



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**

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Thesis Submitted to the School of Law and Government,
Dublin City University
for the Award of Doctor of Philosophy

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December 2025

Declaration

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of *Doctor of Philosophy* is entirely my own work, and that I have exercised reasonable care to ensure that the work is original and have conformed to the regulations on the use and declaration of Generative AI, and does not to the best of my knowledge breach any law of copyright, and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

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Acknowledgments

First of all, as Snoop Dogg said when receiving his Hollywood Walk of Fame star, ‘I want to thank me for believing in me. I want to thank me for doing all this hard work. I want to thank me for having no days off. I want to thank me for never quitting [...]’. As the late Kobe Bryant once said, ‘If you don’t believe in yourself, no one will do it for you!’.

Second, I want to thank my principal supervisor, Federico, for believing in this project and in me, and for welcoming me with open arms into the Brexit Institute and Dublin European Law Institute family. I also want to thank my secondary supervisor, Ken, for his support throughout my not-always-easy PhD journey, both as my supervisor and as Head of School.

I am grateful to my grandmother, Maria, who raised me and whose memory has remained a guiding presence in my life. I owe my deepest gratitude to my role model, my mother, Bernadette. I would not have been able to complete this project without her love and constant encouragement. Unlike former President Barack Obama, my dreams come from my mother, not my father. My passion for the topic of this PhD thesis stems from a painful memory we share: we were in the United States together on 9/11/2001 and I will never forget the flags at half-mast, the tanks in the streets, and the despair that filled the lobby of our hotel.

I am sincerely appreciative of all my friends and colleagues at Dublin City University, in particular: Jasmine, who has been my rock for four years, sharing in the highs and lows of this journey; Elettra, Lucrezia and Charlie, for their friendship, good humour, and for always making the long, often rainy days at the office brighter; Daniel, without whom I would not have survived year one; Niels, my independent panel member, for his helpful feedback and advice; Niall, my mentor during my EU Law teaching, for always offering encouragement and insights; and Christy, for always making herself available and for pushing me to improve my French. A special thank you goes also to all my friends, near and far, and all the people who have come into my life recently and have pushed me through the finish line. Your patience, understanding, and support have meant the world to me.

I would also like to acknowledge all those who, at different stages, have provided feedback on the papers that form chapters of this thesis: above all, Prof Ben Tonra, who was always so generous with his time and ready to provide me with words of encouragement, guidance, and constructive feedback; my former supervisor at the EU Institute for Security Studies, Prof Daniel Fiott; as well as Profs Michal Onderco and Francisco José Bernardino da Silva Leandro, and Drs James Gallen, Joris Larik, Eva Kassoti, Narin Idriz, Alezini Loxa, and Annegret Engel. Special thanks go to my examiners, Prof Sacha Garben and Dr Andrew Forde, for their careful reading of my thesis and their constructive suggestions, which greatly improved this work.

Finally, my heartfelt appreciation goes to everyone at NATO and the EU, working tirelessly to keep us safe.

“NULLA DIES UMQUAM MEMORI VOS EXIMET AEVO.”

— VIRGIL, AENEID IX.447

Dedicated to the victims of terrorism and war



Virgil's tomb, located in the Parco Vergiliano in Piedigrotta, Naples, Italy

List of Publications and Presentations

Publications

Academic publications:

Federica Fazio, ‘Collective defence in NATO: A legal and strategic analysis of Article 5 in light of the war in Ukraine’ in Francisco José Bernardino da Silva Leandro *et al.* (eds.), *The Palgrave Handbook on the Contemporary International Security: Complexities, Geographies, Governance and International Law* (Palgrave Macmillan, forthcoming 2026).

Federica Fazio, ‘The Mutual Defence Clause: Legal and Strategic Considerations on Article 42(7) TEU in an Age of Renewed Military Threats’, (DELI Working Paper Series No 4/2025, Dublin European Law Institute, 2025).

Federica Fazio, ‘The Mutual Defence Clause: Legal and Strategic Considerations on Article 42(7) TEU in an Age of Renewed Military Threats’, (2025) 8(3) *Nordic Journal of European Law* 1–30.

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, 139–164.

Federica Fazio, ‘Collective defence in NATO: A legal and strategic analysis of Article 5 in light of the war in Ukraine’, (DELI Working Paper Series No 2/2024, Dublin European Law Institute, 2024).

Valerio Alfonso Bruno and Federica Fazio, ‘Italian governments and Political Parties vis-à-vis the war in Ukraine’, in Chiara Pierobon and Anja Mihr (eds.) *Polarization, Shifting Borders and Liquid Governance. Studies on Transformation and Development in the OSCE Region* (Springer Nature, 2024) 265–283.

Federica Fazio, Valerio Alfonso Bruno and Christian Kanuert, ‘The Transnationalization of the Far Right and Terrorism across the Atlantic’, (2023) 6/1 *Journal of European and American Intelligence Studies* 59–79.

Non-academic publications:

Federica Fazio, ‘A Dissenting Opinion on The Hague Summit: the Real Winner is NATO, Not Trump’, (Blog, Dublin City University, 30 June 2025).

Federica Fazio, ‘NATO at 76: Is the Alliance in good SHAPE?’ (Blog, Dublin City University, 7 April 2025).

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Federica Fazio, ‘The NATO Washington Summit: Step Forward or Missed Opportunity?’, (Blog, Dublin City University, 18 July 2024).

Federica Fazio, 'Transnationalization of the Far-Right and Terrorism Across the Atlantic', (Azure Forum Strategic Insight, 004/2024).

Presentations

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' *MSCA Staff Exchange Seminar*, Centro per la Cooperazione Internazionale (CPI), Trento, Italy, 20 November 2025.

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' *10th Geneva Jean Monnet Doctoral Workshop 'EU External Action in a Shifting World Order: Legal and Institutional Dynamics*, Ghent University, Ghent, Belgium, 17-18 November 2025.

Federica Fazio, 'Between Law & Strategy: Collective Defence in Light of Russia's War in Ukraine' *European Law Unbound Society (ELU-S) Annual Conference*, Charles University, Prague, Czech Republic, 25-27 September 2025.

Federica Fazio, 'The EU's Collective Defence Framework: A Law-in-Context Analysis of Article 42.7 TEU Amid the War in Ukraine' *European Initiative for Security Studies (EISS) Annual Conference*, University of Macedonia, Thessaloniki, Greece, 26-27 June 2025.

Federica Fazio, 'The EU and Collective Defence: A Law-in-Context Analysis of Article 42.7 TEU in Light of the War in Ukraine' *European Union in International Affairs (EUIA) Conference 2025 'Europe in a Fragmenting World'*, Vrije Universiteit Brussel, Brussels, Belgium, 21-23 May 2025.

Federica Fazio, 'Collective Defence in the EU: A Law-in-Context Analysis of Article 42.7 TEU' *XII Congress of the Portuguese Association of Political Science (APCP)*, Instituto Universitário de Lisboa, Lisbon, Portugal, 6-8 March 2025.

Federica Fazio, 'NATO and Collective Defense: A Law-in-Context Analysis of Article 5 in Light of the War in Ukraine 2025' *2025 West Point Social Sciences Seminar*, United States Military Academy, West Point, New York, 5-6 February 2025.

Federica Fazio, 'Collective defence in the EU: A legal and strategic analysis of Arts. 42.7 TEU and 222 TFEU' *PhD workshop on 'The Legal Implications of the EU's Geopolitical Awakening'*, T.MC. Asser Institute and Leiden University, The Hague, The Netherlands, 14-15 November 2025.

