In the wake of the Paris terrorist attacks on 13 November 2015, France has requested EU solidarity by invoking the so-called mutual assistance clause of the Treaties for the first time in the history of the Union. Article 42(7) TEU calls on Member States to come to fight against armed aggression by ‘all the means in their power’.

This marks a watershed moment for Europe: the EU’s very own collective defence clause, long deemed irrelevant, has come to life. This adds a new political dimension to security discussions in Europe, from the Baltics to Cyprus.

It must now revitalise European political solidarity and make collective security the cornerstone of the EU’s adaptation to an increasingly threatening international landscape.

Defence matters, and so does internal security. The EU is now facing a fundamental strategic shift: whether through acts of terrorism or hybrid threats, there is an inseparable nexus between external and internal security. Safety at home is the flipside of security and even military engagement abroad.

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**From Crisis to Anticipation and Collective Security**

The invocation of Article 42(7) TEU highlights what the European project is fundamentally about: shared values, solidarity and joint responsibility. No Member State can respond to today’s security threats – internal and external – on its own. Many known threats are not met with a sufficiently robust response. Collective security calls for sea change in anticipation, improved capabilities, joint responses and burden-sharing.

**Making Article 42(7) TEU Deliver**

The political and institutional response required when a Member State draws on mutual assistance should now be laid out in detail. Presidents of the European Council and the European Commission, together with the High Representative, should be involved, with a central role played by the latter in strengthening and broadening the scope of EU military missions. The EU’s mutual assistance clause must now be operationalised within the context of European collective security.

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**Time for a European Strategic Defence Review**

The EU’s Global Strategy must guide the adaptation to an increasingly insecure international environment and has to be followed up with a European Strategic Defence Review. There can be no strategic security without defence; no strategic defence without capabilities; no strategic capabilities without a competitive European defence industry. Member States must now come together at the European level to define collective ambitions anew.

**Protecting Europeans’ Homeland**

The EU must urgently deliver on a broad set of measures already agreed after the Charlie Hebdo attacks and in the EU Agenda on Security. As more attacks are likely to occur, full use must be made of the Treaties’ solidarity clause, Article 222 TFEU, to enhance preparation and contingency planning in Europe. The internal-external security nexus has to become anchored at the heart of EU decision making.
1. From Crisis Management to Collective Security based on Anticipation

The appeal to Article 42(7) TEU highlights what the European Union is fundamentally about: shared responsibility and common values. In past years, European solidarity has been put to harsh reality tests. Defence and security are no exception.

The EU has a fairly comprehensive crisis management toolbox, ranging from diplomacy and sanctions to operational military means. Recent months have shown our determination to use it through sanctions against Russia and the rapid launch of the EUNAVFOR operation in the Mediterranean to counter the smuggling and trafficking of migrants. Behind these successes, however, there are fundamental problems in common organisation, solidarity and fair burden-sharing, in particular when it comes to exercising European hard power.

The difference now is that existential insecurity threats have arrived at our doorstep. Foreign and security policy focuses no longer on stabilising faraway countries, 'about which we know little', as Neville Chamberlain would have said. It is about security and the peace of mind of our own citizens. It is about defending the European way of life.

Today, the EU and its 500 million citizens are confronted with a security environment of high fragility and instability. Neither external nor internal security can be guaranteed at national level anymore. Europeans must realise more than ever the basic necessity of working together. The severe threat that terror groups like the Islamic State group pose to Europe’s open societies is here to stay. The Russian aggression on Ukraine has fundamentally upset the nature of our relations in the East. The Union must now gear up to respond to hybrid challenges from state or non-state actors that fall outside the bounds of conventional definitions but seek to exploit our political, economic and technological vulnerabilities. Cyber is one such new dimension of conflict that now needs to be tackled beyond the scope of the purely national domain.

