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# Collective Defence in NATO and the EU: Legal Challenges in an Era of Renewed Conflict.

Federica Fazio\*

## *Abstract*

*Russia's ongoing invasion of Ukraine has underscored the importance of collective defence, long anchored in the North Atlantic Treaty Organisation (NATO) and its mutual defence clause, Article 5 of the North Atlantic Treaty (NAT). However, a similar mutual assistance/defence clause also exists within the European Union (EU). Article 42(7) of the Treaty on European Union (TEU) commits EU Member to assist one another in the event of armed aggression. These provisions have received relatively little attention from legal scholars. In a context marked by heightened strategic concerns about conventional attacks on NATO and/or EU territory, as well as uncertainty over the United States' commitment to NATO and European security, this article examines how Article 5 NAT and Article 42(7) TEU differ in terms of their legal obligations, scope, and credibility as mechanisms of collective defence. Adopting a law-in-context approach, this article analyses and compares the overlapping collective defence clauses of NATO and the EU, clarifying their legal scope and situating them within the broader geopolitical and strategic context in which they operate. The analysis provides important insights into the enduring legal and institutional challenges of advancing defence cooperation in Europe.*

## **I. Introduction**

Established in 1949 as a collective defence alliance, NATO focused exclusively on deterring and defending against the Union of Soviet Socialist Republics (USSR) for four decades.<sup>1</sup> Following the fall of the Berlin Wall in 1989 and the subsequent collapse of the USSR, defence and deterrence were, however, increasingly deprioritised as the Alliance sought

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<sup>1</sup> Although the NAT does not identify a specific adversary, the circumstances surrounding its conclusion indicate that the USSR was the dominant security concern at the time.

to remain relevant in the post-Cold War era. Faced with the imperative “go out of area or go out of business”,<sup>2</sup> NATO expanded its core responsibilities to include democracy promotion and crisis management outside the Euro-Atlantic area.<sup>3</sup> Additionally, it opened to new members and sought to develop a strategic partnership with Russia, notably through the 1997 NATO-Russia Founding Act and the establishment of the Permanent Joint Council, later replaced by the NATO-Russia Council.

Russia’s actions in Ukraine, culminating in its 2014 illegal annexation of Crimea and 2022 full-scale invasion of Ukraine, have, however, prompted the Alliance to gradually refocus on its original deterrence and collective defence mission.<sup>4</sup> In 2022, the Alliance adopted in fact a new Strategic Concept in which these priorities feature prominently, and reaffirmed its commitment to the open-door policy by admitting Finland and Sweden in 2023 and 2024, respectively. The result is a renewed centrality of Article 5 as the legal foundation of the Alliance’s deterrence and collective defence mission. This article binds the security of Europe to that of the United States (US), by affirming that an attack on one ally will be regarded as an attack on all allies. This simple pledge has served as the bedrock of Europe’s security, peace, and stability for close to eight decades.

The EU, on the other hand, originated as a peace project founded on the idea that lasting peace and stability could be achieved through the development of strong economic interdependence among its members, initially by establishing a common market for coal and steel, and subsequently an internal market encompassing all goods. As highlighted by Govaere, the European Economic Community (EEC) had no conferred competence in the area of foreign and security policy.<sup>5</sup> This still remains the case today with its successor: the EU. Under the principle of conferral, the EU may act only within the competences conferred on it by the

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<sup>2</sup> Ronald D. Asmus, Richard L. Kugler, and F. Stephen Larrabee, ‘Building a new NATO’, 72/4 *Foreign Affairs* (1993), 31, available at <<https://www.foreignaffairs.com/articles/southeastern-europe/1993-09-01/building-new-nato>>; Richard Lugar, ‘NATO: Out of Area or Out of Business. A Call for U.S. Leadership to Revive and Redefine the Alliance.’ Remarks Delivered to the Open Forum of the U.S. State Department, The Richard Lugar Senatorial Papers, *Indiana University Libraries*, Modern Political Papers (2 August 1993), 7, available at <<https://collections.libraries.indiana.edu/lugar/items/show/342#?c=0&m=0&s=0&cv=10&xywh=960%2C4335%2C1304%2C1568>>.

<sup>3</sup> Asmus, Kugler & Larrabee, (n 2), 32; Julian Lindley-French, ‘Reinventing NATO’ in *The North Atlantic Treaty Organization: The Enduring Alliance* (Routledge, 2023), 86-97; Jennifer Medcalf, ‘NATO, 1990-2013’, in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (Routledge, 2024), 55-56.

<sup>4</sup> John R. Deni, *NATO and Article 5: The Transatlantic Alliance and the Twenty-First-Century Challenges of Collective Defense* (Rowman & Littlefield Publishing, 2017), 28-37; John R. Deni, ‘Collective defence’, in Sebastian Mayer (ed.) *Research Handbook on NATO* (Edward Elgar Publishing, 2023), 208-221; Sten Rynning, *NATO: From Cold War to Ukraine, a History of the World’s Most Powerful Alliance* (Yale University Press, 2024), 65-76.

<sup>5</sup> Inge Govaere, ‘Transformative Impact on the European Union of War (in Ukraine): Existential Conundrums’, in Inge Govaere, Sacha Garben, and Eleanor Spaventa (eds.) *Impact of War (in Ukraine) on the EU* (Hart Publishing, 2025), 17.

Member States, which continue to retain all other powers.<sup>6</sup> In particular, responsibility for national security lies solely with each Member State.<sup>7</sup>

At the same time, however, the Union has competence over common foreign and security policy, including the gradual development of a common defence policy that might lead to a common defence.<sup>8</sup> Accordingly, the Common Foreign and Security Policy (CFSP), including the Common Security and Defence Policy (CSDP), which survived the abolition of the 1992 Maastricht pillar structure by the Lisbon Treaty,<sup>9</sup> remains inherently intergovernmental and, as such, continues to be governed by specific rules and procedures. For these reasons, and since most of its members (currently 23) are also in NATO, the EU's role in security and defence has historically been confined to crisis management and peacekeeping operations outside its territory.<sup>10</sup>

Over the past few years, however, the EU has been increasingly asserting itself in this domain. This renewed attention to security and defence gained momentum in 2016, in part due to the Brexit vote in the United Kingdom (UK) and Donald Trump's first presidential victory in the US, in June and November respectively. The EU's engagement, particularly in defence matters, has intensified further following Russia's full-scale invasion of Ukraine in 2022. Although NATO remains the backbone of Europe's territorial defence, Trump's re-election in November 2024 and first year in office have raised questions about America's commitment to NATO and European security, reigniting discussions about the EU's own mutual defence clause.

In 2007, the Lisbon Treaty introduced in the EU treaty framework a mutual assistance clause similar to NATO's Article 5. Article 42(7) establishes in fact a mutual assistance obligation, requiring Member States to assist one another in the event of armed aggression. Both mutual defence clauses have been invoked only once to date, following the 2001 and 2015 terrorist attacks in the US and France, respectively.

Although reaffirming NATO's primacy for countries that are members of both organisations, the 2022 Strategic Compass – adopted, like NATO's latest Strategic Concept, amid Russia's war in Ukraine – has emphasised the need for EU Member States to be prepared

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<sup>6</sup> *Consolidated Version of the Treaty on European Union*, (15 March 2025), Article 5(2).

<sup>7</sup> *Consolidated Version of the TEU*, (n 6), Article 4(2). However, Article 4(2) cannot be considered as a competence reservation clause. See, e.g., Bruno De Witte, 'Exclusive Member State Competences — Is There Such a Thing?', in Sacha Garben and Inge Govaere (eds.) *Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future* (Hart Publishing, 2017), 72.

<sup>8</sup> *Consolidated Version of the TEU*, (n 6), Article 24(1).

<sup>9</sup> Inge Govaere 'Multi-faceted Single Legal Personality and a Hidden Horizontal Pillar: EU External Relations Post-Lisbon', 13 *Cambridge Yearbook of European Legal Studies* (2011), 98-106.

<sup>10</sup> *Consolidated Version of the TEU*, (n 6), Article 3(5).

to operationalise the EU’s mutual assistance clause.<sup>11</sup> The ambition of strategic autonomy articulated in the 2016 EU Global Strategy (EUGS) – which can be summarised into the motto “act together if we can, act alone if we must”<sup>12</sup> – remains only partially realised, largely due to the continued overreliance on the US.<sup>13</sup> Nevertheless, the Union has adopted tangible defence initiatives since the start of the conflict in Ukraine,<sup>14</sup> with growing uncertainty surrounding the credibility of NATO’s security guarantee under the current US administration adding further impetus to this development. Against this background, this article examines the mutual defence clauses of NATO and the EU. It adopts a law-in-context approach, situating the legal analysis within broader geopolitical and strategic dynamics, and drawing on international relations and security studies.<sup>15</sup> The article first undertakes a legal analysis of Articles 5 NAT and 42(7) TEU, before turning to the strategic dimension through an examination of the 2022 NATO Strategic Concept and 2022 EU Strategic Compass.

## II. Legal analysis of Article 5 NAT and Article 42(7) TEU

For the purpose of this paper, three key issues will be examined in detail: 1) the thresholds of armed attack and armed aggression; 2) the geographical scope of such conducts; and 3) the legal obligations arising for NATO allies and EU Member States.

### 1. The Threshold: Armed Attack vs Armed Aggression

Under Article 5 NAT, an “armed attack” constitutes the *casus foederis*;<sup>16</sup> yet, the provision itself, along with the rest of the NAT and international law more broadly, does not provide a clear definition of what such an attack entails.

An armed attack constitutes the critical threshold triggering the lawful use of force in

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<sup>11</sup> European External Action Service, *A Strategic Compass for Security and Defence. For a European Union that protects its citizens, values and interests and contributes to international peace and security*, (March 2022), 10, 14, 23, 28, 30, 31, 34, 35, 36, 39, 40, 53 and 54, available at <[https://www.eeas.europa.eu/sites/default/files/documents/strategic\\_compass\\_en3\\_web.pdf](https://www.eeas.europa.eu/sites/default/files/documents/strategic_compass_en3_web.pdf)>.

<sup>12</sup> The phrase reflects a synthesis of recurring themes in former High Representative Federica Mogherini’s speeches following the adoption of the 2016 EU Global Strategy. See European External Action Service, *Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy*, (June 2016), Foreword, 4, para. 2, 9, para. 3.1, 19, para. 4, 46, available at <[https://www.eeas.europa.eu/sites/default/files/eugs\\_review\\_web\\_0.pdf](https://www.eeas.europa.eu/sites/default/files/eugs_review_web_0.pdf)>.

<sup>13</sup> See e.g. European Commission, ‘Joint Statement on a United States-European Union framework on an agreement on reciprocal, fair and balanced trade,’ Statement, (21 August 2025), available at <[https://policy.trade.ec.europa.eu/news/joint-statement-united-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21\\_en](https://policy.trade.ec.europa.eu/news/joint-statement-united-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21_en)>.

<sup>14</sup> See, e.g., Federico Fabbrini, ‘To “Provide for the Common Defence”: Developments in Foreign Affairs and Defence’, in *The EU Constitution in Time of War* (Oxford University Press, 2025) 21-47; Govaere 2025, (n 5), 13-29.

<sup>15</sup> See, e.g., Megan Donaldson, ‘Peace, war, law: teaching international law in contexts’, 18(4) *International Journal of Law in Context* (2022), 393.