Federica Fazio, 'Collective defence in the EU: A law-in-context analysis of 42.7 TEU and 222 TFEU' *2024 Political Studies Association of Ireland (PSAI) Annual Conference*, Trinity College Dublin, Dublin, Ireland 18-20 October 2025.

Federica Fazio, 'Italian governments and political parties vis-à-vis the war in Ukraine', *Book launch Event 'Polarization, Shifting Borders and Liquid Governance. Studies on Transformation and Development in the OSCE Region'* OSCE Academy, Bishkek, Kyrgyzstan, 20 December 2023.

Federica Fazio, 'The Foreign Policy of the Far-Right and the Challenges Ahead for European and Transatlantic Cooperation' *Populism and Far-right International Seminars*, Università Cattolica del Sacro Cuore, Milan, Italy, 29 November 2022.

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Tables

Table 1: Key Changes Made to Article 5 During the Negotiations

<p>Article 5</p> <p>Draft by the US State Department</p> <p>14 January 1949</p>	<p>‘The parties agree that an attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently that, if such an attack occurs, each of them, in exercise of the right of individual and collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the party or parties so attacked by taking forthwith <u>such military or other action, individually and in concert with the other parties as may be necessary</u> to restore and assure the security of the North Atlantic area.’</p>
<p>Article 5</p> <p>Redraft by the US Senate Foreign Relations Committee</p> <p>14 February 1949</p>	<p>‘In the event of armed attack upon another nation signatory to the treaty, a party to the treaty, in the exercise of the right of collective self-defence recognised by Article 51 of the Charter of the United Nations, will individually or in concert with other parties take <u>such measures as it may deem necessary</u> to maintain the security of the North Atlantic area.’</p>
<p>Article 5</p> <p>Text provisionally approved by the US Senate Foreign Relations Committee following a closed meeting with the US Secretary of State</p> <p>19 February 1949</p>	<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 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 <u>such action including the use of armed force, individually and in concert with the other parties, as it deems necessary</u> to restore and assure the security of the North Atlantic area.’</p>
<p>Article 5</p> <p>Final text signed in Washington, DC</p> <p>4 April 1949</p>	<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, <u>such action as it deems necessary, including the use of armed force,</u> 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>

Sources: Insall & Salmon 2015, NATO, and Truman Library

Table 2: Genealogy of the EU's Mutual Defence Clause

<p>Article IV 1948 Brussels Treaty</p>	<p>‘If any of the High Contracting Parties should be the object of an <u>armed attack in Europe</u>, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked <u>all the military and other aid and assistance in their power.</u>’</p>
<p>Article 2(3) 1952 European Defence Community Treaty (Never entered into force)</p>	<p>‘Any <u>armed aggression</u> directed against any one of the member States <u>in Europe or against the European Defense Forces</u> shall be considered as an attack directed against all of the member States.</p> <p>The member States and the European Defense Forces shall furnish to the State or Forces thus attacked <u>all military and other aid and assistance in their power.</u>’</p>
<p>Article V 1954 Modified Brussels Treaty</p>	<p>‘If any of the High Contracting Parties should be the object of an <u>armed attack in Europe</u>, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked <u>all the military and other aid and assistance in their power.</u>’</p>
<p>Article I-41(7) 2004 Draft Constitutional Treaty (Never entered into force)</p>	<p>‘If a Member State is the victim of <u>armed aggression on its territory</u>, the other Member States shall have towards it an <u>obligation of aid and assistance by all the means in their power</u>, in accordance with <i>Article 51</i> of the United Nations Charter. <u>This shall not prejudice the specific character of the security and defence policy of certain Member States.</u></p> <p><i>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.</i>’</p>
<p>Article 42(7) 2007 Lisbon Treaty</p>	<p>‘If a Member State is the victim of <u>armed aggression on its territory</u>, the other Member States shall have towards it an <u>obligation of aid and assistance by all the means in their power</u>, in accordance with <i>Article 51</i> of the United Nations Charter. <u>This shall not prejudice the specific character of the security and defence policy of certain Member States.</u></p> <p><i>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.</i>’</p>

Sources: Brussels Treaty, European Defence Community Treaty, Modified Brussels Treaty, draft Constitutional Treaty, and Lisbon Treaty

Table 3: Article 5 NAT and Article 42(7) TEU- Key Differences at a Glance

Feature	Article 5 1949 North Atlantic Treaty	Article 42(7) 2007 Lisbon Treaty
Armed attack/armed aggression	<ul style="list-style-type: none"> - Threshold for legitimate self-defence - <u>No</u> agreed definition in the NAT or IL - Meaning <u>cannot</u> be broader than ‘armed attack’ under Article 51 UNC 	<ul style="list-style-type: none"> - Agreed definition in UNGA Res 3314 (1974) - Broader than ‘armed attack’ for Europeans (US treats as synonyms)
Geographical applicability	<ul style="list-style-type: none"> - Applies within the NATO area (except Hawaii) - Covers attacks on ground, sea or air within the NATO area (excluding Hawaii) - Excludes overseas or colonial territories (except Algeria until 1962) - May include cyber and outer space 	<ul style="list-style-type: none"> - Applies on EU Member State territories, including overseas territories (in principle ORs, <u>not</u> OCTs) - Excludes attacks on ships in international waters, military forces deployed outside the EU or to another Member State - May include cyber and outer space
Obligation to assist	<ul style="list-style-type: none"> - Any Ally can invoke it - Allies act individually and collectively through NATO - Obligations of result, conditional but <u>not</u> automatic - Military means explicitly mentioned - Nature, timing and scale at Allies’ discretion - <u>No</u> sanctioning mechanism for inaction or inadequate action 	<ul style="list-style-type: none"> - Only the victim state can invoke it - Member States provide assistance bilaterally, <u>not</u> via the EU - Obligations of result, conditional and automatic - Military means not explicitly mentioned or excluded - Nature, timing and scope at Member States’ discretion in practice - <u>No</u> sanctioning mechanism for inaction or inadequate action
Legal basis/compliance	<ul style="list-style-type: none"> - Exercise of self-defence must comply with Article 51 UNC 	<ul style="list-style-type: none"> - Exercise of self-defence must comply with Article 51 UNC
Special caveats		<p>Irish clause:</p> <ul style="list-style-type: none"> - Obligation conditional for neutral/non-aligned countries and those requiring parliamentary authorisation for the use of force <p>NATO clause:</p> <ul style="list-style-type: none"> - Assistance conditional for NATO members - Legal primacy of Article 5 obligations, but <u>no</u> right of first refusal in favour of NATO - Non-NATO EU Member States may invoke it against non-EU NATO Allies

Table 4: Evolution of NATO Strategic Concepts and Approach to Collective Defence (1949-1968)

Strategic Concept	Core Tasks	Approach to Deterrence and Defence	Key Innovations
1949 DC 6/1	Deterrence and collective defence	<ul style="list-style-type: none"> - Deterrence by punishment through strategic bombing (primarily a US responsibility) - Forward defence through conventional forces (primarily a European responsibility) - <u>No</u> explicit reference to the USSR or nuclear weapons 	<ul style="list-style-type: none"> - Generic reference to an ‘enemy’ - MC 14 (1950) later explicitly identified the USSR
1952 MC 3/5 (Final)	Deterrence and collective defence	<ul style="list-style-type: none"> - Largely unchanged from 1949 - Continued implicit reliance on nuclear deterrence 	<ul style="list-style-type: none"> - MC 14/1 reaffirmed identification of the USSR
1957 MC 14/2	Deterrence and collective defence	<ul style="list-style-type: none"> - Explicit reliance on nuclear deterrence and massive retaliation - Combination of nuclear deterrence and forward defence - Conventional forces retained for responses short of all-out war 	<ul style="list-style-type: none"> - Formal adoption of the massive retaliation doctrine - Explicit reference to the Soviet Union (56 mentions) and nuclear weapons (55 mentions) - Clarification of the geographical scope of Article 5
1968 MC 14/3	Deterrence and collective defence, complemented by détente and dialogue	<ul style="list-style-type: none"> - Flexible response doctrine combining conventional reinforcement and nuclear escalation - Nuclear weapons designated as the ‘ultimate deterrent’ and ‘ultimate military response’ - Retention of first-use policy 	<ul style="list-style-type: none"> - Transition from massive retaliation to flexible response - Harmel doctrine of deterrence and defence alongside détente and dialogue - Consideration of chemical and biological threats