Many of these threats are known but have not met with a sufficiently robust reaction. Foresight, anticipation and preparation must now be put at the heart of the EU’s response. Looking beyond today’s crisis, the invocation of article 42(7) TEU also means that the question of the EU’s role in mutual assistance and collective security, not as an alternative but as a complement to NATO, must be put firmly on the political agenda. What is true for France is true for all: an attack on one Member State is an attack on the Union as a whole. Beyond the immediate and bilateral responses to France’s request, the EU must now think ahead to prepare for future contingencies.

Article 42(7) TEU:

Politically Unprecedented and Legally Binding

According to Article 42(7) TEU, when a Member State is the victim of an armed aggression on its territory, the other Member States ‘shall have an obligation of aid and assistance by all the means in their power’. This obligation is first of all political, but it is also legally binding for Member States: the article leaves little discretion on the decision itself, but the choice of specific means is up to individual Member States.1

What is the Role of the European Union?

After the 9/11 terrorist attacks against the United States, NATO invoked its collective defence clause, Article 5, for the first and only time in its history. In legal terms, the similarities between Article 5 of the Washington Treaty and Article 42(7) TEU are more important than the differences. In both cases the responsibility rests primarily with the individual ally or Member State.

In the case of Art. 42(7) TEU, the obligation to mutual assistance occurs ipso iure, and no explicit powers are conferred to the EU. Article 5 holds that in the case of an armed attack on one or more ‘Parties’, ‘each of them, in exercise of the right of individual or collective self-defence (...), will assist the Party or Parties so attacked (...) individually and in concert’. The main difference between the two defence clauses is therefore institutional: NATO has built up the decision-making procedures and military apparatus that ensures and organises collective response in the case of an attack. The EU has not. Mutual assistance is today agreed on an intergovernmental basis, but that should not preclude the EU from providing a framework within which the Member States can support each other.
**The ISIS Threat – Finances and Expansion**

**The ISIS money trail:** ISIS is probably the best-funded terrorist organisation we have ever confronted. It controls a territory approximately the size of the UK, home to a population of several millions. By some estimates, ISIS assets could be in excess of $2 trillion and an annual income of $2.9 billion. From oil and natural gas, seizure of banks, taxes and extortion, donations from wealthy neighbours, to kidnap and ransom, looting and selling antiquities, agriculture and other natural resources (such as phosphate, cement and sulphur), the Islamic State group has its hands on a plethora of income streams for as long as it controls the territory that it does. To illustrate the strategic relevance of oil smuggling beyond making money, ISIS is believed to be selling crude oil to rebels and the Syrian government alike. While ISIS oil production and smuggling has been targeted more intensively since the Paris attacks, experts argue that the losses in oil revenue can be offset by other Islamic State group assets, given the territory it controls.3

**ISIS’ reach:** the current military campaign against ISIS may also push the group to look for safe havens beyond Syria and Iraq and to further target Europe or other Mediterranean countries. Given its porous borders, political fragmentation and turmoil, Libya may be a likely place for ISIS to try to establish either a new front or to move its leadership. The route to eventually relocate fighters and armour from Syria and Iraq to Libya is not evident, but ISIS is actively recruiting in the Maghreb and Sahel regions. Additionally, the Islamic State group, while losing its stronghold in Darnah in June 2015, has now established an exclusive control of 200 km of Mediterranean coastline in Libya and it is thought to have 3,000 fighters in the country.4 Recent activity points to ISIS trying to reach Ajdabiya further to the east, which could provide access to oil fields and terminals.

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**Figure 1: ISIS Finances**

- 38% Oil
- 17% Natural gas
- 12% Extortion
- 10% Phosphate
- 10% Cement
- 7% Wheat & Barley
- 4% Kidnap & Ransom
- 2% Donations

Source: Thomson Reuters, October 2014

**Figure 2: ISIS Strikes**

Source: NYT, Business Insider, BBC
2. Making Article 42(7) TEU Deliver

What has changed since the first-ever appeal on Article 42(7) TEU? The European response to France’s call for aid and assistance has been swift and forceful. The United Kingdom, the Netherlands, Belgium and Denmark have been directly engaged in the military campaign against ISIS in Iraq, and have signalled their intention to step up these efforts, with Belgium adding a frigate to the French operation led from the Charles de Gaulle aircraft carrier and the UK striking ISIS in Syria within hours of receiving parliamentary approval.