<sup>16</sup> *North Atlantic Treaty*, Washington, DC, (4 April 1949), 63 Stat. 2241, 34 UNTS 243, Article 5.

individual or collective self-defence under Article 51 of the United Nation Charter (UNC).<sup>17</sup> However, the exact meaning of this concept remains unclear, as neither the United Nations Charter nor the *travaux préparatoires* of the 1945 San Francisco Conference provide a clear definition. In addition, international courts have not conclusively clarified the degree of gravity and the specific forms of force required to meet this threshold.<sup>18</sup>

Archival correspondence exchanged between 1947-1949 by the UK Foreign Office and the US State Department indicates that NATO founding members informally understood an armed attack to involve force of sufficient gravity to amount to an attack by one state against another and threaten the preservation of international peace and security.<sup>19</sup> However, this understanding was never formally incorporated into the agreed interpretations of the Treaty.<sup>20</sup>

At the same time, it has been argued that the meaning of armed attack in Article 5 cannot exceed that attributed to the same term in Article 51 UNC.<sup>21</sup> Consequently, not every use of force rises to the level of an armed attack. Furthermore, the drafters of the Charter deliberately adopted the term “armed attack” rather than “aggression”, despite the latter appearing elsewhere in the Charter and in its French version.<sup>22</sup> By contrast, the NAT employs only the term “armed attack,” after the earlier formulation “armed aggression” in Article 3 was replaced shortly before the Treaty was signed.<sup>23</sup>

Discussions during the 18<sup>th</sup> Meeting of the Washington Exploratory Talks on Security point to different understandings:<sup>24</sup> Europeans understood armed aggression as

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<sup>17</sup> *United Nations Charter*, San Francisco, (26 June 1945), 1 UNTS XVI, Article 51.

<sup>18</sup> Laurie R. Blank, ‘Irreconcilable Differences: The Thresholds for Armed Attack and International Armed Conflict’, 96/1 *Notre Dame Law Review* (2020), 253; Camilla Guldahl Cooper, ‘State Self-Defence’, in *NATO Rules of Engagement: On ROE, Self-Defence and the Use of Force during Armed Conflict* (International Humanitarian Law Series 57, Leiden and Boston: Brill Nijhoff, 2020), 259; Michael N. Schmitt ‘The North Atlantic Alliance and Collective Defense at 70: Confession and Response Revisited’, 34 *Emory International Law Review* (2019), 101.

<sup>19</sup> Tony Insall and Patrick Salmon, *The Brussels and North Atlantic Treaties, 1947-1949: Documents on British Policy Overseas, Series I, Volume X* (Routledge, 2015), n.281, 428 and n.287, 435.

<sup>20</sup> Aurel Sari, ‘The Mutual Assistance Clauses of the North Atlantic and EU Treaties: The Challenge of Hybrid Threats’, 10 *Harvard National Security Journal* (2019), 413. See also US Office of the Historian, ‘Minutes of the Eighteenth Meeting of the Washington Exploratory Talks on Security, March 15, 1949’, Document 112, Foreign Relations of the United States, 1949, Western Europe, Volume IV, (15 March 1949), 222-223, available at <<https://history.state.gov/historicaldocuments/frus1949v04/d112>>. Grady has suggested that the formulation of Article 5 was left intentionally vague to allow for a wide range of potential Soviet actions to be characterised as an armed attack, thereby strengthening deterrence by leaving room for a possible US response. See Broderick C. Grady, ‘Article 5 of the North Atlantic Treaty: Past, Present, and Uncertain Future’, 31 *Georgia Journal of International and Comparative Law* (2002), 186.

<sup>21</sup> Schmitt, (n 18), 101. See also, US Office of the Historian, Minutes of the Eighteenth Meeting (n 20), 219.

<sup>22</sup> Yoram Dinstein, *War, Aggression and Self-Defence* (5<sup>th</sup> Edition, Cambridge: Cambridge University Press, 2012), 230-234; R.Y. Jennings, ‘The Caroline and McLeod Cases’ 32/1 *The American Journal of International Law* (1938), 196.

<sup>23</sup> Insall & Salmon, (n 19).

<sup>24</sup> US Office of the Historian, Minutes of the Eighteenth Meeting, (n 20), 221-222.

broader than armed attack, while Americans considered the two terms as interchangeable. This divergence in understanding is further confirmed by the 2023 US Law of War Manual, which characterises aggression as “the most serious and dangerous form of the illegal use of force”.<sup>25</sup> Accordingly, the distinction between the thresholds of armed attack and armed aggression may differ depending on the state victim of the attack or aggression.

Although Article 42(7) TEU, and the TEU more generally, does not define the term “armed aggression”, in 1974, UN General Assembly (UNGA) Resolution 3314 provided a definition of aggression as “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations”.<sup>26</sup> This resolution continues to serve as the most authoritative source for the concept of aggression.<sup>27</sup>

Similarly, Article 4 NAT provides that “[t]he Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened.”<sup>28</sup> The close resemblance in wording between Article 1, UNGA Resolution 3314 and Article 4 NAT seems to support the view that armed attack and armed aggression can be regarded as synonyms. In practice, an armed attack can be understood as a manifestation of aggression, a relationship that is further reflected in Article 3 of Resolution 3314.<sup>29</sup>

However, some commentators have suggested that Article 42(7) TEU’s use of armed aggression may suggest a wider material scope of application than Article 5 NAT.<sup>30</sup> On the basis of this interpretation, Article 42(7) could potentially cover certain hybrid activities that do not meet the threshold of an armed attack under Article 5 NAT, including, for example,

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<sup>25</sup> US Department of Defence, *Law of War Manual (2015, updated July 2023)*, para. 1.11.3.1, 44, available at <<https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF>>.

<sup>26</sup> *UNGA Resolution 3314 (XXIX) on the Definition of Aggression*, (14 December 1974), GAOR 29<sup>th</sup> Sess. Supp. 31, Article 1.

<sup>27</sup> See Article 8 bis of the Rome Statute, of the International Criminal Court, available at <<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>>.

<sup>28</sup> *North Atlantic Treaty*, (n 16), Article 4. Article 4 operates at an earlier stage than Article 5 NAT, enabling consultations in situations of potential threat and thereby contributing to deterrence. The Polish request for consultations in September 2025 offers a useful illustration of this point. See Chancellery of the Prime Minister of the Government of Poland, ‘Poland Moves to Invoke NATO Article 4 After Airspace Violation’, (10 September 2025), available at <<https://www.gov.pl/web/primeminister/poland-moves-to-invoke-nato-article-4-after-airspace-violation#:~:text=%22The%20fact%20that%20drones%20directly,obviously%20changes%20the%20political%20situation%20>>. For more information on Article 4, see section 2.

<sup>29</sup> UNGA Resolution 3314 1974, (n 26), Article 3.

<sup>30</sup> See, e.g. Jean-Christophe Martin, ‘The Mutual Defence Clause’, in Elsa Bernard, Quentin Loiez and Stéphane Rodrigues (eds.) *The European Defence Union: An Article-by-Article Commentary* (1<sup>st</sup> Edition, Intersentia, 2026), 239.

recent incidents in the Baltic Sea.<sup>31</sup> This would imply that EU Member States might, at least in theory, be obliged to engage in collective defence in situations where NATO allies would not be required to. However, such an interpretation would conflict with international law.

The use of the term “armed attack” is not unique to Article 5 NAT but also appears in Article 51 UNC, to which both Article 42(7) TEU and Article 5 NAT explicitly refer.<sup>32</sup> Article 103 UNC establishes the Charter’s primacy in the event of conflict with other international agreements,<sup>33</sup> a hierarchy likewise reflected in Article 30(1) of the Vienna Convention on the Law of Treaties (VCLT).<sup>34</sup> In this context, and in light of the duty to ensure that EU law is interpreted in conformity with international law – stemming from Articles 3(5) and 21(1) TEU and recognised by the Court of Justice of the EU (CJEU) in *Poulsen*<sup>35</sup> and *Air Transport Association of America*<sup>36</sup> – Article 42(7) TEU should, to the greatest extent possible, be read consistently with Article 51 UNC. It follows that the notion of armed aggression in Article 42(7) TEU ought to be understood as aligning with the concept of armed attack as used in Article 51 UNC.<sup>37</sup> It has been suggested that the adoption of the term armed aggression in Article 42(7) TEU may simply result from a literal translation of the French “agression armée”, which is also employed in the French version of Article 5 NAT.<sup>38</sup>

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<sup>31</sup> See e.g. Federal Foreign Office, *Joint Declaration by the Foreign Ministers of Germany, France, Poland, Italy, Spain and the United Kingdom in Warsaw*, Press Release, (19 November 2024), available at <<https://www.auswaertiges-amt.de/en/newsroom/news/2685538-2685538>>; European Commission, ‘Joint Statement by the European Commission and the High Representative on the Investigation into Damaged Electricity and Data Cables in the Baltic Sea’, Statement, (26 December 2024), available at <[https://ec.europa.eu/commission/presscorner/detail/en/statement\\_24\\_6582](https://ec.europa.eu/commission/presscorner/detail/en/statement_24_6582)>; Statsministeriet, ‘Joint Statement of the Baltic Sea NATO Allies’, (14 January 2025), available at <<https://stm.dk/media/ndolltur/joint-statement-of-the-baltic-sea-nato-allies-summit.pdf>>.

<sup>32</sup> See Table 1, 26.

<sup>33</sup> Martin Reichard, ‘Collective Self-Defence’, in Martin Reichard (ed.), *The EU-NATO Relationship: A Legal and Political Perspective* (1<sup>st</sup> Edition, Routledge, 2006), 210.

<sup>34</sup> See, e.g. Alexander Orakhelashvili, ‘1969 Vienna Convention. Article 30: Application of Successive Treaties Relating to the Same Subject Matter’, in Olivier Corten and Pierre Klein (eds.), *The Vienna Convention on the Law of Treaties A Commentary* (Oxford University Press, 2011), 64 and 780.

<sup>35</sup> Case C-286/90, *Poulsen and Diva Navigation*, [1992] ECR I-6019, paras. 9 and 10. See also Piet Jan Slot, ‘Case C-286/90, *Anklagemyndigheden (Public Prosecutor) v. P.M. Poulsen and Diva Navigation*, Judgment of 4 November 1992’, 31/1 *Common Market Law Review*, (1994), 147-153.

<sup>36</sup> Case C-366/10, *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change*, [2011] ECR I-13717, paras. 101, 103, and 109. See also Benoît Mayer, ‘Case C-366/10, *Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change*, Judgment of the Court of Justice (Grand Chamber) of 21 December 2011’, 49/3 *Common Market Law Review*, (2012), 1113-1139.

<sup>37</sup> Matthias G. Fischer and Daniel Thym, ‘Article 42 [CSDP: Goals and Objectives; Mutual Defence] (ex-Article 17 TEU), in Hermann-Josef Blake and Stelio Mangiameli (eds.), *The Treaty on European Union (TEU): A Commentary* (Berlin: Springer-Verlag Berlin Heidelberg, 2013), 1225; Martin, (n 30), 238-239.