Table 5: Evolution of NATO Strategic Concepts and Approach to Collective Defence (1991-2022)

Strategic Concept	Core Tasks	Approach to Deterrence and Defence	Key Innovations
<p>1991 The Alliance’s New Strategic Concept</p>	<p>Collective defence, crisis management, and conflict prevention</p>	<ul style="list-style-type: none"> - Reduced forward presence and decreased reliance on nuclear weapons - Continued requirement for credible collective defence - Progress on conventional arms control 	<ul style="list-style-type: none"> - Explicit reaffirmation of Articles 5 and 6 - Shift toward cooperative security with the USSR/Russia - Recognition of the risks from WMD proliferation and terrorism - Acknowledgement of the strategic importance of Southern Europe
<p>1999 The Alliance’s Strategic Concept</p>	<p>Security, consultation, deterrence and defence, and partnerships</p>	<ul style="list-style-type: none"> - Deterrence and defence embedded within a comprehensive security approach - Increased emphasis on crisis response and cooperative security 	<ul style="list-style-type: none"> - Russia described as having a ‘unique role’ in Euro-Atlantic security - Ukraine recognised as having a ‘special place’ - Launch of the NATO-Russia Founding Act and NATO-Ukraine Charter - Reaffirmation of NATO’s open-door policy - Development of the ESDI within NATO and compatibility with EU’s emerging ESDP
<p>2010 Strategic Concept ‘Active Engagement, Modern Defence’</p>	<p>Collective defence, crisis management, and cooperative security</p>	<ul style="list-style-type: none"> - Collective defence reaffirmed as NATO’s greatest responsibility - Deterrence based on a mix of conventional and nuclear forces, including the NRF - Large-scale conventional attacks assessed as unlikely 	<ul style="list-style-type: none"> - Russia described as a partner of ‘strategic importance’ - NATO-Russia Council framed as a key forum for consultation and cooperation - Terrorism identified as a ‘direct threat’ - Recognition that cyber operations could reach the Article 5 threshold - EU described as NATO’s ‘unique and essential partner’ - Entry into force of the Lisbon Treaty welcomed, but <u>no</u> clarification of Article 5 NAT vs Article 42(7) TEU

<p>2022 Strategic Concept</p>	<p>Collective defence, crisis management, and cooperative security</p>	<ul style="list-style-type: none"> - Return to deterrence and forward defence - Nuclear deterrence reaffirmed as the cornerstone of allied security - Strengthened emphasis on conventional defence and force posture - NFM and implementation of the DDA Concept 	<ul style="list-style-type: none"> - Recognition that a strong, independent Ukraine is vital to the stability of the NATO area - Reiteration of NATO’s open-door policy - Russia reclassified as ‘the most significant and direct threat’ - Terrorism described as the ‘most direct asymmetric threat’ - First explicit reference to China as a source of ‘systemic challenges’ - Identification of the Russia-China partnership as a strategic concern - Recognition that cyber and space operations could reach the Article 5 threshold - Emphasis on the strategic importance of the Indo-Pacific region - EU partnership described as ‘more significant’ in light of the war in Ukraine
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Table 6: Evolution of EU Security Strategies and Approach to Security and Defence (2003-2022)

Strategy	Primary Focus	Approach to Security and Defence	Strategic and Institutional Outcome
<p align="center">2003 European Security Strategy</p>	<p>Crisis prevention and management</p>	<ul style="list-style-type: none"> - Strong focus on non-military threats, particularly terrorism (12 mentions) - Limited emphasis on defence (7 mentions) and territorial protection - Security framed as external ('first line of defence abroad') - Emphasis on early action and conflict prevention - <u>No</u> reference to the preparatory work for the ERRF 	<ul style="list-style-type: none"> - First shared EU threat assessment and definition of common security objectives - Promotion of a comprehensive approach using both civilian and military tools - Emphasis on EU-NATO cooperation via Berlin Plus - Groundwork for the establishment of the EDA and EEAS - Recognition of the need for more flexible and mobile forces for crisis management
<p align="center">2016 EU Global Strategy</p>	<p>Crisis management with emerging collective security elements</p>	<ul style="list-style-type: none"> - Covering all dimensions of EU external action - Continued strong focus on terrorism (29 mentions) - Strong focus on cyber and hybrid threats - Stronger emphasis on defence (57 mentions), with strategic autonomy introduced - Explicit reference to Article 42(7) TEU (6 mentions) with mutual assistance and solidarity prioritised - Expectation that the EU will assume larger role in crisis management and collective security 	<ul style="list-style-type: none"> - Followed by the IPSD & EDAP - Launch of the EDF, CARD and PESCO - Establishment of the MPCC and EDIDP - Replacement of the Athena mechanism and the APF with the EPF - Deepening of EU-NATO cooperation through the first (2016) and second (2018) Joint Declarations

<p>2022 Strategic Compass</p>	<p>Crisis response, territorial security, capability development, and partnerships</p>	<ul style="list-style-type: none"> - Defence placed at the centre (234 mentions) but <u>not</u> strategic autonomy (1 mention) - Compass for action with 70 concrete measures to be implemented by 2025 - Commitment to the RDC by 2025 - Increased emphasis on mutual assistance (12 mentions) and solidarity - Reduced prominence of terrorism (24 mentions) relative to hybrid (46 mentions), cyber, and space threats - <u>No</u> mention of how to prepare for Russian aggression on EU territory, only of the role of EUMS in coordinating assistance - NATO reaffirmed as the foundation of collective defence for its members 	<ul style="list-style-type: none"> - First common EU threat analysis using a bottom-up approach - Use of EPF to provide lethal assistance to Ukraine - Continued development of PESCO and EDF - MPCC designated as the preferred EU command and control structure also for certain executive missions and live exercises - Further deepening of EU-NATO partnership through political dialogue, joint exercises and the third Joint Declaration (2023) - Follow-on initiatives include EDIS and EDIP, ReArm Europe/Readiness 2030 and SAFE, and White Paper for European Defence – Readiness 2030
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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

Abstract

This PhD thesis provides the first systematic and comprehensive analysis of the collective defence mechanisms in Article 5 of the North Atlantic Treaty (NAT) and Article 42(7) of the Treaty on European Union (TEU). Russia's ongoing invasion of Ukraine has re-emphasised the importance of collective defence, of which the North Atlantic Treaty Organisation (NATO) and its mutual defence clause have been the cornerstone for over seventy-six years. However, a similar mutual assistance/defence clause also binds the Member States of the European Union (EU). In light of rising fears of military escalation and potential conventional attacks on NATO and/or EU territory, and amid uncertainty surrounding the United States' commitment to European security under the current Trump administration, understanding how these mutual defence clauses operate, interact, and apply in practice is of critical importance.

