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France and Article 42(7) of the Treaty on the European Union

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1. Article 42(7) – the Mutual Defence clause

In response to the recent terrorist attacks on Paris, France invoked Article 42 (7) of the Treaty on the European Union, at a meeting of the EU Foreign Affairs Council on 17 November 2015. This is the first time that Article 42 (7) has been invoked since it was introduced in the Lisbon Treaty in 2009.¹

Article 42 (7) TEU states:

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.

Being limited to the obligation of aid and assistance, Article 42(7) does not carry the security commitment that comes with NATO's Article V (see below). Each Member State is responsible for determining its contribution on the basis of what they deem to be necessary, which does not necessarily mean the deployment of military assets.

An EU Briefing Paper on the Lisbon Treaty and its implications for CFSP/ESDP notes the wording was specifically chosen to satisfy three groups of states:

those seeking a mutual defence commitment which could be satisfied with the part of the article stating 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.";

those seeking to protect their traditional neutral status (such as Ireland, Austria and Sweden) which could be satisfied with the clause "This shall not prejudice the specific character of the security and defence policy of certain Member States"; and

those wanting to ensure that the article would not undermine NATO which could be satisfied with the reminder that "Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the

¹ Despite being a new clause in the EU treaty, it largely reiterated what already existed in article V of the Brussels Treaty (1948 and amended in 1954) which established the Western European Union. Article of the Brussels Treaty stated "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".

foundation of their collective defence and the forum for its implementation".²

At the EU meeting on 17 November Defence Ministers expressed "their unanimous and full support to France and their readiness to provide all the necessary aid and assistance".³ It is expected that EU Member States will now conduct bilateral negotiations with the French Government on the extent of assistance that may be offered. It is considered that greater sharing of intelligence between EU Member States will be a priority, alongside the reinforcement of the EU's borders. It has also been suggested that France is seeking assistance in meeting some of its foreign military commitments, including its participation in UN peacekeeping operations in Africa and Lebanon.⁴

1.1 The impact on the UK

The UK is obligated under this 'mutual defence' clause and it was ratified as part of the passage of the *European Union Amendment Act 2008*. However, as outlined above it will be for the British Government to determine its contribution and it does not obligate the Government to provide any further military assets to the ISIS/Daesh campaign. In response to the French request a Government spokesman has stated:

The Prime Minister has been clear that we will do whatever we can to help the French Government at this time, and that we need to work together to defeat these terrorists. We have been in constant contact with the French authorities since Friday. This is about a French request for bilateral assistance from other EU member states. We understand and support the French decision, and we stand ready to consider any French request for assistance.⁵

Under the newly established Convention on deploying the armed forces, the Government has committed to giving the House the opportunity to debate any proposed deployment of military forces, prior to action, "except when there is an emergency and such action would not be appropriate". The Government has since made it clear that it reserves the right to undertake immediate action in the event that a critical British national interest is at stake or there is a need to act to prevent a humanitarian catastrophe. In such cases retrospective approval would be sought.⁶

The Government has stated its intention to seek the approval of the House before committing military forces to action against ISIS in Syria. However, France's invocation of a treaty obligation has raised questions among many observers as to whether a treaty obligation represents a critical national interest and, therefore, whether prior parliamentary approval would now need to be sought for expanding UK military

² "[The Lisbon Treaty and its implications for CFSP/ESDP](#)", *European Parliament Directorate General External Policies of the Union*, February 2008 p8

³ [Main results of the Foreign Affairs Council 16-17/11/2015](#)

⁴ "France invokes EU's article 42.7, but what does it mean?", *The Guardian*, 17 November 2015

⁵ MOD, [Defence in the Media](#), 18 November 2015

⁶ HC Deb 26 September 2014, c1265

operations against ISIS. Indeed, the publication *UK Defence Doctrine* highlights treaty obligations a legitimate use of armed force in the protection of UK interests.⁷ This lack of clarification over when the Convention should be invoked has been debated at length in the last few years.⁸

1.2 EU Article 222 TFEU – the Solidarity Clause

The *Treaty on the Functioning of the European Union (TFEU)* also contains a Solidarity Clause (Article 222) which states that:

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.

However, that clause goes on to state that “should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities...”.

To date, the French Government has not invoked Article 222. Many observers have suggested that France has avoided doing so in order to retain a greater role over the response to the attacks, as Article 42 TEU is intergovernmental in nature. In contrast, invoking Article 222 would pave the way for greater involvement by the EU institutions.⁹

⁷ Ministry of Defence, Joint Doctrine Publication 0-01, [UK Defence Doctrine](#), Annex 3A

⁸ Further detail is available in Library Briefing Paper CBP7166, [Parliamentary approval for military action](#), May 2015

⁹ [“France ‘at war’ inaugurates EU’s mutual defence clause”](#), *EurActive.com*, 17 November 2015

2. NATO Article V

At the heart of NATO lies the principle of collective defence. This is enshrined in Article V of the North Atlantic Treaty which provides that if a NATO member is a victim of an armed attack, each and every other member of the Alliance will consider this act of violence as an armed attack against all members and will take the actions it deems necessary. Article V states:

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.

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.¹⁰

Like Article 42 (7) TEU, if Article V were to be invoked it is up to each individual member state to decide what action it deems necessary and does not automatically assume a military response by all members. Each ally would consult with the other members and any assistance would be taken forward in concert.

NATO invoked Article V for the first time in its history after 9/11.

Thus far NATO has not invoked Article V in response to the terrorist attacks in Paris and France has not requested that it do so. In a statement on 17 November 2015, the NATO Secretary General stated:

There has been no request for invoking Article 5. But many NATO Allies have offered France support and help. And we are doing so in many different ways, not least by sharing intelligence, working more closely with France in their efforts to fight ISIL.

And US, our biggest NATO Ally, is leading the coalition fighting ISIL. And Turkey, another NATO Ally, is on the borders of Syria and Iraq and very much affected, a key Ally in the fight against ISIL. So NATO countries contribute in many ways, both in their support for France and in the fight against ISIL.

And I'm looking forward now to meet with European Defence Ministers now and discuss how we can further develop our close cooperation between NATO and the European Union.¹¹

¹⁰ [The North Atlantic Treaty](#), 4 April 1949, Article V

¹¹ [Doorstep Statement by the NATO Secretary General](#), 17 November 2015

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