Assistance in Iraq and Syria can come in many forms, from operational support in air strikes to providing material support and intelligence sharing. New partners have decided to join the effort, and the case of Germany is particularly noteworthy. Germany is becoming for the first time a direct part of the military offensive against ISIS through the deployment of Tornado surveillance jets, air-to-air refuelling planes, a frigate to join French patrols in the Mediterranean and increased commitment to training of Peshmerga forces, totalling up to 1,200 land, air and sea troops.

Support will also come in other conflict areas as well, such as the Sahel, the Central African Republic and Lebanon, where many European countries are lining up their efforts to backfill French capabilities to be deployed for matters of national security. The mutual assistance clause comes with a certain paradox, however. Unlike the solidarity clause in Article 222 TFEU, which explicitly involves the Union institutions, the defence clause in Article 42(7) TEU centres on interaction among EU Member States.

The expression of EU solidarity is today primarily left to bilateral talks between Member States. Yet in the context of the need for unity of effort, involving also the Common Security and Defense Policy (CSDP), the EU Political and Security Committee as well as the EU Military Committee should be regularly informed of ongoing bilateral discussions. Careful reflection on the legal and policy framework of Article 42(7) TEU suggests the bilateral approach need not preclude EU coordination to ensure greater effectiveness. It could also be essential for future preparedness.

The High Representative has a central role to play. The first lesson to be drawn must be in terms of a strengthened and more united foreign policy towards key actors in our extended neighbourhood. The top EU political leadership.

Figure 3: Where France is Engaged

10,000 soldiers deployed on national territory to boost security following Charlie Hebdo and 13 November attacks.

3,500 soldiers engaged in Operation Chammal, covering 38 fighter jets, air and sea operational support (including Charles de Gaulle aircraft carrier), intelligence and C2. France is looking for broader operational support. So far UK, Belgium and Germany have signalled readiness to step up.

845 soldiers in UN peacekeeping mission UNIFIL. At present several EU Member States with relevant capabilities do not participate at all, or not up to their weight.

900 soldiers engaged in Operation Sangaris. Recently reduced from 1,700 men, now serves as security guarantor and reserve force for UN peacekeeping operation MINUSCA. Completely replacing French forces would prove complex, but significant backfilling should be possible.

23 out of 60 troops in EU military advisory mission under French Command. Given small size of operation, any reduction of French force elements is unlikely to be relevant.

3,000 soldiers in Operation Barkhane. Higher-intensity operation acting as anti-terrorist force. Several EU Member States with relevant capabilities could contribute.

13 soldiers as contribution to EU training mission under German command. Given small size of contribution to overall 600 men strong mission, any reduction of French force elements is irrelevant.

1 frigate, 2 maritime patrol and reconnaissance aircraft and a total of 420 men engaged in EUNAVFOR Atalanta off the coast of Somalia.

In addition France has 3,800 pre-deployed troops in military bases in Senegal, Ivory Coast, Chad, UAE and Djibouti, as well as a total of 7,200 in overseas territories.

Source: French Ministry of Defence, Brussels2
including the President of the European Council and President of the European Commission, must liaise closely to provide strategic guidance and oversee coordination efforts. In fulfilling this task, they must be equipped with all the necessary intelligence and situational assistance.

The EU’s own operational tools must be made more robust, not least by ensuring that all take their due share of the burden for collective security efforts in EU missions and operations. A first test was provided by the annual EU Force-Generation Conference, consisting in the formal identification of units that can be readily assembled as an EU force. An improved force-generation process, capable of delivering more and a broader spectrum of forces, must now be put on the agenda. For the future, such an exercise should also aim to play a broader role as a ‘clearing house’ of Member States’ efforts in EU and other missions and operations. Acting more efficiently abroad also means that capacity building in partner countries, so-called ‘train and equip’, must be stepped-up.