Using a law-in-context approach, this thesis analyses and compares these overlapping mutual defence clauses. Specifically, the thesis explores the historical origins of these clauses, it teases out their legal meaning, and, drawing on international and European security scholarship, it examines the geopolitical and strategic contexts in which they operate. This thesis considers as case studies the two circumstances in which these mutual defence clauses were triggered for the first – and so far only – time. First, the invocation of Article 5 NAT following the 11 September 2001 terrorist attacks in the United States of America (USA). Second, the activation of Article 42(7) TEU in response to the 13 November 2015 terrorist attacks in Paris.

The thesis argues that 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 lent credible military strength to Article 5 NAT, something Article 42(7) TEU still lacks.

By analysing the EU and NATO's collective defence mechanisms, this research seeks to equip legal professionals and policymakers with insights that can foster a better understanding of the legal and institutional challenges that must be overcome to advance defence integration and cooperation in Europe.

Introduction

1. Research Scope and Contribution

This doctoral thesis deals with collective defence in Europe. Its purpose is to analyse Europe's collective defence systems, as enshrined in Article 5 NAT and Article 42(7) TEU. With Russia's full-scale invasion of Ukraine, high-intensity warfare has returned to Europe, reigniting urgent debates about collective defence and the European security architecture.

When NATO was established in 1949 collective defence was its sole *raison d'être*. For four decades, its sole purpose was to deter and defend its members against the Soviet Union. Yet, with the fall of the Berlin wall in 1989 and subsequent collapse of the Soviet Union two years later, defence and deterrence were progressively deprioritised as the Alliance expanded its focus to a broader range of tasks, while its members enjoyed the so-called 'peace dividend'. Since the Russian Federation illegally seized and annexed Crimea in 2014, however, the Alliance's focus has gradually shifted from these more recent tasks – namely crisis management and cooperative security – back to its original deterrence and collective defence mission, enshrined in Article 5 NAT. This article binds the security of Europe to that of the USA and commits its signatories to common defence, by affirming that an attack on one will be considered an attack on all. 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 recently highlighted by Govaere, the European Economic Community (EEC) had no conferred competence in the area of foreign and security policy.¹ This remains the case today with the EU. Article 5(2) TEU stipulates that '[u]nder the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.'² Article 4(2) TEU further specifies that

¹ 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* (Oxford and Dublin: Hart Publishing, 2025), 17.

² *Consolidated Version of the Treaty on European Union*, (consolidated as of 15 March 2025), Article 5(2), available at <https://eur-lex.europa.eu/eli/treaty/teu_2016/2025-03-15/eng>. For more information on this topic, see, e.g., Sacha Garben and Inge Govaere (eds.), *Division of Competences between the EU and the Member States: Reflections on the*

‘national security remains the sole responsibility of each Member State’.³ At the same time, however, Article 24(1) TEU provides that ‘[t]he Union’s competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union’s security, including the progressive framing of a common defence policy that might lead to a common defence.’⁴ Accordingly, the intergovernmental Common Foreign and Security Policy, including the Common Security and Defence Policy, which survived the abolition of the 1992 Maastricht pillar structure by the Lisbon Treaty,⁵ remains subject to specific rules and procedures.⁶ For these reasons, and because most of its members are also in NATO, the EU’s role in security and defence has historically been limited to crisis management and peacekeeping operations outside its territory, in accordance with Article 3(5) TEU, which states that ‘[i]n its relations with the wider world, the Union shall [...] contribute to peace, security, [...] as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter’.⁷

In recent years, however, the EU has been progressively expanding its involvement in the field of security and defence. This process appears to have begun in 2016, prompted in part by the Brexit referendum and Donald J. Trump’s first presidential election, which took place in June and November respectively. The EU’s growing role in security and defence, particularly defence, has become even more pronounced since the outbreak of war in Ukraine in 2022. Although NATO remains key to Europe’s territorial defence, as evidenced by Finland and Sweden’s accession in 2023 and 2024 respectively, Trump’s re-election in November 2024 has raised questions about America’s commitment to NATO and European security, prompting renewed debate about the EU’s evolving role amid Russia’s revanchist policies and potential aggression against its members. The 2007 Lisbon Treaty envisages a collective assistance/defence obligation in Article 42(7) TEU, which, similarly to NATO’s clause, commits EU Member States to assist one another in the event of aggression. This raises questions about how the EU’s collective defence obligations compare to NATO’s, in terms of their legal foundations, practical implementation, and overall strategic credibility.

Past, the Present and the Future (Oxford, London and Portland: Hart Publishing, 2017); Sacha Garben, *The Competence Question in the (Con)Federal European Union* (Oxford: Oxford University Press, 2025).

³ *Consolidated Version of the TEU*, (n 2), Article 4(2). However, as pointed out by De Witte, ‘the little phrase of Article 4(2) TEU, despite its sharp wording, is not a genuine competence reservation clause either.’ See 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* (Oxford, London and Portland: Hart Publishing, 2017), 72.

⁴ *Consolidated Version of the TEU*, (n 2), Article 24(1).

⁵ 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. See also Antonio Missiroli (ed.), *The EU and the World: Players and Policies Post-Lisbon – A Handbook* (Paris: European Union Institute for Security Studies, 2017), 16, available at <https://www.iss.europa.eu/sites/default/files/EUISSFiles/EU_Handbook.pdf>; Karen E. Smith, *European Union Foreign Policy in a Changing World* (2nd Edition. Cambridge: Polity Press, 2008), 29-33 and 38-49.

⁶ See *supra* n 4, subparagraph 2.

⁷ *Consolidated Version of the TEU*, (n 2), Article 3(5).

2. *Research Question and Design*

In light of the above, this thesis seeks to answer the following research questions: *What is the relationship between the EU and NATO's mutual defence clauses? In what ways do NATO's Article 5 and the EU's Article 42(7) differ in terms of their legal obligations, scope, and credibility as mechanisms of collective defence?* To this end, it examines these two legal provisions using a law-in-context approach.

This research method is regarded as the most appropriate in the legal and social sciences to analyse a law or legal phenomenon in the broader political, social, historical, and economic context in which it is embedded.⁸ This interdisciplinary approach utilises any concept and method from 'any other discipline that helps to explain the operation in practice of the particular legal field or legal phenomena under investigation'.⁹ Given the topic and the author's dual background in law and political science, this PhD thesis draws insights from political science and international relations scholarship. It is this author's impression that law scholars and politics scholars do not frequently interact, but rather tend to end up sitting at separate tables and having separate conversations about the same issues. To borrow the words of Whittington, Kelemen and Caldeira, '[t]oo often scholars focused on their own close-knit intellectual communities and ignored, or viewed with wary skepticism, the efforts of those working on related issues but on the other side of one of these divides'.¹⁰ This thesis represents an attempt to remedy that division. After all, 'law is just politics by other means'.¹¹ Special attention is, therefore, devoted to the geopolitical and strategic context in which the two clauses were negotiated, adopted and later operationalised. In other words, context matters. A mere doctrinal and comparative analysis of Articles 5 NAT and 42(7) TEU would not provide a truly 360-degree understanding; contextualising these clauses within the evolving

⁸ See, e.g., Megan Donaldson, 'Peace, war, law: teaching international law in contexts', 18/4 *International Journal of Law in Context* (2022), 393-402; Peter Cane, 'Context, context everywhere', 16/4 *International Journal of Law in Context* (2020), 459-463; Ester Herlin-Karnell, Gerard Conway and Aravind Ganesh, *European Union Law in Context* (Oxford and New York: Hart Publishing, 2021); William Twining, *Law in Context: Enlarging a Discipline* (Oxford: Clarendon Press, 1997).