<sup>38</sup> Bob Deen, Dick Zandee, and Adája Stoetman, ‘Uncharted and uncomfortable in European defence: The EU’s mutual assistance clause of Article 42(7)’, Report, *Clingendael Institute*, (January 2022), 7, available at <<https://www.clingendael.org/sites/default/files/2022-01/uncharted-and-uncomfortable.pdf>>. See also Elie Perot

Article 42(7) finds its origins in Article IV of the Brussels Treaty, a provision which, much like Article 5 NAT, was conceived to address traditional armed attacks by state actors, rather than threats posed by non-state actors.<sup>39</sup> However, like Article 5 NAT, Article 42(7) was invoked for the first, and so far only, time in response to terrorist attacks carried out by a non-state-sponsored terrorist group. This is particularly significant given the existence of the solidarity clause in Article 222 of the Treaty on the Functioning of the EU (TFEU), specifically designed to address such instances, supporting an extensive interpretation of Article 42(7) TEU.<sup>40</sup> Therefore, although the scope of Article 42(7) TEU has not been explicitly clarified in European Council decisions or conclusions<sup>41</sup> – unlike Article 5 NAT in NATO Summit *communiqués* – it appears reasonable to treat it as applicable in circumstances broadly comparable to those triggering NATO’s collective defence clause. On this basis, its scope may be understood to extend beyond traditional armed attacks to encompass non-traditional forms of hostility, including terrorism, cyber operations, hybrid activities, and attacks conducted from, to, or in space, thereby creating potential areas of overlap between the two frameworks.<sup>42</sup>

## 2. The Geographical Scope: In Europe or North America vs On Its Territory

Article 5 clearly affirms that the armed attack against one or more NATO allies must have been

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‘The art of commitments: NATO, the EU, and the interplay between law and politics within Europe’s collective defence architecture’, 28/1 *European Security* (2019), 45; Martin, (n 30), 238; Sari, (n 20), 418.

<sup>39</sup> For more information, see Federica Fazio, ‘Collective defence in the EU: A law-in-context analysis of Articles 42(7) TEU and 222 TFEU in light of the war in Ukraine’, in Narin Idriz, Eva Kassoti, and Joris Larik (eds.), *The legal implications of the EU’s geopolitical awakening*, CLEER Papers 2025/1, 142-143.

<sup>40</sup> Fischer & Thym, (n 37), 1225-1226; Martin, (n 30), 240-241.

<sup>41</sup> Although recent conclusions adopted by the Council ‘on advancing the EU’s capacity to counter hybrid threats’ stressed the need to further invest in the mutual defence clause, in line with what stated in the Strategic Compass. See Council of the European Union, *Council conclusions on advancing the European Union’s capacity to counter hybrid threats*, 7349/26, (16 March 2026), para. 17, available at <<https://data.consilium.europa.eu/doc/document/ST-7349-2026-INIT/en/pdf>>. Both the EU Strategic Compass and NATO’s latest Strategic Concept indicate that hybrid threats may, under certain conditions, trigger a collective response. Bernard Siman, ‘Hybrid Warfare: Attribution is Key to Deterrence’, Commentary, *Egmont Institute*, (30 January 2023), available at <<https://www.egmontinstitute.be/hybrid-warfare-attribution-is-key-to-deterrence/>>. In addition, in 2016, the Joint Framework ‘on countering hybrid threats’ had suggested that a combination of serious hybrid activities amounting to armed aggression against an EU Member State could trigger Article 42(7) TEU. See European Commission, *Joint Communication to the European Parliament and the Council-Joint Framework on countering hybrid threats*, JOIN(2016) 18 final, (6 April 2016), available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016JC0018>>.

<sup>42</sup> Already in 2012, the European Parliament, in its resolution ‘on the EU’s mutual defence and solidarity clauses: political and operational dimensions’ indicated that certain non-armed attacks, including cyberattacks targeting critical infrastructure, could fall within the scope of the clause when intended to cause significant disruption or damage to a Member State and attributable to an external actor. See European Parliament, *European Parliament resolution of 22 November 2012 on the EU’s mutual defence and solidarity clauses: political and operational dimensions*, P7\_TA(2012)0456, (22 November 2012), para. 13, available at <[https://www.europarl.europa.eu/doceo/document/TA-7-2012-0456\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-7-2012-0456_EN.pdf)>. As noted by Martin, in the aftermath of the Bataclan and Stade de France attacks, the European External Action Service (EEAS) further specified that, for an incident to fall within the scope of Article 42(7) TEU and qualify as armed aggression, it needed to “originate from abroad” and be attributable to either state or non-state actors. Martin, (n 30). See also Sari, (n 20), 422.

committed in Europe or North America, with Article 6, further clarifying the geographical range of the armed attack that can trigger mutual defence obligations.<sup>43</sup>

Overseas territories outside of Europe and North America are not covered and colonial territories were never included, with the sole exception of Algeria, which in 1949 was considered part of metropolitan France. The French government had made its inclusion a *condition sine qua non* for participation in the Atlantic Pact.<sup>44</sup> Although the text of Article 6 still refers to “the Algerian Departments of France”, this reference became obsolete following Algeria’s independence in 1962, and a footnote was subsequently added to reflect this change.<sup>45</sup>

The article was later amended in 1951, following the accession of Greece and Türkiye. Article 2 of the relevant accession protocol<sup>46</sup> extended the application of Article 6 to Türkiye’s territory, effective 18 February 1952, the date when the country deposited its instrument of ratification. Later accession protocols – including the most recent for Finland and Sweden in July 2022 – have likewise modified the geographical scope of Article 6 (and, by extension, Article 5),<sup>47</sup> but have not altered its text, as all acceding countries have, to date, been part of the Euro-Atlantic area.<sup>48</sup>

NATO’s first Secretary General, Lord Hastings Ismay, described the Alliance as “cover[ing] the North Atlantic Ocean and the European continent from the North Cape to North Africa and from the Channel to the Caucasus mountains.”<sup>49</sup> However, Boeva and Novotny have noted that, while NATO’s southern border is clearly marked by the Tropic of Cancer, its northern border is less precisely defined.<sup>50</sup>

Article 5 covers land, air, and sea – the North Atlantic Ocean, North Sea, most of the Baltic Sea following accession of Finland and Sweden, and the Mediterranean Sea – between

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<sup>43</sup> *North Atlantic Treaty*, (n 16), Article 6. However, Article 6 applies solely to the territory where the armed attack takes place and does not cover NATO operations, whether under Article 5 or not. See, e.g., Schmitt, (n 18), 110-111.

<sup>44</sup> Insall & Salmon, (n 19), n.200, 328.

<sup>45</sup> *North Atlantic Treaty*, (n 16), Note 2.

<sup>46</sup> NATO, *Protocol to the North Atlantic Treaty on the accession of Greece and Turkey*, Official texts, (22 October 1951), available at <<https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/1951/10/22/protocol-to-the-north-atlantic-treaty-on-the-accession-of-greece-and-turkey>>.

<sup>47</sup> Anne Verhelst and Snezana Trifunovska, *North Atlantic Treaty Organization (NATO)*, (Wolters Kluwer, 2020), 46.

<sup>48</sup> Antoaneta Boeva and Ivan Novotny, ‘Scope and Historical Developments of Article 6’, 34 *Emory International Law Review*, (2019), 126-127.

<sup>49</sup> Lord Hastings Ismay, *NATO: The First Five Years 1949-1954* (NATO Archives, 1955), IX, available at <[https://archives.nato.int/uploads/r/null/2/1/216977/NATO-The\\_first\\_5\\_years\\_1949-1954\\_by\\_Lord\\_Ismay\\_.pdf](https://archives.nato.int/uploads/r/null/2/1/216977/NATO-The_first_5_years_1949-1954_by_Lord_Ismay_.pdf)>.

<sup>50</sup> Boeva & Novotny, (n 48), 123-124.

Europe and North America, as well as space<sup>51</sup> and cyberspace<sup>52</sup>, and applies not only to attacks against ground, naval and air forces, but potentially also to attacks targeting cyber and space capabilities and infrastructure.<sup>53</sup> Strikingly, however, Article 5 does not extend to the US State of Hawaii, as Article 6 was never amended after Hawaii became the 50<sup>th</sup> US State in August 1959.<sup>54</sup> In light of growing security concerns in the Indo-Pacific, some US security experts have proposed amending Article 6 to include Hawaii, as well as Guam, in order to address potential threats from China and North Korea on the two islands.<sup>55</sup>

However, although “geographically bounded”, the NAT is “politically unbounded”: while Article 5 applies only within the NATO area, Article 4 ensures that an issue arising anywhere in the world, including Hawaii and Guam, can trigger consultations among allies.<sup>56</sup> Since the Alliance’s founding in 1949, Article 4 has been invoked nine times, most recently by Poland<sup>57</sup> and Estonia<sup>58</sup> in response to Russian violations of their airspace. Worryingly, Russia has also been responsible for major hybrid attacks in the region.<sup>59</sup>

While the geographical scope of Article 5 NAT is limited to armed attacks taking place

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<sup>51</sup> NATO, *Brussels Summit Communiqué, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels 14 June 2021*, Press Release (2021) 086 (14 June 2021), para. 33, available at <[https://www.nato.int/cps/en/natohq/news\\_185000.htm](https://www.nato.int/cps/en/natohq/news_185000.htm)>.

<sup>52</sup> NATO, *Wales Summit Declaration, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Wales*, Press Release (2014) 120, (5 September 2014), para. 72, available at <[https://www.nato.int/cps/en/natohq/official\\_texts\\_112964.htm](https://www.nato.int/cps/en/natohq/official_texts_112964.htm)>; NATO, ‘Nato will defend itself. Article by NATO Secretary General Jens Stoltenberg published in Prospect’s new cyber resilience supplement’, *News*, (29 August 2019), available at <[https://www.nato.int/cps/en/natohq/news\\_168435.htm](https://www.nato.int/cps/en/natohq/news_168435.htm)>.

<sup>53</sup> Clarifications on the exact territory covered by Article 5 were provided in the Appendix to NATO’s 1957 Strategic Concept. To that, the 2022 Strategic Concept added malicious cyber activities and hostile operations to, from, or within space. See NATO, ‘Final Decision on MC 14/2 Revised. A report by the Military Committee on Overall Strategic Concept for the Defense of the North Atlantic Treaty Organization Area, MC 14/2 (Revised) (Final Decision), 23 May 1957’, in Gregory G. Pedlow (ed.), *NATO Strategic Documents 1949-1969* (NATO 1997), Appendix, Area Planning Guidance, n.2, 15, available at <<https://www.nato.int/docu/stratdoc/eng/a570523a.pdf>>; NATO, *2022 NATO Strategic Concept Adopted by Heads of State and Government at the NATO Summit in Madrid*, (29 June 2022), para. 25, 7, available at <[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/2022/6/pdf/290622-strategic-concept.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/290622-strategic-concept.pdf)>. However, according to Sari and Nasu, the applicability to allied space forces and assets might be constrained by the geographical limits imposed by Article 6(2) NAT. See Aurel Sari and Hitoshi Nasu, ‘NATO AND COLLECTIVE DEFENSE IN SPACE: SAME MISSION, NEW DOMAIN’, *Turkish Policy Quarterly* (Summer 2021), 41-42.

<sup>54</sup> Boeva & Novotny, (n 48), 130.

<sup>55</sup> Brad Lendon, ‘This US state is not covered by the NATO treaty. Some experts say that needs to change’, *CNN* (30 March 2024), available at <<https://edition.cnn.com/2024/03/29/us/nato-treaty-hawaii-intl-hnk-ml-dst/index.html#>>.

<sup>56</sup> Rynning (n 4), 7; *North Atlantic Treaty*, (n 16),

<sup>57</sup> See Chancellery of the Prime Minister of the Government of Poland, (n 28).

<sup>58</sup> Republic of Estonia Government, ‘Estonian Government to request NATO Article 4 consultations’, (19 September 2025), available at <<https://valitsus.ee/en/news/estonian-government-request-nato-article-4-consultations>>. See also NATO, ‘Statement by the North Atlantic Council on recent airspace violations by Russia’, Official texts, (23 September 2025), available at <<https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/2025/09/23/statement-by-the-north-atlantic-council-on-recent-airspace-violations-by-russia>>.