The will and capacity to act together in defence should not stop there. The Lisbon Treaty can help frame efforts of Member States that are capable and willing to go further. In addition to the possibility of a permanent structured cooperation, the Treaty’s Article 44 TEU provides for the launch of CSDP operations by a ‘coalition of willing’ Member States under an EU flag and EU political control. The idea is that Article 44 TEU will enable greater burden-sharing at least at two levels: by broadening participation compared to interventions done outside the EU framework, and because common financing provisions can come into play. Modalities for such operations have never been agreed, and it is clear that Article 44 has merit only insofar as it does not involve the same burdensome operational planning and force generation modalities as standard CSDP operations.6

Going further, if the Union is to make full sense of today’s demands for collective security and defence, the opportunities to define the EU’s role in mutual assistance and collective defence must now be seized upon. Article 42(7) TEU must be translated into strategy, planning and institutions.

3. Time for a European Strategic Defence Review

The many impasses in European defence must now be overcome. As the focus of the coming months will fall on the new Global Strategy on Foreign and Security Policy to be delivered by June 2016, this strategic exercise cannot ignore a profound reflection on what security responsibilities Europeans need to assume together as a matter of priority. We know there can be no strategic security without defence; no strategic defence without capabilities; no strategic capabilities without a competitive European defence industry. In parallel to similar efforts in NATO, the Global Strategy must initiate the EU’s long-term adaptation to an increasingly threatening international security environment by defining anew our overall military objectives. This means assessing Europe’s shared vital interests in the new security environment, the fusion of internal and external security, possible threat scenarios and the effectiveness of past and current European missions and operations.

Once the strategic ambition is set, there is an urgent need to revise and determine our means of action in common defence through a European Strategic Defence Review or Defence ‘White Book’. The needs and contributions to a capable EU military instrument that can face today’s crises must be defined. Answers must be given to the weaknesses of today’s CSDP. This means looking again at burden-sharing and common financing provisions as well as arrangements for effective planning and command-and-control of civilian and military missions at home and abroad, with the possible setting-up of a European Operational Headquarters.

Alongside the review of our crisis management capabilities, the important questions that had fallen silent must also now be answered. The Treaties’ commitments to solidarity (Art. 222 TFEU) and mutual assistance (Art. 42(7) TEU) stand as strong symbols of what the Union entails. They must now be given operational significance. The CSDP is today primarily a peacekeeping and crisis management instrument, but what about the EU’s pledge to mutual assistance and collective defence? It is a question of particular relevance for Member States that remain outside NATO and its collective defence, but not only. While NATO remains indispensable to deter armed aggression, collective security carries many more dimensions today. The EU’s standard military response capability was last defined at the Helsinki European Council in 1999. If the EU is taking collective defence and security seriously, new headline goals must be given operational significance through contingency planning for different threat scenarios.

In this context, a strategic defence review must also engage a process for the collective capability development and pooling and sharing that is today severely wanting. The recent UK defence review presages a European capability upgrade. Europeans must come together to make the most of renewed investment in defence, avoiding costly inefficiencies and duplication, on the basis of the needs identified by Member States and the EU. Together with the European Defence Agency (EDA), the Commission must play its role to the full: the proposed defence action plan on industry and technology must support the capability priorities of the future Strategic Defence Review.
The 2016 calendar will add momentum to this ambition: after the June Global Strategy and NATO’s July Warsaw Summit, Europeans must come together to decide **what needs to be done and who does what**. It is a question both of our credibility within the Transatlantic Alliance and of our ability to define our own strategic means of action. The upcoming Dutch EU Presidency must spearhead this **high-level Member States-led process, involving the External Action Service, the Commission and the European Defence Agency**.