⁹ As quoted in Carl Harlow, 'The EU and law in context: the context', *European Law Open* (2022), 213.

¹⁰ Keith E. Whittington, R. Daniel Kelemen and Gregory A. Caldeira 'Overview of Law and Politics the Study of Law and Politics', in Robert Goodin (ed.), *The Oxford Handbook of Political Science* (Oxford: Oxford University Press, 2013), 242.

¹¹ David Kairys, 'Legal Reasoning' in David Kairys (ed.), *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1982), 17. This is an adaptation of Carl von Clausewitz's famous quote '[w]ar is merely the continuation of policy by other means'. See Carl von Clausewitz, *On War*, Book I, Chapter I in Michael Howard, Peter Paret and Bernard Brodie (eds. and translators) (Indexed Edition, Princeton: Princeton University Press, 1989), 87, available at <<https://ia801804.us.archive.org/14/items/on-war-vom-kriege-carl-von-clausewitz-howard-paret-brodie-west-morigi-repubblica/On%20War%2C%20Vom%20Kriege%2C%20Carl%20von%20Clausewitz%2C%20Howard%2C%20Paret%2C%20Brodie%2C%20West%2C%20Morigi%2C%20Repubblicanesimo%20Geopolitico%2C%20Neo-marxismo%2C%20Neo-marxism%2C%20Marxism%2C%20Marxismo%2C%20Neo-Republicanism%2C%20Antillogicalism.pdf>>.

geopolitical and strategic landscape in which they have been agreed to and operated since adoption and invocation is essential.

The two chapters of the thesis follow a common structure. Chapter 1 examines NATO's Article 5, while Chapter 2 focuses on the EU's Article 42(7). Each begins with a historical analysis, followed by a legal analysis, and concludes with a strategic analysis.

The historical analysis includes an examination of the *travaux préparatoires* that led to the adoption of Article 5 NAT and Article 42(7) TEU. For Article 5, this entailed studying the negotiations leading to the adoption of the 1949 NAT and the process that provided it with a concluding O, making it the strong and enduring alliance that it is today; for Article 42(7), it encompasses not only the negotiations leading to the 2007 Lisbon Treaty, but also earlier developments in the 1948 Brussels Treaty, 1952 European Defence Community Treaty, 1954 Modified Brussels Treaty and 2004 Constitutional Treaty. Although, in the words of his former Secretary General, Jens Stoltenberg, NATO is today 'not only the most successful, and strongest, but also the longest-lasting Alliance in history',¹² the EU's mutual defence clause technically predates NATO's. Article 42(7) TEU traces, in fact, its origins to Article IV of the 1948 Brussels Treaty (BT) and the Western Union Defence Organisation (WUDO) – the defensive military alliance of the Western Union, later replaced by the Western European Union (WEU), whose functions the EU progressively assumed. Consequently, the genesis of the EU's mutual defence clause is examined in detail.

The historical analysis shows that the two clauses were negotiated almost simultaneously and that Article IV BT served both as a pre-condition and as one of the models used in the drafting of Article 5 NAT. It further highlights that the wording of both clauses had to be softened: Article IV BT, changing from 'all the military and other aid and assistance in their power', to 'all the means in their power' in Article I-41(7) of the draft Constitutional Treaty to accommodate the concerns of both the neutral/non-aligned and Atlanticist blocks in the EU; while Article 5 NAT, changing from 'such military and other action [...] as may be necessary' to 'such action including the use of armed force [...] as it deems necessary' to ensure ratification by the US Senate.

The legal analysis then delves into the two mutual defence clauses in their current formulations. Article 5 NAT is analysed first, with key elements warranting deeper evaluation identified and discussed in detail. The same analytical framework is subsequently applied to Article 42(7) TEU to ensure a certain degree of consistency and comparability. To provide an empirical backing for these arguments and illustrate how the two clauses work in practice, two case studies are

¹² NATO, 'Speech by NATO Secretary General Jens Stoltenberg at the NATO 75th Anniversary Celebratory Event in Washington', *Speeches & transcripts*, (9 July 2024), available at <https://www.nato.int/cps/en/natohq/opinions_227396.htm>.

taken into account: the first – and to date the only – invocation and activation of Article 5 NAT, following the 11 September 2001 terrorist attacks in the USA, and that of Article 42(7) TEU following the 13 November 2015 terrorist attacks in France.

The legal analysis argues that both Article 5 NAT and Article 42(7) TEU entail obligations of result whose content is deliberately indeterminate and whose enforcement is inherently political rather than judicial. The distinction between an obligation of means and an obligation of result derives from contract law within legal systems influenced by the French civil law tradition. It was subsequently introduced into public international law in the late 1970s through the Draft Articles on State Responsibility by Roberto Ago, then-Special Rapporteur of the International Law Commission. An obligation of means – also referred to as obligation of conduct – requires states to adopt a particular course of action, such as specific measures determined by the international obligation itself. In this context, ‘[a] breach by the State of an international obligation specifically calling for it to adopt a particular course of conduct exists simply by virtue of the adoption of a course of conduct different from that specifically required.’¹³ By contrast, an obligation of result requires states to achieve a specific outcome, while retaining the freedom to choose the means to do so. In this case, ‘[a] breach of an international obligation requiring the State to achieve a particular result *in concreto*, but leaving it free to choose at the outset the means of achieving that result, exists if, by the conduct adopted in exercising its freedom of choice, the State has not in fact achieved the internationally required result.’¹⁴

However, applying this binary distinction to collective defence clauses such as Article 5 NAT and Article 42(7) TEU reveals certain conceptual limits. The thesis posits that, like NATO Allies, EU Member States are legally bound to assist an aggressed member. However, for Article 5 NAT, the obligation to assist is conditional but not automatic, whereas for Article 42(7) TEU it is both automatic and conditional. It is this author’s view that the flexible wording of Article 42(7) TEU, and particularly the phrase ‘by all the means in their power’, might have led some Member States’ capitals to perceive the clause as closer to an obligation of means than of result. This perception is reinforced

¹³ United Nations, *Yearbook of the International Law Commission 1977*, Volume II, Part 1 (New York: United Nations, 1978), Article 20, available at <https://legal.un.org/ilc/publications/yearbooks/english/ilc_1977_v2_p1.pdf>.

¹⁴ *Ibid.*, Article 21. However, as noted by Wolfrum, the distinction between obligation of result and obligation of means does not appear in the final text adopted by the International Law Commission, as Article 12 generically states that ‘[t]here is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.’ See United Nations, *Responsibility of States for Internationally Wrongful Acts 2001* (New York: United Nations, 2008), Article 12, available at <https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf>; Rüdiger Wolfrum, ‘Obligation of Result Versus Obligation of Conduct: Some Thoughts About the Implementation of International Obligations’, in Mahnouch H. Arsanjani *et al.* (eds.) *Looking to the Future – Essays on International Law in Honor of W. Michael Reisman* (Leiden and Boston: Martinus Nijhoff Publishers, 2011), 364. See also James Crawford, ‘Article 12: Existence of a Breach of an International Obligation’ in *The International Law Commission’s Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge: Cambridge University Press, 2002), 125–130.

by the fact that, unlike Article 5 NAT, which explicitly states the overarching objective of ‘restoring and maintaining the security of the North Atlantic area’, Article 42(7) TEU contains no comparable statement.

A systemic interpretation of Article 42(7) TEU, however, reveals 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, 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 entails an obligation of result, requiring Member States to provide assistance aimed at the preservation of peace and security. The EU’s latest security strategies confirm this interpretation. In substance, this is comparable to the objective of restoring and maintaining the security of the North Atlantic area under Article 5 NAT. 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 section demonstrates. Moreover, in both cases, compliance 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. Additionally, the legal analysis indicates that both clauses have progressively broadened in interpretation, potentially overlapping in cases of traditional and/or non-traditional attacks.