<sup>59</sup> Seth G. Jones, ‘Russia’s Shadow War Against the West’, *Center for Strategic and International Studies*, (18 March 2025), available at <<https://www.csis.org/analysis/russias-shadow-war-against-west>>.

in Europe or North America, Article 42(7) TEU contains no explicit geographical limitation beyond the requirement that the aggression occur on the territory of an EU Member State. Since no further geographical specification is provided for Article 42(7) TEU, overseas territories outside of Europe should, in theory, be considered within its scope. However, EU primary law does not extend to all overseas territories – only to the EU’s outermost regions (ORs) – and Article 42(7) TEU should similarly not be presumed to apply to all overseas territories, including the EU’s overseas countries and territories (OCTs).<sup>60</sup> Yet, the European Council may redefine the status of ORs and OCTs.<sup>61</sup>

The EU’s mutual assistance clause is likewise inapplicable, unlike its NATO equivalent, when the armed forces of a Member State are targeted while stationed in the territory of another Member State.<sup>62</sup> By referring solely to Member States’ territories, the clause also appears to exclude applicability to maritime units operating in international waters or to personnel deployed beyond EU borders. Accordingly, attacks on ships flying the flag of an EU Member State in international waters or on personnel deployed on CSDP missions or other external operations fall outside the scope of Article 42(7) TEU.<sup>63</sup>

A similar line of reasoning could apply to personnel and infrastructure located in space.<sup>64</sup> The 1967 Outer Space Treaty – to which all EU Member States<sup>65</sup> are now signatories – prohibits the exercise of sovereignty over outer space.<sup>66</sup> However, the 2023 EU Space Strategy for Security and Defence explicitly allows a Member State to invoke Article 42(7)

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<sup>60</sup> This issue is, however, controversial and has attracted considerable attention in light of President Trump’s initial refusal to rule out the use of military force to acquire Greenland, an OCT. See, e.g. Deen, Zandee, and Stoetman, (n 38), 17; Federica Fazio ‘What happens if Trump Invades Greenland?’, Blog, *Dublin European Law Institute*, (7 January 2026), available at <<https://www.dcu.ie/blog/2151/what-happens-if-trump-invades-greenland>>; Fischer & Thym, (n 37), 1226; Wessel Willem Geursen, *Mapping the territorial scope of EU law* (PhD thesis, Vrije Universiteit Amsterdam, 2024), available at <<https://research.vu.nl/ws/portalfiles/portal/307385687/ww%20geursenmapping%20the%20territorial%20scope%20of%20eu%20lawthesis%20including%20annexes%20-%2065e4818190907.pdf>>; Ulla Neergaard ‘In the Hour of the Predator: A Clause Without Claws? The EU’s Mutual Assistance Clause (Article 42(7) TEU) and Greenland’, *EU Law Live*, (10 September 2025), available at <<https://eulawlive.com/op-ed-in-the-hour-of-the-predator-a-clause-without-claws-the-eus-mutual-assistance-clause-article-427-teu-and-greenland/>>.

<sup>61</sup> See, e.g., Catherine Barnard and Denzil Davidson, ‘Can Greenland join the EU?’, *UK in a Changing Europe*, (3 February 2026), available at <<https://ukandeu.ac.uk/can-greenland-join-the-eu/>>.

<sup>62</sup> Sari, (n 20), 455.

<sup>63</sup> Deen, Zandee, and Stoetman, (n 38), 18; Perot 2019, (n 38), 50; Sari, (n 20), 425.

<sup>64</sup> Daniel Fiott, ‘The Strategic Compass and EU space-based defence capabilities’, In-Depth Analysis Requested by the SEDE Sub-Committee, *European Parliament*, (November 2022), 26-27, available at <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702569/EXPO\\_IDA\(2022\)702569\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702569/EXPO_IDA(2022)702569_EN.pdf)>.

<sup>65</sup> Croatia and Latvia, the last two countries to join, acceded in March 2023 and March 2025, respectively. For more information, visit <<https://hina.hr/news/11151003>> and <<https://www2.mfa.gov.lv/en/vienna/news/72300-latvia-officially-joins-the-outer-space-treaty#:~:text=On%2023%20May%202025%2C%20Latvia,or%20the%20Outer%20Space%20Treaty>>.

<sup>66</sup> *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies*, Washington, DC, London, and Moscow, (27 January 1967), 610 UNTS 205, Article 2.

TEU “should a space threat or incident amount to an armed attack on its territory.”<sup>67</sup> Moreover, the 2025 EU Space Act proposed by the European Commission seeks to enhance protection of European space assets by extending cybersecurity regulations to the space sector.<sup>68</sup> These developments point to a potentially broader interpretation of Article 42(7) TEU, encompassing attacks not only to, but also from, or even within space, provided that they produce effects on a Member State’s territory.<sup>69</sup> It remains, however, unclear whether Article 42(7) TEU would cover attacks on EU-owned space assets, such as Copernicus or Galileo, or only those belonging to the Member States.

### **3. The Legal Obligations: Such Action As It Deems Necessary, Including the Use of Armed Force vs Aid and Assistance By All the Means in Their Power**

The invocation and operationalisation of Article 5 NAT are *not automatic*, but depend on consensus within the North Atlantic Council (NAC), the Alliance’s highest political authority. Once consensus is reached in the NAC, the agreed decisions are implemented by NATO’s military command structure.<sup>70</sup> Action is taken both individually and collectively through NATO. This was the case in the aftermath of the 9/11 terrorist attacks, which involved the coordinated hijackings of four commercial airliners in New York, Washington, DC, and Pennsylvania by the Al-Qaeda terrorist network.

On 12 September 2001, a formal NAC meeting at foreign-minister-level considered a draft statement invoking Article 5. Although most allies supported the decision, several sought assurances that the “nature, scale and timing” of any response would remain a matter of national discretion, with collective action subject to further consultation in the NAC. At the time, NATO’s Legal Adviser, Baldwin De Vidts, made clear that each ally retained full authority to decide over its own response, while the Alliance as a whole would consult collectively before undertaking any coordinated action.<sup>71</sup> On that basis, NATO reached a unanimous decision that

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<sup>67</sup> European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Joint Communication to the European Parliament and the Council- European Union Space Strategy For Security and Defence*, JOIN(2023) 9 final, (10 March 2023), 9, available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023JC0009#:~:text=Any%20Member%20State%20can%20invoke,armed%20attack%20on%20its%20territory.&text=%2D%20develop%20synergies%20with%20partners%20and%20alies%20in%20space%20security%20and%20defence>>.

<sup>68</sup> European Commission, ‘Commission proposes EU Space Act to boost market access and strengthen space safety’, Press Release, (25 June 2025), available at <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_1583](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1583)>.

<sup>69</sup> Martin (n 30), 239-240.

<sup>70</sup> In certain member states, including the US, parliamentary authorisation may be required. See, e.g., Verhelst & Trifunovska, (n 47), 66.

<sup>71</sup> Edgar Buckley, ‘Invoking Article 5’, *NATO Review*, (1 June 2006), available at <<https://www.nato.int/docu/review/articles/2006/06/01/invoking-article-5/index.html>>.

Article 5 would be triggered, subject to confirmation that the attacks had originated from outside the US, and reaffirmed its readiness to provide assistance.<sup>72</sup> In a later press statement, Lord George Robertson, then NATO Secretary General, indicated that the allies would take “such actions as they deemed necessary, including the use of force”, while stressing that any response would be “commensurate with their judgement and resources”.<sup>73</sup>

Article 5 was formally invoked on 2 October 2001, once it had been determined that Al-Qaeda had planned and directed the attacks from Afghanistan.<sup>74</sup> In response, the Allies consulted again in the NAC to agree on and implement a set of eight collective measures to operationalise Article 5 and respond to the requests made by the US government.<sup>75</sup>

According to Article 5, each ally determines the action it “deems necessary”, which does not automatically entail the use of armed force. In 1949, US Senators Arthur Vandenberg and Tom Connally had ensured that the obligation imposed on each ally – and on the US in particular – be limited to undertaking “such action as it deems necessary, including the use of armed force”, rather than “such military or other action, as may be necessary”, as the original draft prepared by the US Department of State stated. This adjustment was essential to secure Congressional approval, as the clause could not suggest an automatic US commitment to war in the event of an attack on another ally.<sup>76</sup> Under the US Constitution, this kind of decisions require congressional authorisation<sup>77</sup>, a limitation on presidential authority reaffirmed by the 1973 War Powers Resolution.<sup>78</sup>

Decades later, this discretionary margin has taken on renewed political significance as US President Donald Trump has repeatedly cast doubt on the US commitment to Article 5,

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<sup>72</sup> NATO, *Statement by the North Atlantic Council*, Press release (2001) 124, (12 September 2001), <<https://www.nato.int/docu/pr/2001/p01-124e.htm#:~:text=The%20Council%20agreed%20that%20if,shall%20be%20considered%20an%20attack>>.

<sup>73</sup> NATO, *Statement by the North Atlantic Council*, Press Release (2001) 122, (11 September 2001), <[https://www.nato.int/cps/en/natohq/official\\_texts\\_18863.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/official_texts_18863.htm?selectedLocale=en)>; NATO, ‘NATO reaffirms Treaty commitments in dealing with terrorist attacks against the US’, *News*, (12 September 2001), <[https://www.nato.int/cps/en/natohq/news\\_18569.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/news_18569.htm?selectedLocale=en)>.

<sup>74</sup> NATO, *Statement by NATO Secretary General, Lord Robertson*, NATO Speeches, (2 October 2001), <<https://www.nato.int/docu/speech/2001/s011002a.htm>>. See also Nora Bensahel, *THE COUNTERTERROR COALITIONS: Cooperation with Europe, NATO, and the European Union*, *Project Air Force*, (RAND, 2003), 6-7, available at <[https://www.rand.org/content/dam/rand/pubs/monograph\\_reports/2005/MR1746.pdf](https://www.rand.org/content/dam/rand/pubs/monograph_reports/2005/MR1746.pdf)>.

<sup>75</sup> For the full list of requests, see NATO, ‘Statement to the Press by NATO Secretary General, Lord Robertson, on the North Atlantic Council Decision on Implementation of Article 5 of the Washington Treaty following the 11 September Attacks against the United States’, *NATO Speeches*, (4 October 2001), available at <<https://www.nato.int/docu/speech/2001/s011004b.htm>>.

<sup>76</sup> Insall & Salmon (n 19), n.233-234, 370-371.

<sup>77</sup> *The Constitution of the United States of America*, Philadelphia, (17 September 1787), Article 1, Section 8.

<sup>78</sup> US Congress, 93<sup>rd</sup> Congress, 1<sup>st</sup> Session, ‘H.J.Res.542 - War Powers Resolution’, (11 July 1973), <<https://www.congress.gov/bill/93rd-congress/house-joint-resolution/542/text>>. On the limits of the War Powers Resolution, see, e.g., Tess Bridgeman and Brian Finucane, ‘What the Iran war Reveals about the War Powers Resolution and How Congress Can Act’, *Just Security*, (5 May 2026), available at <<https://www.justsecurity.org/137977/iran-hostilities-war-powers-restart-clock/>>.

including through threats directed at the territory of a fellow NATO ally<sup>79</sup> and by raising the possibility of US withdrawal from NATO.<sup>80</sup>

At its core, the problem lies in the vague formulation of Article 5, which is a double-edged sword. On the one hand, after the Cold War, the absence of both a designated adversary and a precise definition of armed attack have enabled NATO to adjust to an evolving security landscape by extending the concept of armed attack to include non-conventional forms of violence, whether perpetrated by states or non-state actors. On the other end, however, the changes introduced by the US Senate during the drafting process suggest that the provision stops short of imposing a strict obligation to provide military assistance. In addition, although the assistance must be directed towards the overarching objective of restoring and maintaining the security of the North Atlantic area, the form, scope, and timing of the response remain at each ally's discretion.