### 4. Protecting Europeans’ Homeland

Fear is now vividly present in the minds of all Europeans. They feel – and indeed are! – more exposed to the fallout from conflicts in our neighbourhood and global conflict areas. Soldiers outside office buildings and schools, tighter controls at airports and train stations are a reminder to all citizens that internal and external security are now inextricably connected. **This is a game changer in terms of the way defence issues will be approached in Europe.** From now on, defence will primarily be seen through the prism of what it means for individual and collective security of our citizens in their daily lives.

#### Foreign Fighters from Europe

According to Europol Director Rob Wainwright, some 2,000 Europeans have been positively confirmed as foreign fighters, but there is a consensus across Europe that the number of foreign fighters is likely to be around 5,000. Interior ministers met swiftly after the attacks in Paris to draw the consequences of increased terrorist threats. The to-do-list has already been drawn up after the Charlie Hebdo attacks in February 2015, the EU Agenda on Security in April and additional measures proposed by the European Commission in the wake of the Paris attacks. Now, it is above all a **matter of following up words with actions**. Passenger Name Records (PNR) are a case in point, information sharing and centralisation of information on foreign fighters is yet another priority where Europeans must act on their pledges.
There is a concrete interface between internal and external security: the EU border. Reinstating the credibility of our external frontier requires making the registration of all arrivals at the external border watertight, with a centralised digital database which is integrated across national services and allows for cross-checking with SIS II, VIS and Europol’s database and Interpol’s Stolen and Lost Travel Documents Database. Alert mechanisms are effectively employed by national security services. In the longer term, legal migration solutions must be developed to regularise entry into the European Union.

The linkages between foreign conflicts and internal security will need to be better understood and acted upon. The EU must strengthen its intelligence and situational awareness of the most pressing challenges. The preparation of the joint framework on hybrid threats is a first element of such a reflection: Member States, the External Action Service and the Commission must show their resolve to overcome institutional barriers to increase situational awareness and reactivity to multi-faceted threats, together with partners such as NATO. A key step forward is the setting up a fusion cell reporting directly to the President of the Commission and the High Representative/Vice-President on the basis of the current Intelligence and Situation Centre (EU INTCEN). Improved situational awareness and intelligence must also feed into the EU Integrated Political Crisis Response arrangements (IPCR) to reinforce the European Union’s ability to take rapid decisions when facing major crises requiring a response at EU political level.

Last but not least, addressing homeland security means also preparing for the worst: attacks could change in scale and in nature, with the use of chemical weapons or striking vulnerable targets such as schools. The EU must now seize the occasion to examine all forms of EU solidarity and contingency planning in case of future attacks. If article 42(7) TEU proved the preferred choice after Paris attacks, the solidarity clause in article 222 TFEU could carry more relevance in the future as it specifically aims to address terrorist threats and foresees EU decision-making and coordination with EU-wide tools and instruments. Another advantage of the solidarity clause is the prevention and protection provisions that apply to terrorism, paving the way for common actions in advance of an attack.

The solidarity clause has so far never been invoked, but its implementation has been the subject of an interpretative Council decision (2014/415/EU). It is restrictive in a number of regards and notably on the balance between ‘prevention’ and ‘response’, suggesting these duties apply only to the immediate moments before an unfolding attack. A review of the Article 222 TFEU implementing decision is necessary for better preparation and contingency planning against terrorist attacks in Europe. Duties should now be expanded to apply also to enhanced intelligence cooperation, advanced protocols for police cooperation, increased critical infrastructure protection, and capacity for quicker deployment of the ATLAS network, the EU Civil Protection Mechanism and/or the CSDP.

Concerning the measures that can be decided, both articles refer to all available and appropriate means and assets, but the solidarity clause also refers to instruments at the disposal of the Union, that are not mentioned in the mutual assistance clause.