Finally, the strategic analysis – understood, for the purposes of this thesis, as an analysis of strategies – examines NATO’s eight Strategic Concepts: the 1949, 1952, 1957, and 1968 Cold-War Strategic Concepts, and the 1991, 1999, 2010, and 2022 post-Cold War Strategic Concepts. Likewise, it considers the EU’s three security strategies: the 2003 European Security Strategy, the 2016 European Global Strategy, and the 2022 Strategic Compass. These documents are analysed using a combination of textual and contextual analysis, research methods commonly employed in political science: the former identifies and interprets the use and frequency of particular words or themes within qualitative text data,¹⁵ while the latter situates these findings within the broader political and strategic environment in which the processes under investigation occur.¹⁶ The strategic analysis reveals that the Alliance is refocusing on its original and core mission of deterrence and defence, as reflected in the wording of the latest Strategic Concept of 2022, which closely mirrors the language of the Cold-War era Strategic Concepts. However, it also highlights that the political will to come to one another’s defence, and its clear signalling to Allies and adversaries alike, is as crucial as maintaining a strong deterrence and defence posture.

¹⁵ See, e.g., Roger Pierce, ‘Using Content Analysis’ in Roger Pierce (ed.) *Research Methods in Politics* (London: SAGE, 2008).

¹⁶ See, e.g., Charles Tilly and Robert Goodin, ‘Overview of Contextual Political Analysis it Depends’, in Robert Goodin (ed.) *The Oxford Handbook of Political Science* (Oxford: Oxford University Press, 2011), 431–459.

By contrast, collective defence was never the EU's core mission, and the Union continues to be largely perceived as a soft or normative power. While the EU's constitutional framework includes a collective defence clause, unlike NATO, the Union lacks a clear collective defence mandate, as well as the hard-power capabilities and integrated military command structure required to exercise collective defence independently. Recent events in Ukraine may have prompted a gradual transformation into a form of 'semi-hard power',¹⁷ as indicated by the increasing emphasis on 'defence' and, to a lesser extent, the 'mutual assistance clause' in the 2022 Strategic Compass. Nevertheless, treaty limitations and a persistent lack of political will within the European Council continue to prevent the EU from moving beyond the pursuit of a common defence *industry* to the establishment of a genuine common *defence*.

The conclusions reached here are intended to foster a better understanding among legal professionals and political scientists, encouraging them to join forces and find bold and creative solutions to overcome existing legal and political hurdles and limitations.

3. *The Concept of Collective Defence in International Law*

While a detailed analysis and discussion of collective defence in international law is outside the scope of this thesis,¹⁸ a brief overview is deemed necessary in order to better understand NATO's and EU's collective defence obligations and how they relate to United Nations (UN) principles.

Article 2(4) of the UN Charter (UNC) outlaws the *offensive* use of force, forbidding states from using force or even threatening to use force against another state's territorial integrity and/or political independence. However, the *defensive* use of force, both individually and collectively exercised, is contemplated by Article 51 UNC. This exceptional measure¹⁹ recognises self-defence – both in its individual and collective forms – as an inherent right, one that predates and exists independently of the UN Charter as a principle of customary international law. While some scholars contend that Article 51 UNC restricted the customary right of self-defence by requiring States to comply with the Charter's conditions, others maintain that customary law continues to apply, thereby permitting a broader scope of self-defence not limited solely to instances of armed attack.²⁰ However,

¹⁷ Govaere 2025, (n 1).

¹⁸ For a detailed analysis, see, e.g., Christian Henderson, *The Use of Force and International Law* (2nd Edition, Cambridge: Cambridge University Press, 2023); Marc Weller, *The Oxford Handbook of the Use of Force in International Law* (1st Edition, Oxford: Oxford University Press, 2015).

¹⁹ Another exception to the prohibition of the use of force is contemplated by Article 53 UNC, which relates to regional arrangements and organisations under Chapter VIII designed to fulfil regional tasks and settle disputes in a specific region through enforcement action, to be previously authorised by the UN Security Council.

²⁰ 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.

according to the interpretation of the International Court of Justice (ICJ), Article 51 UNC reflects and codifies customary international law, such that the two have effectively come to coincide.²¹

Under Article 51 UNC, a member state is entitled not only to act in its own self-defence – individual self-defence – but also that of another member state – collective (self-)defence – in presence of an armed attack, of which, however, no definition is provided in the UNC or in the records of the 1945 San Francisco Conference. Moreover, the gravity or type of force that meets that threshold has never been conclusively clarified by international courts.²² In instances of self-defence, the UN Security Council (UNSC) will not consider the use of force as a threat to, or a violation of international peace and security, nor as an act of aggression, provided that the state(s) concerned promptly notify it of the actions taken in the exercise of this right. If this reporting obligation is not fulfilled, however, the measures adopted by the state(s) will be considered unlawful and constitute a *prima facie* violation of the right of self-defence.²³ In the case of collective self-defence, a request of assistance, or at a minimum the consent of the attacked state(s), is required.²⁴ States are also required to cease the use of force once the UNSC takes action to restore or uphold international peace and security. Moreover, both individual and collective self-defence are subject to conditions and restrictions, namely necessity, immediacy, and proportionality of the response.²⁵

Some commentators²⁶ and UN member states – such as the USA – have argued in favour of broadening the interpretation of legitimate self-defence beyond the definition of an ‘act of aggression’ provided by Article 3 of the UN General Assembly (UNGA) Resolution 3314 of 1974.²⁷ This broader

²¹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, ICJ Rep. 1986 14, paras. 200 and 235, available at <<https://www.icj-cij.org/sites/default/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>>.

²² Laurie R. Blank, ‘Irreconcilable Differences: The Thresholds for Armed Attack and International Armed Conflict’, 96/1 *Notre Dame Law Review* (2020), 253, available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3556955>. Cooper, (n 20), 259; Michael N. Schmitt ‘The North Atlantic Alliance and Collective Defense at 70: Confession and Response Revisited’, 34 *Emory International Law Review* (2019), 101, available at <<https://scholarlycommons.law.emory.edu/eilr/vol34/iss0/7/>>.

²³ Nicaragua Case, (n 21).

²⁴ Cooper, (n 20), 265-268. See also Benedetto Conforti and Carlo Focarelli, *Le Nazioni Unite* (VIII Edizione CEDAM, 2010), 218. Some commentators have argued that state’s consent does not need to be made explicit in the form of an expressed request. On the topic, see, e.g., Bruno Simma, *The Charter of the United Nations: A Commentary* (Oxford: Oxford University Press, 1994), 675.

²⁵ Cooper, (n 20), 258; Yoram Dinstein, *War, Aggression and Self-Defence* (5th 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), 89; Michael Wood, ‘The Caroline Incident 1837’, in Tom Ruys, Olivier Corten, Alexandra Hofer (eds.) *The Use of Force in International Law: A Case-based Approach* (Oxford: Oxford University Press, 2018).

²⁶ See, e.g., Dinstein, (n 25); Thomas M. Franck, *Recourse to Force: State Action against Threats and Armed Attacks* (Cambridge: Cambridge University Press, 2002).