Consequently, US support in a crisis might take non-military forms, fall short of what is needed, or reach the affected ally too late or not at all. As De Vidts further observed, responses should be commensurate with the scale of the attack.<sup>81</sup> Article 5, however, provides no enforcement or sanctioning mechanism against an ally that offers insufficient assistance or none at all. The credibility of the Article 5 commitment, therefore, relies as much on political cohesion among allies as on the Alliance's deterrence and defence posture.<sup>82</sup>

The opposite is true for Article 42(7) TEU. While the expression "such action as it deems necessary, including the use of armed force" of Article 5 NAT seems to suggest that assistance need not necessarily take a military form, the phrase "by all the means in their power" in Article 42(7) TEU indicates that military support is included among the forms of assistance, even if not explicitly stated. The assistance envisaged may take either civilian or military forms, depending on the resources available to individual Member States and on the specific circumstances and severity of the armed aggression.<sup>83</sup> Earlier treaty formulations contained explicit references to military assistance, notably in Article IV of the 1948 Brussels Treaty and subsequently in Article V of the 1954 Modified Brussels Treaty. Such references were, however, subsequently removed in Article I-40(7) of the 2004 Draft Constitutional Treaty, a

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<sup>79</sup> Fazio 2026, (n 60).

<sup>80</sup> Federica Fazio, 'Can Trump really pull the US out of NATO?', Blog, *Dublin European Law Institute*, (28 April 2026), <<https://www.dcu.ie/blog/2151/can-trump-really-pull-us-out-nato>>.

<sup>81</sup> Buckley, (n 71).

<sup>82</sup> Federica Fazio, 'NATO at 76: is the Alliance in good SHAPE?', Blog, *Dublin City University*, (7 April 2025), available at <<https://www.dcu.ie/blog/2151/nato-76-alliance-good-shape>>.

<sup>83</sup> Sari, (n 20), 434-435.

formulation that was ultimately carried over into Article 42(7) TEU.<sup>84</sup> Nevertheless, the absence of an explicit exclusion of military means suggests that the obligation to assist may still encompass military support.<sup>85</sup>

This interpretation is supported by a systematic reading of the provision: Article 42(7) is located in Section 2 of the TEU, under the provisions governing the CSDP, which strongly suggests that military assistance remains among the forms of support envisaged.<sup>86</sup> The inclusion of the so-called “Irish clause” and “NATO clause” at the request of neutrals and Atlanticist members of the bloc, respectively, further corroborates this reading, as their presence would be largely redundant if military assistance were not contemplated at all.

At the same time, the expression “by all the means in their power” in Article 42(7) TEU appears to afford less scope for unilateral Member State discretion than Article 5 NAT’s “as it deems necessary”, leaves each ally to determine the measures it considers appropriate.<sup>87</sup> On this basis, some commentators have characterised Article 42(7) as establishing “an unconditional obligation of mutual assistance”.<sup>88</sup> However, the presence of the Irish and NATO clauses indicates that Member States retain a degree of flexibility comparable, in practice, to that exercised by NATO allies,<sup>89</sup> as demonstrated by the varied national contributions that followed the 2015 Paris terrorist attacks.

Article 42(7) TEU was formally invoked for the first time on 17 November 2015, when then French Minister of Defence, Jean-Yves Le Drian, appeared before the Foreign Affairs Council (FAC) in the aftermath of the terrorist attacks at the Bataclan and Stade de France in Paris that had taken place four days earlier. On that occasion, the then-28 defence ministers expressed “unanimous and full support to France and their readiness to provide all the necessary

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<sup>84</sup> For more information, see Fazio 2025, (n 39), 142-148.

<sup>85</sup> Carmen-Cristina Cirlig, ‘The EU’s mutual assistance clause. First ever activation of Article 42(7) TEU’, Briefing, *European Parliamentary Research Service*, (November 2015), 3, available at <[https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2015\)572799](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2015)572799)>; Martin, (n 30), 247-248; Perot 2019, (n 38), 53.

<sup>86</sup> Hillion & Blockmans, and Martin have argued that for this reason it is not excluded that the provision of aid and assistance could also take the form of a CSDP mission or operation. See, Christophe Hillion and Steven Blockmans, ‘Europe’s self-defence: Tous pour un et un pour tous?’, CEPS Commentary, *Centre for European Policy Studies (CEPS)*, (20 November 2015), 3, available at <[https://cdn.ceps.eu/wp-content/uploads/2015/11/CH%20&%20SB%20Tous%20pour%20un%20CEPS%20Commentary\\_0.pdf](https://cdn.ceps.eu/wp-content/uploads/2015/11/CH%20&%20SB%20Tous%20pour%20un%20CEPS%20Commentary_0.pdf)>; Martin, (n 30), 251.

<sup>87</sup> Martin, (n 30), 248-249; Sari, (n 20), 438. The German Constitutional Court, however, clearly affirmed that the EU’s collective defence clause does not go beyond NATO’s collective defence clause. See Federal Constitutional Court, Judgment on the Treaty of Lisbon, (30 June 2009), para. 386, available at <[https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/06/es20090630\\_2bve000208en.htm](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/06/es20090630_2bve000208en.htm)>.

<sup>88</sup> Fischer & Thym, (n 37).

<sup>89</sup> For an exhaustive analysis of the Irish and NATO clauses, see Federica Fazio, ‘Collective defence in NATO: A legal and strategic analysis of Article 5 in light of the war in Ukraine’, 8/3 *Nordic Journal of European Law*, 15-18. See also Table 2, 27.

aid and assistance”.<sup>90</sup> Notably, as mentioned in section 1, although the attacks had been carried out by a non-state actor, France chose to invoke Article 42(7) TEU rather than Article 222 TFEU.<sup>91</sup> This is because Article 42(7) is entirely Member State-driven, requires no formal Council decision or conclusions, and does not follow a predefined activation procedure.<sup>92</sup>

These characteristics were acknowledged by former High Representative for Foreign Affairs and Security Policy, Federica Mogherini, who clarified that the invocation of Article 42(7) would not necessitate the adoption of Council decisions or conclusions.<sup>93</sup> Accordingly, no formal act was adopted by the Council following France’s request, confirming that the obligations arising under Article 42(7) TEU are *automatic*, in contrast to those under Article 5 NAT and Article 222 TFEU.<sup>94</sup> While Article 42(7) does not formally envision a role for EU institutions, Mogherini nevertheless indicated that the Union could assist by facilitating and coordinating the provision of aid where appropriate.<sup>95</sup>

Although Article 42(7) TEU, unlike Article 5 NAT, does not specify the overarching goal toward which the assistance must be directed, its underlying purpose may nonetheless be inferred. A systemic interpretation of Article 42(7) TEU reveals in fact that, when read in conjunction with Article 3(1) TEU – which identifies the promotion of peace, EU values and the well-being of EU citizens as a foundational aim of the Union –<sup>96</sup> and Article 21(2)(c) TEU – which calls on the EU to preserve peace, prevent conflicts, and strengthen international security – the EU’s mutual defence clause, like NATO’s, entails an obligation of result, requiring Member States to provide assistance aimed at the preservation of peace and security. This interpretation is supported by the 2016 EU Global Strategy<sup>97</sup> and the 2022 Strategic Compass.<sup>98</sup> The decisive difference lies not in the legal structure of the obligation, but in the strategic capabilities through which these objectives are pursued, as the strategic analysis sections shows.

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<sup>90</sup> Council of the European Union, *Outcome of the Council Meeting. 3426<sup>th</sup> Council meeting, Foreign Affairs - Meeting of defence Ministers - Mutual defence clause (article 42(7) TEU)*, 14120/15 Presse 69 PR CO 61, (16 and 17 November 2015), 6, available at <<https://www.consilium.europa.eu/media/23101/st14120en15.pdf>>.

<sup>91</sup> Deen, Zandee, and Stoetman, (n 38), 10-11; Tom Dyson and Theodore Konstadinides, ‘The Legal Underpinnings of European Defense Cooperation’, in Tom Dyson & Theodore Konstadinides (eds.) *European Defence Cooperation in EU Law and IR Theory* (Palgrave Macmillan, 2013), 69.

<sup>92</sup> Council of the European Union, *Council Decision of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause*, Article 3, OJ [2014] L 192/55, 1.01.2014.

<sup>93</sup> European Commission, European Commission, *LIVE Foreign Affairs Council (Defence)- press conference HRVP Federica Mogherini*, (17 November 2015), at 3:24 and 4:01, available at <<https://audiovisual.ec.europa.eu/en/video/I-112324>>.

<sup>94</sup> Cirlig, (n 85). It is noteworthy that Articles 42(7) TEU and 222 TFEU employ “shall”, in contrast to Article 5 NAT, which uses “will”.

<sup>95</sup> European Commission, *Press Conference HRVP Federica Mogherini*, (n 93), at 4:25.

<sup>96</sup> See Govaere 2025, (n 5). 13

<sup>97</sup> *2016 EU Global Strategy*, (n 12), para.1, 7.

<sup>98</sup> *2022 Strategic Compass*, (n 11), 14, 53, 55, 58, and 62.

Moreover, compliance with the obligations under Article 42(7) TEU, as with Article 5 NAT, remains outside the scope of judicial enforcement, such that any failures to act or inadequate responses would, if addressed, be sanctioned through political rather than legal mechanisms. The CJEU has, in principle, no jurisdiction on CFSP and CSDP, and, therefore, on Article 42(7) TEU, but only on Article 222 TFEU.<sup>99</sup> The Court could exercise jurisdiction over acts of staff management, as illustrated by the *KS and KD* and *H. v Council* judgement, if aid and assistance were provided through a CSDP mission or operation. Yet, this possibility is, in principle, excluded in the context of self-defence under Article 42(7) TEU, as confirmed by Mogherini at the time of its invocation.<sup>100</sup> Therefore, as with NATO, if any Member State decides to provide little or no aid and assistance at all, there is no sanctioning mechanism to compel it to act otherwise.

### III. Strategic Analysis: The 2022 Strategic Concept and the 2022 Strategic Compass

Mutual defence clauses fulfil a dual role, requiring their signatories both to respond collectively to common threats and to deter potential aggressors. As such, they lie “at the crossroads between war and peace and the intersection between law and strategy”.<sup>101</sup> Against this background, this section examines NATO’s 2022 Strategic Concept and the EU’s 2022 Strategic Compass, arguing that while NATO has increasingly focused on preparedness for traditional armed attacks on Allied territory, the EU has placed greater emphasis on preparing for non-traditional forms of aggression.

#### 4. NATO’s 2022 Strategic Concept

NATO’s most recent Strategic Concept was adopted at the Madrid Summit in June 2022, in the context of Russia’s aggression of Ukraine. The Concept reaffirmed the Alliance’s three core missions from the previous 2010 Strategic Concept – deterrence and defence, crisis prevention and management, and cooperative security<sup>102</sup> – but placed greater emphasis on

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<sup>99</sup> Cirlig, (n 85), 7; Sari, (n 20). While Article 42(7) TEU establishes an obligation of support among Member States, it does not create a justiciable duty to provide any specific form or level of assistance before the Court. Nevertheless, it constitutes a legally relevant benchmark against which Member States’ conduct may be assessed in light of general principles of EU law, despite the absence of a comprehensive enforcement mechanism. Its obligations may nonetheless be assessed within the Union’s constitutional framework, in particular the duty of sincere cooperation under Article 4(3) TEU and the principle of solidarity in Article 2 TEU.

<sup>100</sup> See Cirlig, (n 85); European Commission, *Press Conference HRVP Federica Mogherini*, (n 93). Hillion & Blockmans and Martin, however, are of a different opinion. See Hillion & Blockmans, (n 86); Martin, (n 30).