**Figure 5: External–Internal Threats: Improving Situational Awareness, Intelligence and Foresight**

![Diagram of external–internal threats integration]

**Article 42(7) TEU vs Article 222 TFEU**

Art. 42(7) TEU needs to be read together with – but differentiated from – Art. 222 TFEU, that was introduced in the wake of the terrorist attacks in Madrid. The ‘solidarity clause’ of Art. 222 TFEU calls for common action in case of a terrorist attack or a natural or man-made disaster. It explicitly involves the Union and its Member States and clearly states a legal obligation to take action. In principle, the solidarity clause – in the case of terrorist attacks – can only be invoked when a terrorist attack of a non-state organisation has occurred. It would not be applicable in case of an attack by a third state, because this situation would constitute an armed aggression in the sense of Art. 42(7) TEU.

Concerning the measures that can be decided, both articles refer to all available and appropriate means and assets, but the solidarity clause also refers to instruments at the disposal of the Union, that are not mentioned in the mutual assistance clause.
According to Declaration Nr. 37 concerning Art. 222 TFEU, Member States explicitly keep their own right to choose the appropriate means. Therefore, Member States have a large margin of discretion.

Art. 222 TFEU comprises preventive and retroactive measures:
• In order to ‘prevent the terrorist threat in the territory of the Member States’ or in order to ‘protect democratic institutions and the civilian population from any terrorist attack’ the EU has the competence to mobilise all the instruments at its disposal, including the military resources made available by the Member States.
• If such an attack has happened the EU can assist a Member State in its territory at its request. Finally, according to Art. 222 (2) TFEU, if a Member State is the object of a terrorist attack, the other Member States shall assist it at the request of its political authorities by coordination in the Council.

Conclusion
Since the beginning of his mandate – and earlier, in his presidential campaign – President Jean-Claude Juncker has called for a stronger Europe in security and defence. In his Political Guidelines presented to the European Parliament in July 2014 he has explicitly named integrated defence capabilities and permanent structured cooperation as Europe’s way forward. Before the 2015 June European Council – which was supposed to be a political catalyst for European defence – he favoured mandating High Representative/Vice-President Mogherini to explore the potential of the so far unused provisions of the Lisbon Treaty to drive European defence forward.

Now the deadly Paris attacks and France’s decision to invoke Article 42(7) TEU force our hand. Collective security calls for collective capabilities and joint responses.

Security and Defence Top Priorities for Special Adviser Michel Barnier
In February 2015, the President of the European Commission, Jean-Claude Juncker, appointed Michel Barnier as his Special Adviser on European Defence and Security Policy. Among Mr. Barnier’s tasks is to contribute to the Commission’s work on security and defence and develop a set of ambitious and forward-looking proposals on European security.

As a long-standing European political leader, Michel Barnier has been engaged in European defence issues for more than two decades. A two-time European Commissioner, he initiated in 2012 the setting-up of the Commission’s Defence Task Force and oversaw the preparation of the Communication ‘A New Deal for European Defence,’ presented to the European Council in December 2013. Before becoming Minister of Foreign Affairs in the French government from 2004 to 2005, Michel Barnier served in the Praesidium of the Convention on the Future of Europe, where he chaired the working group on European Defence that proposed the current Treaty framework on defence, including the solidarity and mutual assistance clauses.

Notes
1. The so-called ‘Irish clause’ in Art. 42(7) second sentence also constitutes a safeguard for those states that are neutral and, arguably, also for those that have other national constitutional reservations or specific security and defence policies.
3. FT, 14 October 2015; Washington Post, 18 November 2015, NYT, 29 November 2015
4. NYT, 28 November 2015, Oxford Analytica
5. For more detailed discussion, see also EPSC Strategic Note In Defence of Europe
6. Past discussions on Art 44 have stranded because the insistence of some Member States of duplication modalities of standard CSDP military operations, with EU Political and Security Committee having not only political control but also to approve CMC, CONOPS, OPLAN, RoE.
8. The Atlas Network, created in 2001, is an association consisting of special police intervention units of the 27 EU Member States working on countering terrorism and criminal acts. The Network is financed and supported by the European Commission.