²⁷ UNGA Resolution 3314 (XXIX) on the Definition of Aggression, (14 December 1974), GAOR 29th Sess. Supp. 31, 142-144, available at <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/PDF/NR073916.pdf?OpenElement>>.

interpretation could encompass, for example, attacks carried out by non-state actors²⁸ – such as terrorist attacks,²⁹ – aggressions that have not yet materialised – anticipatory³⁰, preventive or pre-emptive self-defence –,³¹ or non-military forms of harm – such as humanitarian suffering,³² or, more recently, cyber attacks.³³ However, others³⁴ reject this wider interpretation, arguing that self-defence must be interpreted in line with the UNC and with UN resolutions – particularly UNGA Resolutions 2625 and 3314 – as well as court rulings, especially those of the ICJ – namely the Nicaragua,³⁵ Oil Platforms,³⁶ and Armed Activities on the Territory of the Congo³⁷ cases.

Finally, it is important to note that Article 51 was not originally intended to be included in the Charter. During the UN Conference in San Francisco, South American states that had previously ratified the Act of Chapultepec's mutual defence arrangement expressed their concern to the USA, prompting the American delegate, Senator Arthur H. Vandenberg, to request that the right of self-defence be incorporated into the Charter.³⁸ Therefore, this right was ultimately included within the UNC to accommodate collective self-defence arrangements under regional pacts and alliances.

²⁸ As highlighted by Schmitt, however, ‘whether Article 51 of the U.N. Charter and customary international law encompass an attack by non-State actors who lack the Nicaragua relationship to a State remains unsettled’. See Schmitt, (n 22), 104.

²⁹ *Armed Activities on Territory of the Congo (Dem. Rep. Congo v. Uganda)*, ICJ Rep. 2005 168, paras. 143,146-47, available at <<https://www.icj-cij.org/sites/default/files/case-related/116/116-20051219-JUD-01-00-EN.pdf>>; *Legal Consequences of Construction of Wall in Occupied Palestinian Territory*, (Advisory Opinion), ICJ Rep. 2004 136, paras. 139 and 150, available at <<https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>>. See also Terry D. Gill and Kinga Tibori-Szabó, ‘Twelve Key Questions on Self-Defense against Non-State Actors’, 95 *International Law Studies*, Stockton Center for International Law (2019), 467-505; Noam Lubell, ‘The Possibility of Self-Defence Against Non-State Actors’, in *Extraterritorial Use of Force Against Non-State Actors* (Oxford: Oxford Monographs in International Law, 2010), 25–42; US Department of Justice, *White Paper, Lawfulness of a Lethal Operation Directed against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa’ida of an Associated Force*, (8 November 2011), 2, available at <<https://irp.fas.org/eprint/doj-lethal.pdf>>.

³⁰ As pointed out by Schmitt, ‘Most States and contemporary international law scholars are of the view that Article 51 must necessarily be understood as allowing for anticipatory action.’ What they seemingly disagree on is when the right to anticipatory self-defence matures – temporal proximity vs last window of opportunity view. See Schmitt, (n 22), 106-108.

³¹ See also Historical Office, Office of the Secretary of Defense, *The National Security Strategy of the United States of America*, (September 2002), available at <https://history.defense.gov/Portals/70/Documents/nss/nss2002.pdf?ver=oyVN99aEnrAWijAc_O5eiQ%3d%3d>; Anthony Clark Arend, ‘International Law and the Preemptive Use of Military Force’, 26/2 *The Washington Quarterly* (Spring 2003) 89–103; W Michael Reisman and Andrea Armstrong, ‘The Past and Future of the Claim of Preemptive Self-Defense’, 100/3 *The American Journal of International Law* (2006), 525–550.

³² José Luis Aragón Cardiel, Amanda Davis and Lauranne Macherel, ‘The Use of Force Against Non-Military Threats’, 49/3 *Columbia Human Rights Law Review* (2018), 100-182.

³³ Nicholas Tsagourias, ‘Cyber attacks, self-defence and the problem of attribution’, 17/2 *Journal of Conflict and Security Law* (2012), 229–244.

³⁴ See, e.g., Olivier Corten, *Law against War* (Oxford: Hart Publishing, 2010); Henderson, (n 18); Christine Gray, *International Law and the Use of Force* (4th Edition Oxford: Oxford University Press, 2018).

³⁵ Nicaragua Case, (n 21).

³⁶ *Case Concerning Oil Platforms (Iran v United States)*, ICJ Rep. 2003 161, para.78, available at <<https://www.icj-cij.org/sites/default/files/case-related/90/090-20031106-JUD-01-00-EN.pdf>>.

³⁷ Armed Activities on Territory of the Congo Case, (n 29).

³⁸ Carin Kahgan, ‘Jus Cogens and the Inherent Right to Self-Defense’, 3/3 *ILSA Journal of International & Comparative Law* (1997), 805-820. See also Sten Rynning, *NATO: From Cold War to Ukraine, a History of the World's Most Powerful Alliance* (New Haven and London: Yale University Press, 2024), 28-29.

Accordingly, collective defence may be exercised by: 1) an individual state; 2) two or more individual states acting independently in support of the attacked state; 3) an *ad hoc* coalition of states acting cooperatively; or 4) a permanent multinational military organisation, such as NATO.³⁹

In the words of Grant, ‘NATO more than any other organization realizes the concept of “the inherent right of individual or collective self-defence” that Article 51 of the United Nations Charter envisaged.’⁴⁰ Against this background, the next chapters examine how the collective defence commitments of NATO and the EU are framed and operate in practice, beginning with NATO’s.

³⁹ Schmitt, (n 22), 101.

⁴⁰ Thomas D. Grant, ‘NATO’, in Anne van Aaken *et al.* (eds.) *The Oxford Handbook of International Law in Europe* (Oxford: Oxford University Press, 2023), 501.

Chapter 1

Collective Defence in NATO: A Law-in-Context Analysis of Article 5 NAT

Introduction

Russia's ongoing aggression of Ukraine has marked the return of conventional warfare in Europe, re-emphasising the importance of NATO and prompting significant changes not only within NATO itself,⁴¹ but also among its members,⁴² in the European security and defence architecture more

⁴¹ See, e.g., Sebastian Mayer 'Introduction: NATO as an object of research', in Sebastian Mayer (ed.) *Research Handbook on NATO* (Cheltenham and Northampton: Edward Elgar Publishing, 2023), 1-19; Diego A. Ruiz Palmer, 'NATO's Military Transformations 1949-2024', in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (London: Routledge, 2024), 79-92; Kęstutis Paulauskas, 'NATO and the Eastern Flank', in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (London: Routledge, 2024), 289-301; Jens Ringsmose 'Conventional Force Posture', in James Sperling and Mark Webber (eds.) *The Oxford Handbook of NATO* (Oxford: Oxford University Press, 2025), 419-434; Sten Rynning, 'NATO 2014-2024,' in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (London: Routledge, 2024), 65-76; Rolf Tamnes, 'NATO and the Northern Flank 1949-2024', in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (London: Routledge, 2024), 275-288; Sarah Tarry, 'NATO's Deterrence and Defence: Protecting the Future', in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (London: Routledge, 2024), 358-369; Tomonori Yoshizaki and Hideaki Shinoda, 'The Impact of the Russo-Ukrainian War on NATO: Implications for the Strategic Concept of the Alliance', in Hideaki Shinoda and Pavlo Fedorchenko-Kutuyev (eds.) *The Impacts of the Russo-Ukrainian War* (Singapore: Springer, 2025), 43-57; David S. Yost 'Nuclear Deterrence', in James Sperling and Mark Webber (eds.) *The Oxford Handbook of NATO* (Oxford: Oxford University Press, 2025), 381-402.