<sup>101</sup> Sari (n 20), 406.

<sup>102</sup> NATO, *Active Engagement, Modern Defence: Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization Adopted by Heads of State and Government at the NATO Summit in Lisbon 19-20 November 2010*, (19 November 2010), paras. 4a, 4b and 4c, 7-8, available at <[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_publications/20120214\\_strategic-concept-2010-eng.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_publications/20120214_strategic-concept-2010-eng.pdf)>; *2022 Strategic Concept*, (n 53), para. 4, 3.

deterrence and defence. Collective defence was, in fact, described as NATO's "key purpose and greatest responsibility", with the need to reinforce deterrence and defence presented as urgent.<sup>103</sup> This is because Russia had turned from "strategic partner"<sup>104</sup> to "the most significant and direct threat to allies' security and to peace and stability in the Euro-Atlantic area."<sup>105</sup> In addition, China, explicitly mentioned in a Strategic Concept for the first time, had started to pose "systemic challenges", with its growing partnership with Russia risking further destabilising Euro-Atlantic security.<sup>106</sup>

This rhetorical shift was matched by a progressive practical return to deterrence and forward defence.<sup>107</sup> Russia's annexation of Crimea in 2014 had spurred the adoption of the Readiness Action Plan, which included the creation of the Very High Readiness Joint Task Force (VJTF), the expansion of the NATO Response Force (NRF), the establishment of multinational battlegroups in Poland and the Baltic states, as well as the allies' renewed commitment to higher defence spending.<sup>108</sup> Russia's 2022 invasion, however, accelerated this trend: four additional battlegroups were stationed in Bulgaria, Hungary, Romania, and Slovakia,<sup>109</sup> and at subsequent summits – Vilnius in 2023 and Washington in 2024 – allies agreed that the 2% defence spending benchmark should be understood as a baseline rather than a ceiling,<sup>110</sup> before ultimately adopting a new 5% target at the 2025 Hague Summit.<sup>111</sup>

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<sup>103</sup> *Ibid.*, para. 1. See Dan Sabbagh, 'Russia could be ready to attack Nato within five years, says secretary general', *The Guardian*, (9 June 2025), available <<https://www.theguardian.com/world/2025/jun/09/nato-chief-russia-quantum-leap-defence>>.

<sup>104</sup> *2010 NATO Strategic Concept*, (n 102), para. 33, 29.

<sup>105</sup> *2022 Strategic Concept*, (n 53), para. 8, 4.

<sup>106</sup> *2022 Strategic Concept*, (n 53), paras. 13 and 14, 5.

<sup>107</sup> *Ibid.*, para. 21, 6.

<sup>108</sup> NATO, *Wales Summit Declaration*, (n 52), paras. 8 and 14; NATO, *Warsaw Summit Communiqué Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Warsaw 8-9 July 2016*, Press release (2016) 100, (9 July 2016), para. 40, available at <[https://www.nato.int/cps/en/natohq/official\\_texts\\_133169.htm](https://www.nato.int/cps/en/natohq/official_texts_133169.htm)>.

<sup>109</sup> NATO, *Madrid Summit Declaration Issued by NATO Heads of State and Government participating in the meeting of the North Atlantic Council in Madrid 29 June 2022*, Press Release (2022) 095 NATO, (29 June 2022), para. 9, available at <[https://www.nato.int/cps/en/natohq/official\\_texts\\_196951.htm](https://www.nato.int/cps/en/natohq/official_texts_196951.htm)>.

<sup>110</sup> *2022 Strategic Concept*, (n 53), para. 48, 11; NATO, *Vilnius Summit Communiqué. Issued by NATO Heads of State and Government participating in the meeting of the North Atlantic Council in Vilnius 11 July 2023*, Press Release 2023 (001), (11 July 2023), available at <[https://www.nato.int/cps/en/natohq/official\\_texts\\_217320.htm](https://www.nato.int/cps/en/natohq/official_texts_217320.htm)>; NATO, *Washington Summit Declaration issued by the NATO Heads of State and Government participating in the meeting of the North Atlantic Council in Washington, D.C. 10 July 2024*, Press release (2024) 001, (10 July 2024), <[https://www.nato.int/cps/en/natohq/official\\_texts\\_227678.htm](https://www.nato.int/cps/en/natohq/official_texts_227678.htm)>; Federica Fazio, 'The NATO Washington Summit: Step Forward or Missed Opportunity?' Blog, *Dublin City University*, (18 July 2024), available at <<https://www.dcu.ie/blog/2151/nato-washington-summit-step-forward-or-missed-opportunity>>;

<sup>111</sup> NATO, *The Hague Summit Declaration issued by the NATO Heads of State and Government participating in the meeting of the North Atlantic Council in The Hague 25 June 2025*, Press Release (2025) 001, (25 June 2025), paras. 2 and 3, available at <[https://www.nato.int/cps/en/natohq/official\\_texts\\_236705.htm](https://www.nato.int/cps/en/natohq/official_texts_236705.htm)>. See also Federica Fazio, 'A Dissenting Opinion on The Hague Summit: the Real Winner is NATO, Not Trump', Blog, *Dublin City University*, (30 June 2025), available at <<https://www.dcu.ie/blog/2151/dissenting-opinion-hague-summit-real-winner-nato-not-trump>>.

The Alliance codified its evolving military posture in the classified 2019 Military Strategy, implemented through the publicly available Warfighting Capstone Concept (NWCC),<sup>112</sup> approved in 2021, and the classified Concept for Deterrence and Defence of the Atlantic area (DDA Concept), first approved in 2020 and then endorsed in Vilnius in 2023. The DDA Concept, in particular, represents the first extensive redesign of NATO's defence planning since the Cold War, and has implemented a "family" of plans across strategic, regional, and domain-specific levels<sup>113</sup> to reinforce the Alliance's deterrence and defence posture by transitioning from crisis management back to large-scale collective defence operations.<sup>114</sup> To this end, under the New Force Model (NFM), in July 2024 the NRF was replaced by the Allied Reaction Force (ARF), a multi-domain rapid reaction formation designed to carry out both deterrence missions and NATO's other operational tasks.<sup>115</sup> It remains to be seen, however, if that will continue to be the case, as the US is advocating a scaling back of NATO's out of area crisis management missions in favour of a full return to its original collective defence mission in the Euro-Atlantic area.<sup>116</sup>

## 5. The EU's 2022 Strategic Compass

Like the 2022 Strategic Concept, the EU's Strategic Compass was also approved shortly after the war in Ukraine began. It was agreed by the Foreign Affairs and Defence Ministers of the EU Member States in March 2022 and subsequently endorsed by EU Heads of State and Government. In contrast to the previous 2003 European Security Strategy and the 2016 EUGS, it relied on a shared threat analysis and a bottom-up approach.<sup>117</sup> The Strategic Compass also marked a pronounced shift in emphasis towards defence. The term "defence" appeared 234 times throughout the document, for the first time featuring in the title itself. This quantitative change underscores the growing centrality of defence concerns in response to war on the Union's borders. References to mutual assistance also increased markedly, appearing twelve times in the Compass, compared with only six in the 2016 EUGS.

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<sup>112</sup> NATO ACT, *NATO Warfighting Capstone Concept* (2021), available at <<https://www.act.nato.int/wp-content/uploads/2023/06/NWCC-Glossy-18-MAY.pdf>>.

<sup>113</sup> Stephen R. Covington, 'NATO's Concept for Deterrence and Defence of the Euro-Atlantic Area (DDA)', Belfer Center for Science and International Affairs, *Harvard Kennedy School*, (2 August 2023), available at <<https://www.belfercenter.org/publication/natos-concept-deterrence-and-defence-euro-atlantic-area-dda>>.

<sup>114</sup> Nele Loorents, 'NATO's Regional Defence Plans', *5 International Centre for Defence and Security*, (July 2024), 1, available at <[https://icds.ee/wp-content/uploads/dlm\\_uploads/2024/07/No-5\\_NATOs-Regional-Defence-Plans\\_Nele-Loorents.pdf](https://icds.ee/wp-content/uploads/dlm_uploads/2024/07/No-5_NATOs-Regional-Defence-Plans_Nele-Loorents.pdf)>.

<sup>115</sup> SHAPE, 'Stand Up of Allied Reaction Force Marks a New Era for NATO', *News Archive*, (1 July 2024), available at <<https://shape.nato.int/news-archive/2024/stand-up-of-allied-reaction-force-marks-a-new-era-for-nato>>.

<sup>116</sup> Victor Jack, 'US presses NATO for major reset, ending mission in Iraq', *Politico*, (19 February 2026) available at <<https://www.politico.eu/article/us-presses-nato-reset-foreign-missions-allies-peacekeeping-iraq-kosovo/>>.

<sup>117</sup> *2022 Strategic Compass*, (n 11), 7.

To enhance the Union's capacity to respond swiftly and decisively, the Strategic Compass committed the Member States to the creation of a Rapid Deployment Capacity (RDC) of up to 5,000 troops by the end of 2025. The successor to the never-activated EU Battlegroups, the RDC, while primarily conceived for external crisis management, could, much like the NRF/now ARF also be mobilised for territorial defence.<sup>118</sup> It should nonetheless be recalled that, upon its establishment, the NRF was considerably larger, comprising approximately 9,500 troops;<sup>119</sup> the brigade-size force envisioned by the RDC may prove insufficient to respond to an external crisis, let alone an armed aggression on EU territory, and represents a further decrease in the EU's level of ambition compared to the 6,000 troops envisaged by the Battlegroups.<sup>120</sup>

The Strategic Compass also marked a novelty in committing the EU to the regular conduct of live exercises to enhance defence interoperability and preparedness, explicitly linking them to the implementation of the mutual assistance and solidarity clauses.<sup>121</sup> Nonetheless, much like the EUGS, the strategy continued to prioritise non-traditional threats. Indeed, it is these forms of aggression, including cyber,<sup>122</sup> hybrid,<sup>123</sup> and even space-based attacks,<sup>124</sup> that the regular exercises are largely designed to address.<sup>125</sup> This focus is highlighted by the forty-six mentions of hybrid threats in the Compass, which contrasts sharply with the highly conventional nature of Russia's war in Ukraine,<sup>126</sup> granted EU candidate country status

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<sup>118</sup> Although the Chair of the Military Committee, General Seán Clancy, recently rejected this possibility in an interview with *The Economist*. See *The Economist*, 'How far do the European Union's military ambitions go? An interview with the EU's top military officer', (6 April 2026), available at <[https://www.economist.com/europe/2026/04/06/how-far-do-the-european-unions-military-ambitions-go?utm\\_campaign=editorial-social&utm\\_content=discovery.content&utm\\_medium=social-media.content.np&utm\\_source=facebook&fbclid=IwdGRleARBgYZleHRuA2FlbQIxMQBzcnRjBmFwcF9pZAo2NjI4NTY4Mzc5AAEenT6xyNGvIP8TqmF4G\\_rytFk-dpwwK3lGqXlOsJme4nvVD4Vn2efwjf2OQE\\_aem\\_a3DfiOQKGxbLMIsYbWGKFA](https://www.economist.com/europe/2026/04/06/how-far-do-the-european-unions-military-ambitions-go?utm_campaign=editorial-social&utm_content=discovery.content&utm_medium=social-media.content.np&utm_source=facebook&fbclid=IwdGRleARBgYZleHRuA2FlbQIxMQBzcnRjBmFwcF9pZAo2NjI4NTY4Mzc5AAEenT6xyNGvIP8TqmF4G_rytFk-dpwwK3lGqXlOsJme4nvVD4Vn2efwjf2OQE_aem_a3DfiOQKGxbLMIsYbWGKFA)>.

