EU that Article 42(7) of the Treaty on EU was invoked, this calls for an explanation and a comment.

Article 42(7) provides in its first paragraph:

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.

Article 42(7) is a two-edged sword: it entails an obligation for all Member States to aid and assist the attacked Member State both domestically and abroad. This is important because the fight against terror has both internal and external aspects. In this comment we are concerned most of all with the external aspects. As regards the internal EU policies, suffice to say that a further legal basis is provided by Article 222 of the Treaty on the Functioning of the EU. That more specific article was not used by the European Council on this occasion, creating the impression that the invocation of Article 42(7) was most of all intended to bring about changes in the foreign policy of the European Council, although it can cover both domestic and foreign policy.

This being as it may, one may ask why the use of NATO in accordance with the first paragraph of Article 5 of the Treaty of Washington was dismissed. While

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France could have invoked Article 5 of the Treaty establishing NATO, it triggered the cooperation mechanism of the EU instead.

On a technical level, it is certainly possible to invoke Article 5 of the Treaty of Washington. This provides:

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 recognised 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.

The notion of armed attack in Article 5 was originally understood more particularly as an attack by a third State against a NATO member, and not a terrorist act by a gang of citizens. However in September 2001, when the US invoked the provision to wage its ‘war against terror’, the notion received a broader interpretation, allowing for a reaction to the action or non- action by third States that contribute to that type of violence.

On a diplomatic level, one may note that Article 42(7) does not emphasize the use of military force. This makes it more suitable for use in the present state of the EU, where not every Member State has the same interests in using armed force. Instead of declaring a state of war between the Alliance and a third state, Article 42(7) triggers a bilateral cooperation mechanism in which the Member State concerned determines together with each of the other Member States what their contribution will be to aid and assistance. Whereas there is a definite obligation of cooperation, there is no explicit need for all the Member States to consider the use of armed force by their armies. Aid could consist in the provision of training, or financial assistance, as well as police or military cooperation on the territory of the EU or abroad. The cooperation process, determining who does what, is ‘facilitated’ by the EU, particularly, the High Representative. As Frederica Mogherini has underlined in a press conference on 17 November 2015,¹ the Article 42(7) declaration does not imply an EU/CSDP mission on foreign territory. It does, however, mean assistance to France, at home and abroad, either in Syria or at other ‘theatres’.

In fact, France had multiple reasons to propose the use of Article 42(7) EU: it is an informal instrument requiring no formal decision. The ensuing collaboration would allow the country to ask those states willing to intervene with armed force to do so and it would allow those Member States who are against military

¹ EEAS, *Press conference on 17 November 2015*, <<https://www.facebook.com/EuropeanExternalActionService/videos/1007300402665995/?pnref=story>>, (accessed on 21 Nov. 2015).

intervention, to decline and to contribute in another way. Furthermore, the resulting solidarity would allow freeing up French resources by spreading the burden of the fight against terrorism in Europe or abroad. On top of that, on a symbolic level, France would be generating understanding within the EU and the European Central Bank for accumulating national debt necessary for additional action it might deploy.

As we have seen above, the use of NATO as an additional avenue would however still be possible, and it would offer other perspectives. Most of all, it would be a signal especially in relation to the central European members of the EU, that NATO still has a significance of its own, at a moment when there is concern that the Ukrainian crisis is put on the backburner. As Bruno Tertrais² points out, the use of Article 5 of the Treaty of Washington in addition to the TEU would be a symbolic move, directed to a significant degree to a European audience. A collective stance from NATO would reassure the central European members of the EU that NATO is still a pillar of strength of their military security. This message would furthermore help those countries to secure the approval of their national parliaments for the release of the funds required for the effort, given the fact that these countries prefer NATO over the EU at least when it comes to defence issues. As an additional bonus, it would put Turkey's determination as an ally in the region to the test and put its cooperation on a firmer basis.

In view of the advantages of the NATO option, one may ask why this was the road not taken, in addition to Article 42(7). It would not be wholly fancy to think that the dismissal of the NATO option resided in part in the historically ambivalent attitude which France has always displayed towards NATO, ever since the times of General Charles de Gaulle. However, it could also be that the deployment of NATO would result in greater difficulty in cooperating with Russia, as Tertrais suggests. How much the one or the other reason may account for the dismissal of NATO is hard to say. However, it is uncertain whether the use of NATO will always be rejected in the future, for reasons explained before.

It follows from the foregoing that the use of Article 42(7) EU does not mean a giant leap forward in the projection of the EU as an international, military actor. In the EU, defence is still very much a Member State issue. While the EU is not as quick in defence decisions as a federal state, its ways to further security in the face of terror are more diffuse. All in all, by the reaction to the Paris events, cooperation is enhanced both on the internal and on the external plane.

² B. Tertrais, *Pour mobiliser pleinement l'Europe, il faut passer par l'OTAN*, Le Figaro, 19 Nov. 2015, <<http://www.lefigaro.fr/vox/politique/2015/11/19/31001-20151119ARTFIG00302-pour-mobiliser-pleinement-l-europe-il-faut-passer-par-l-otan.php>>, (accessed 22 Nov. 2015).