<sup>119</sup> Guillaume Lasconjarias, 'The NRF: from a Key Driver of Transformation to a Laboratory of the Connected Forces Initiatives', Research Paper 88, *NATO Defence College*, (January 2023), 4, available at <[https://www.files.ethz.ch/isn/157613/rp\\_88.pdf](https://www.files.ethz.ch/isn/157613/rp_88.pdf)>.

<sup>120</sup> The 1999 Helsinki Headline Goal envisioned a European Rapid Reaction Force of up to 15 brigades, totalling around 60,000 troops, capable of deployment within 6 days and of sustaining operations for up to one year. The 2010 Headline Goal downsized the force, creating the EU Battlegroups: four battalion-sized units, approximately 6,000 troops in total, designed to deploy within ten days of an EU decision and maintain operations for 30 days, extendable to 120 days with resupply.

<sup>121</sup> *2022 Strategic Compass*, (n 11), 28.

<sup>122</sup> *2022 Strategic Compass*, (n 11), 35 and 39.

<sup>123</sup> *Ibid.*, 34 and 39.

<sup>124</sup> *Ibid.*, 34 and 36.

<sup>125</sup> Daniel Fiott, 'Rising Risks: Protecting Europe with the Strategic Compass', CSDS Policy Brief 10/2022, *Centre for Security, Diplomacy and Strategy (CSDS)*, (12 May 2022), 2, available at <<https://csds.vub.be/publication/rising-risks-protecting-europe-with-the-strategic-compass/>>.

<sup>126</sup> Steven Blockmans, Dylan Macchiarini Crosson and Zachary Paikin, 'The EU's Strategic Compass – A guide to reverse strategic shrinkage?' CEPS Policy Insights 2022, *Centre for European Policy Analysis (CEPS)*, (14 March 2022), 8, available at <[https://cdn.ceps.eu/wp-content/uploads/2022/03/CEPS-PI2022-14\\_EU-Strategic-Compass.pdf](https://cdn.ceps.eu/wp-content/uploads/2022/03/CEPS-PI2022-14_EU-Strategic-Compass.pdf)>.

in June 2022.<sup>127</sup> The Strategic Compass contains no clear guidance on how the EU intends to prepare for the possibility of a conventional armed attack on its territory. Instead, it limits itself to noting that the EU, and in particular the EU Military Staff (EUMS), may contribute to “the coordination of logistical support and assistance to Member States”,<sup>128</sup> something Mogherini had already suggested in the aftermath of the 2015 Paris attacks.<sup>129</sup>

This reflects the fact that 23 EU Member States are also NATO allies and continue to regard Article 5 NAT as the cornerstone of their security.<sup>130</sup> However, it is no longer certain that Article 5 can be relied upon.<sup>131</sup> The 2025 US National Security Strategy<sup>132</sup> and the 2026 National Defence Strategy<sup>133</sup> underscore a clear shift in US strategic priorities and reflect growing expectations that European allies assume greater responsibility for their own territorial defence.

The Defence Readiness 2030 agenda – which includes initiatives such as the ReArm Europe/Readiness 2030 Plan<sup>134</sup> and its Security Action for Europe (SAFE) loans,<sup>135</sup> the new

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<sup>127</sup> See e.g. Zsolt Darvas *et al.*, ‘Ukraine’s path to European Union membership and its long-term implications’, Policy Brief 05/24, *Bruegel*, available <[https://www.bruegel.org/system/files/2024-03/PB%2005%202024\\_2.pdf](https://www.bruegel.org/system/files/2024-03/PB%2005%202024_2.pdf)>. An extension of the EU’s Article 42(7) to Ukraine is currently under consideration. See e.g. The Economist, ‘To fight Russia, Europe needs Ukraine: It is risky to let Ukraine into the EU. It’s more dangerous to keep it out’, (28 April 2026), available at <[https://www.economist.com/international/2026/04/28/to-fight-russia-europe-needs-ukraine?utm\\_campaign=editorial-social&utm\\_content=discovery.content&utm\\_medium=social-media.content.np&utm\\_source=facebook&fbclid=IwY2xjawRkOCBleHRuA2FlbQIxMABicmlkETBFMXVUN0hROHRYSEIDbnB2c3J0YwZhcHBfaWQQMjIyMDM5MTc4ODIwMDg5MgABHuElMhQ8Lhieclt6-EbDXNU5ImxscGafavIa1SUa8TRhTrwrLBhLeYoJ\\_DW\\_aem\\_a7rrfl\\_qYuhFSFchMbfFPJw](https://www.economist.com/international/2026/04/28/to-fight-russia-europe-needs-ukraine?utm_campaign=editorial-social&utm_content=discovery.content&utm_medium=social-media.content.np&utm_source=facebook&fbclid=IwY2xjawRkOCBleHRuA2FlbQIxMABicmlkETBFMXVUN0hROHRYSEIDbnB2c3J0YwZhcHBfaWQQMjIyMDM5MTc4ODIwMDg5MgABHuElMhQ8Lhieclt6-EbDXNU5ImxscGafavIa1SUa8TRhTrwrLBhLeYoJ_DW_aem_a7rrfl_qYuhFSFchMbfFPJw)>.

<sup>128</sup> 2022 *Strategic Compass*, (n 11), 38.

<sup>129</sup> European Commission, *Press Conference HRVP Federica Mogherini*, (n 93).

<sup>130</sup> Perot argues that cooperation with NATO has caused the EU to concentrate solely on lower-level collective defence concerns, like hybrid threats. See Elie Perot, ‘The European Union’s nascent role in the field of collective defense: between deliberate and emergent strategy’, 46/1 *Journal of European Integration* (2024), 11.

<sup>131</sup> See e.g. Henry Foy and Barbara Moens, ‘Polish PM questions whether US is ‘loyal’ to Europe’s defence’, *Financial Times*, (24 April 2026), available at <<https://www.ft.com/content/1a5a2502-a45a-40c1-af6f-b30ecc34bacb?syn-25a6b1a6=1>>; Aaron Pellish and Paul McLeary, ‘Hegseth orders withdrawal of 5,000 US troops from Germany’, *Politico*, (1 May 2026), available at <<https://www.politico.com/news/2026/05/01/hegseth-withdrawal-us-troops-germany-00903551>>; Politico, ‘Trump threatens Sánchez and Meloni with US troops withdrawal’, (1 May 2026), available at <<https://www.politico.eu/article/donald-trump-threatens-spain-pedro-sanchez-and-italy-giorgia-meloni-with-us-troops-withdrawal/>>.

<sup>132</sup> The White House, *National Security Strategy of the United States of America* (November 2025), available at <<https://www.whitehouse.gov/wp-content/uploads/2025/12/2025-National-Security-Strategy.pdf>>.

<sup>133</sup> US Department of War, *2026 National Defense Strategy* (23 January 2026), available at <<https://media.defense.gov/2026/Jan/23/2003864773/-1/-1/0/2026-NATIONAL-DEFENSE-STRATEGY.PDF>>.

<sup>134</sup> European Commission, ‘Letter by President von der Leyen on defence’, (4 March 2025), <<https://ec.europa.eu/commission/presscorner/api/files/attachment/880628/Letter%20by%20President%20von%20der%20Leyen%20on%20defence.pdf>>.

<sup>135</sup> Council of the European Union, ‘Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument’, (27 May 2025), available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32025R1106>>.

White Paper,<sup>136</sup> the Defence Readiness Roadmap,<sup>137</sup> and the Defence Readiness (Simplification) Omnibus<sup>138</sup> – represents a clear attempt to increase strategic autonomy and reduce dependence on NATO and the US. In addition, the European Parliament has consistently called for the establishment of operational procedures and mechanisms that would enable EU Member States to act autonomously under Article 42(7) TEU,<sup>139</sup> including the development of an EU command-and-control structure similar to NATO’s Supreme Headquarters Allied Powers Europe (SHAPE). These calls have been recently echoed by the European Commission. Commissioner for Defence and Space, Andrius Kubilius, has repeatedly emphasised the need to be prepared to implement Article 42(7) TEU.<sup>140</sup> Similarly, Commission President, Ursula von der Leyen, speaking at the 2026 Munich Security Conference, called “to bring Europe’s mutual defence clause to life”.<sup>141</sup> This issue has gained further prominence on the EU’s agenda

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<sup>136</sup> European Commission and High Representative, *White Paper for European Defence – Readiness 2030* (23 December 2025), available at <[https://commission.europa.eu/document/download/e6d5db69-e0ab-4bec-9dc0-3867b4373019\\_en?filename=White%20paper%20for%20European%20defence%20-%20Readiness%202030.pdf](https://commission.europa.eu/document/download/e6d5db69-e0ab-4bec-9dc0-3867b4373019_en?filename=White%20paper%20for%20European%20defence%20-%20Readiness%202030.pdf)>.

<sup>137</sup> European Commission, *Joint Communication to the European Parliament, the European Council and the Council - Preserving Peace - Defence Readiness Roadmap 2030*, JOIN(2025) 27 final, (16 October 2025), available at <[https://defence-industry-space.ec.europa.eu/document/download/9db42c04-15c2-42e1-8364-60afb0073e68\\_en?filename=Joint-Communication%20Defence-Readiness-Roadmap-2030.pdf](https://defence-industry-space.ec.europa.eu/document/download/9db42c04-15c2-42e1-8364-60afb0073e68_en?filename=Joint-Communication%20Defence-Readiness-Roadmap-2030.pdf)>.

<sup>138</sup> European Commission, ‘Communication from the Commission to the European Parliament and the Council ‘Defence Readiness Omnibus’ COM(2025) 820 final, (17 June 2025), available at <[https://defence-industry-space.ec.europa.eu/document/download/b2bcc9a0-5259-4543-9e1c-3af1dde8fbec\\_en?filename=Defence-Simplification-Omnibus.pdf](https://defence-industry-space.ec.europa.eu/document/download/b2bcc9a0-5259-4543-9e1c-3af1dde8fbec_en?filename=Defence-Simplification-Omnibus.pdf)>.

<sup>139</sup> The European Parliament had urged the High Representative as early as 2012 to develop practical measures and guidance for responding effectively to a Member State invoking the mutual defence clause, and to clarify the role of EU institutions in such circumstances. Although reiterated in 2016 and in later years, these calls have to date not resulted in the establishment of a procedural framework. See, European Parliament, (n 42), para. 17, available at <[https://www.europarl.europa.eu/doceo/document/TA-7-2012-0456\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-7-2012-0456_EN.pdf)>; European Parliament, *Resolution on the mutual defence clause (Article 42(7) TEU)*, P8\_TA(2016)0019, (21 January 2016), paras. 8 and 9, available at <[https://www.europarl.europa.eu/doceo/document/TA-8-2016-0019\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0019_EN.pdf)>. See also European Parliament, *Implementation of the common security and defence policy – annual report 2022*, (2022/2050(INI)), P9\_TA(2023)0010, para. 3, available at <[https://www.europarl.europa.eu/doceo/document/TA-9-2023-0010\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0010_EN.pdf)>; European Parliament, *Implementation of the common security and defence policy – annual report 2023*, (2023/2119(INI)), P9\_TA(2024)0105, para. 17, available at <[https://www.europarl.europa.eu/doceo/document/TA-9-2024-0105\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0105_EN.pdf)>; European Parliament, *Implementation of the common security and defence policy – annual report 2024*, (2024/2082(INI)), P10\_TA(2025)0058, para. 9, available at <[https://www.europarl.europa.eu/doceo/document/TA-10-2025-0058\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-10-2025-0058_EN.pdf)>; European Parliament, *European Parliament resolution of 9 October 2025 on a united response to recent Russian violations of the EU Member States’ airspace and critical infrastructure* (2025/2901(RSP)) (9 October 2025), para. 29, available at <[https://www.europarl.europa.eu/doceo/document/TA-10-2025-0230\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-10-2025-0230_EN.pdf)>; European Parliament, *European Parliament resolution of 21 January 2026 on the implementation of the common security and defence policy – annual report 2025* (2025/2165(INI)) (21 January 2026), paras. 40, 76, 81, available at <[https://www.europarl.europa.eu/doceo/document/TA-10-2026-0013\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-10-2026-0013_EN.pdf)>.

<sup>140</sup> See e.g., European Commission, *Opening Speech by Commissioner Kubilius at the Conference "Defending Baltics: War Lessons From Ukraine"*, (16 November 2025), available at <[https://ec.europa.eu/commission/presscorner/detail/en/speech\\_25\\_2707](https://ec.europa.eu/commission/presscorner/detail/en/speech_25_2707)>; European Commission, *Speech by Commissioner Kubilius at the Folk och Försvar - National Conference 2026: "Europe Under Pressure"*, Speech, (11 January 2026), available at <[https://ec.europa.eu/commission/presscorner/detail/en/speech\\_26\\_69](https://ec.europa.eu/commission/presscorner/detail/en/speech_26_69)>.

<sup>141</sup> European Commission, *Speech by President von der Leyen at the Munich Security Conference 2026*, Speech, (14 February 2026), available at <[https://ec.europa.eu/commission/presscorner/detail/da/speech\\_26\\_414](https://ec.europa.eu/commission/presscorner/detail/da/speech_26_414)>.

following reports that, in March 2026, in the context of the US-Israeli strikes against Iran, the latter fired missiles in the direction of Cyprus, thereby highlighting the potential vulnerability of EU Member States, particularly neutral ones, in the context of escalating regional tensions.<sup>142</sup>

At an informal Summit held in Cyprus at the end of April 2026, EU Member States agreed that the Commission would prepare a blueprint outlining how to respond in the event of an invocation of Article 42(7) TEU.<sup>143</sup> However, the relationship between the Commission's initiative and the work currently undertaken by the EEAS remains unclear. The EEAS is currently running simulations to develop a manual setting out the resources that Member States could mobilise for three different scenarios: one involving the invocation of NATO's Article 5, one triggering the EU's Article 42(7), and one in case of a simultaneous invocation.<sup>144</sup> These scenarios allegedly encompass not only hybrid, but also conventional forms of attacks.<sup>145</sup> This points to a growing recognition of the heightened risk of armed aggression on EU territory and the need to ensure readiness to operationalise Article 42(7) TEU, against the backdrop of increasing uncertainty regarding the US commitment to NATO and Article 5 NAT.

#### **IV. Conclusion**

This paper has examined the EU's and NATO's collective defence clauses through a law-in-context approach. The legal analysis has illustrated that Article 42(7) TEU has a broader geographical coverage compared to Article 5 NAT, as it also applies to overseas territories with certain restrictions, even though it does not apply to ships in international waters or military personnel deployed out of area. Additionally, in theory, the obligations under Article 42(7) TEU are legally more stringent than those stemming from Article 5 NAT: although both entail obligations of result, the former obliges EU Member States to provide assistance "by all the means in their power", whereas the latter requires NATO allies to take "such action including the use of armed force", as deemed necessary. Yet, in practice, Article 5 NAT has proved more credible: while both organisations lack enforcement mechanisms to address instances of inadequate action or inaction by their signatories, the US nuclear umbrella has thus far provided Article 5 NAT with strong deterrent credibility, something Article 42(7) TEU lacks but that EU

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<sup>142</sup> Sarantis Michalopoulos, 'EU's mutual defence clause to be discussed in coming days, Commission says', *Euractiv*, (2 March 2026), available at <<https://www.euractiv.com/news/eus-mutual-defence-clause-to-be-discussed-in-coming-days-commission-says/>>.

<sup>143</sup> Michele Kambas and Ingrid Melander, 'EU to prepare blueprint for mutual assistance pact, amid NATO doubts', *Reuters*, (24 April 2026), available at <<https://www.reuters.com/business/aerospace-defense/eu-prepare-blueprint-mutual-assistance-pact-amid-nato-doubts-2026-04-24/>>.

<sup>144</sup> Charles Cohen and Nicoletta Ionta, 'EU prepares mutual defence clause trigger', *Euractiv*, (1 April 2026), available at <<https://www.euractiv.com/news/eu-prepares-mutual-defence-clause-trigger/>>.

<sup>145</sup> Kambas & Melander, (n 143).

Member States are seeking to acquire.<sup>146</sup>

As the strategic analysis has shown, the 2022 Strategic Compass, while representing an important shift in the EU's approach to security and defence, emphasised unconventional threats, such as potential cyber and hybrid attacks, at the expense of addressing preparations for traditional, large-scale military attacks, which NATO, by contrast, is increasingly planning for. NATO's strategic reorientation is evident in the stronger and more direct language of the 2022 Strategic Concept, as well as in the adoption of the NWCC and DDA Concepts, in the increasingly assertive tone of NATO Summit declarations and in recently launched activities aimed at enhancing military presence in the Eastern flank, Baltic Sea and Arctic Ocean.<sup>147</sup>

While conventional and unconventional attacks are theoretically covered by both Article 5 NAT and Article 42(7) TEU, territorial defence is generally considered the responsibility of individual Member States and NATO.<sup>148</sup> This reflects the fact that the EU as a whole has no collective defence mandate, as Article 42(7) TEU envisions no formal role for the EU in the event of armed aggression on a Member State territory. The first year of Trump's second term has sparked renewed debates on European strategic autonomy, reflecting uncertainty over the future of US engagement in NATO and European security. The Defence Readiness 2030 agenda represents a clear step in this direction. The new European Security Strategy, expected for June 2026, is likely to give concrete expression to this shift in forthcoming EU policy priorities.

However, the Union's ability to credibly threaten the use of force in exercising the right of collective defence remains a long-term aspiration, which requires building a strong European defence industrial base and achieving deeper defence integration, whether through Article 42(2) TEU or via intergovernmental or supranational frameworks outside the current Treaties, with a view to their eventual incorporation.

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<sup>146</sup> France in the United Kingdom, 'President delivers speech on France's nuclear deterrence', (4 March 2026), available at <<https://uk.diplomatie.gouv.fr/en/president-delivers-speech-frances-nuclear-deterrence>>.

<sup>147</sup> See NATO, 'NATO launches 'Baltic Sentry' to increase critical infrastructure security', *News*, (14 January 2025), available at <[https://www.nato.int/cps/en/natohq/news\\_232122.htm](https://www.nato.int/cps/en/natohq/news_232122.htm)>; NATO, 'NATO launches "Eastern Sentry" to bolster posture along eastern flank', *News*, (12 September 2025), available at <[https://www.nato.int/cps/en/natohq/news\\_237601.htm](https://www.nato.int/cps/en/natohq/news_237601.htm)>; NATO, 'Arctic Sentry to Enhance Nato's Presence in the Arctic and the High North', *News Releases*, (11 February 2026), available at <<https://shape.nato.int/news-releases/Arctic-Sentry-2>>.

<sup>148</sup> This point is reinforced by Russian President Vladimir Putin's repeated assertions that he opposes Ukraine's accession to NATO, while remaining unconcerned with its EU membership. See, e.g., Reuters, 'Putin says Russia has 'nothing against' Ukraine joining EU', (17 June 2022), available at <<https://www.reuters.com/article/world/putin-says-russia-has-nothing-against-ukraine-joining-eu-idUSKBN2NY0NK/>>; Reuters, 'Putin says Russia doesn't oppose Ukraine joining the EU', (2 September 2025), available at <<https://www.reuters.com/world/china/putin-says-russia-doesnt-oppose-ukraine-joining-eu-2025-09-02/>>.

**Table 1: Text of Article 5 NAT and Article 42(7) TEU**

Article 5 1949 North Atlantic Treaty	Article 42(7) 2007 Lisbon Treaty
<p>‘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.</p> <p>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.’</p>	<p>‘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.</p> <p>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.’</p>

From Federica Fazio, “Collective Defence in NATO and the EU: A Law-in-Context Analysis of Articles 5 NAT & 42(7) TEU Amid the War in Ukraine”, presented at the 10th Geneva Jean Monnet Doctoral Workshop, *EU External Action in a Shifting World Order : Legal and Institutional Dynamics*, at Ghent University, (18 November 2026).

**Table 2: Article 5 NAT and Article 42(7) TEU- Key Differences at a Glance**

III. Feature	III. Article 5, 1949 North Atlantic Treaty	Article 42(7), 2007 Lisbon Treaty
IV. Armed attack/armed aggression	<ul style="list-style-type: none"> <li>- Threshold for legitimate self-defence</li> <li>- <u>No</u> agreed definition in the NAT or IL</li> <li>- Meaning <u>cannot</u> be broader than ‘armed attack’ under Article 51 UNC</li> </ul>	<ul style="list-style-type: none"> <li>- Agreed definition in UNGA Res 3314 (1974)</li> <li>- Broader than ‘armed attack’ for Europeans (US treats as synonyms)</li> </ul>
Geographical applicability	<ul style="list-style-type: none"> <li>- Applies within the NATO area (except Hawaii)</li> <li>- Covers attacks on ground, sea or air within the NATO area (excluding Hawaii)</li> <li>- Excludes overseas or colonial territories (except Algeria until 1962)</li> <li>- May include cyber and outer space</li> </ul>	<ul style="list-style-type: none"> <li>- Applies on EU Member State territories, including overseas territories (in principle ORs, <u>not</u> OCTs)</li> <li>- Excludes attacks on ships in international waters, military forces deployed outside the EU or to another Member State</li> <li>- May include cyber and outer space</li> </ul>

Obligation to assist	<ul style="list-style-type: none"> <li>- Any Ally can invoke it</li> <li>- Allies act individually and collectively through NATO</li> <li>- Obligations of result, conditional but <u>not</u> automatic</li> <li>- Military means explicitly mentioned</li> <li>- Nature, timing and scale of response at Allies' discretion</li> <li>- <u>No</u> sanctioning mechanism for inaction or inadequate action</li> </ul>	<ul style="list-style-type: none"> <li>- Only the victim state can invoke it</li> <li>- Member States provide assistance bilaterally, <u>not</u> via the EU</li> <li>- Obligations of result, conditional and automatic</li> <li>- Military means <u>not</u> explicitly mentioned or excluded</li> <li>- Nature, timing and scope of response at Member States' discretion</li> <li>- <u>No</u> sanctioning mechanism for inaction or inadequate action</li> </ul>
Legal basis/compliance	<ul style="list-style-type: none"> <li>- Exercise of self-defence must comply with Article 51 UNC</li> </ul>	<ul style="list-style-type: none"> <li>- Exercise of self-defence must comply with Article 51 UNC</li> </ul>
Special caveats		<p>Irish clause:</p> <ul style="list-style-type: none"> <li>- Obligation conditional for neutral/non-aligned countries and those requiring parliamentary authorisation for use of force</li> </ul> <p>NATO clause:</p> <ul style="list-style-type: none"> <li>- Assistance conditional for NATO members due to legal primacy of Article 5 obligations</li> </ul>

From Federica Fazio, *EUROPE'S COLLECTIVE DEFENCE SYSTEMS: A Legal and Strategic Analysis of the EU and NATO's Mutual Defence Commitments in the Age of Renewed Military Threats* (PhD thesis, Dublin City University, 2026).