⁴² See, e.g., Valerio Alfonso Bruno and Federica Fazio, 'Italian Governments and Political Parties Vis-a-Vis the War in Ukraine', in Anja Mihr and Chiara Pierobon (eds.) *Polarization, Shifting Borders and Liquid Governance* (Springer, 2024), 265-283; John R. Deni *et al.*, *Assessing the Zeitenwende: Implications for Germany, the United States, and Transatlantic Security* (Carlisle Barracks, PA: US Army War College Press, 2025), available at <<https://press.armywarcollege.edu/cgi/viewcontent.cgi?article=1972&context=monographs>>; Joanna Dyduch and Magdalena Góra, 'Polish Reactions to Russian Aggression Against Ukraine', in Anja Mihr and Chiara Pierobon (eds.) *Polarization, Shifting Borders and Liquid Governance* (Springer, 2024), 301-319; Tom Dyson 'Germany', in James Sperling and Mark Webber (eds.) *The Oxford Handbook of NATO* (Oxford: Oxford University Press, 2025), 687-703; Caroline L. Kapp and Liana Fix, 'German, French, and Polish Perspectives on the War in Ukraine', in Anja Mihr and Chiara Pierobon (eds.) *Polarization, Shifting Borders and Liquid Governance* (Springer, 2024), 321-333; Wojciech Lorenx, 'Poland', in James Sperling and Mark Webber (eds.) *The Oxford Handbook of NATO* (Oxford: Oxford University Press, 2025), 719-735; Panagiota Manoli, 'Greece's Response to Russia's War on Ukraine', in Anja Mihr and Chiara Pierobon (eds.) *Polarization, Shifting Borders and Liquid Governance* (Springer, 2024), 349-365; Luca Ratti, 'Italy', in James Sperling and Mark Webber (eds.) *The Oxford Handbook of NATO* (Oxford: Oxford University Press, 2025), 704-718; Viljar Veebel and Illimar Ploom, 'Estonian Fears, Hopes, and Efforts—Russian War Against Ukraine', in Anja Mihr and Chiara Pierobon (eds.) *Polarization, Shifting Borders and Liquid Governance* (Springer, 2024), 335-348.

broadly,⁴³ as well as in other international organisations.⁴⁴ Since collective defence has returned to the fore, NATO has taken unprecedented steps to adapt to this new security reality, showing that territorial defence pursuant to Article 5 of its founding document, the NAT, remains the Alliance's primary responsibility.

Ever since the Russian invasion and illegal annexation of Crimea in 2014, the Alliance's focus has been progressively shifting from crisis management and cooperative security back to its original deterrence and collective defence mission.⁴⁵ Today, deterrence and collective defence, is one of the Alliance's three core tasks, alongside crisis management and cooperative security.⁴⁶ However, this has not always been the case. Originally, NATO was created for reasons of collective defence, defined by Deni as 'the act by two or more sovereign entities of unifying against an exogenous threat or threats.'⁴⁷ This is what differentiates it from collective security organisations such as the UN or the

⁴³ See, e.g., Léonie Allard and Rachel Rizzo, 'Transatlantic Security in a New Era, 67/2 *Survival* (2025), 85–96; Susana Anghel and Mario G.H. Damen, 'The Future European Security Architecture: Dilemmas for EU Strategic Autonomy', Study, *European Parliamentary Research Service* (March 2025); Lasha Bazhunaishvili and Irakli Gorgiladze, 'The Russian war against Ukraine and remake of European security architecture: dynamics and prospects', 10/2 *European Journal of Transformation Studies* (2022), 235–258; Federico Fabbrini, 'EU Defence Capabilities after the War in Ukraine: The Act in Support of Ammunition Production and the Development of an EU Defense Industrial Policy', in Inge Govaere, Sacha Garben and Eleanor Spaventa (eds.) *The Impact of War (in Ukraine) on the EU* (Oxford and Dublin: Hart Publishing, 2025), 167–183; Calle Håkansson 'The Ukraine war and the emergence of the European commission as a geopolitical actor', *Journal of European Integration* (2024), 25-45; Daniela Schwarzer 'The war in Ukraine and its challenges to European security, transatlantic relations and EU-UK cooperation', in Federico Fabbrini (ed.) *The Law & Politics of Brexit: Volume 5. The Trade & Cooperation Agreement* (Oxford: Oxford University Press, 2024), 44-66.

⁴⁴ See, e.g. Ed Bates, Kanstantsin Dzehtsiarou and Andrew Forde, *Russia, the Council of Europe and the European Convention on Human Rights: A Troubled Membership and Its Legacy* (Bristol: Bristol University Press, 2025); Jelena Cupać, 'OSCE's Resilience in Times of War' in Anja Mihr and Chiara Pierobon (eds.) *Polarization, Shifting Borders and Liquid Governance* (Springer, 2024), 397-407; Georgios Kostakos, 'The United Nations and the Russian-Ukrainian War', in Anja Mihr and Chiara Pierobon (eds.) *Polarization, Shifting Borders and Liquid Governance* (Springer, 2024), 383-395; Mariana Ohanjanyan, Bob Deen and Kaspar Pucek, 'Neither secure nor co-operative? The potential futures of the OSCE', Report, *Clingendael Institute* (March 2025), available at <<https://www.clingendael.org/sites/default/files/2025-05/Potential%20futures%20of%20the%20osce.pdf>>.

⁴⁵ Admiral Rob Bauer, 'NATO in a New Era of Collective Defence', *Institute of International and European Affairs*, (27 February 2024), available at <<https://www.iiea.com/events/nato-in-a-new-era-of-collective-defence>>; John R. Deni, *NATO and Article 5: The Transatlantic Alliance and the Twenty-First-Century Challenges of Collective Defense* (Lanham, Maryland: Rowman & Littlefield Publishing, 2017); John R. Deni, 'Collective defence', in Sebastian Mayer (ed.) *Research Handbook on NATO* (Cheltenham and Northampton: Edward Elgar Publishing, 2023), 208-221; NATO, 'NATO takes measures to reinforce collective defence, agrees on support for Ukraine', *News*, (1 April 2014), available at <https://www.nato.int/cps/en/natohq/news_108508.htm?selectedLocale=en>; NATO, 'NATO Secretary General: Ukraine crisis shows defence matters more than ever', *News*, (8 May 2014), available at <https://www.nato.int/cps/en/natohq/news_109638.htm?selectedLocale=en>; NATO, 'NATO boosts its defence and deterrence posture', *News*, (10 February 2016), available at <https://www.nato.int/cps/en/natohq/news_127834.htm?selectedLocale=en>; NATO, 'NATO Allies send more ships, jets to enhance deterrence and defence in eastern Europe', *News*, (24 January 2022), available at <https://www.nato.int/cps/en/natohq/news_191040.htm?selectedLocale=en>.

⁴⁶ See 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>; NATO, *2022 NATO Strategic Concept Adopted by Heads of State and Government at the NATO Summit in Madrid*, (29 June 2022), Preface, 1, paras. 4, 3, and 20-46, 6-11, available at <https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/290622-strategic-concept.pdf>.

⁴⁷ Deni 2023, (n 45), 209.

Organisation for Security and Co-operation in Europe (OSCE): NATO was primarily designed to address challenges and problems that are *exogenous, not endogenous*, originating from outside and not inside the system.⁴⁸ Although neither Article 5 NAT nor the NAT more broadly identifies a specific adversary, throughout the Cold War this exogenous threat was represented by the Soviet Union and the Warsaw Pact, a military alliance formed in May 1955 as a counterweight to NATO in response to the remilitarisation of West Germany and its accession to NATO. Enshrined in Article 5 NAT, collective defence is, therefore, the Alliance's *casus foederis*.

After the end of the Cold War, the Alliance faced an existential dilemma: it had to 'go out of area or go out of business'.⁴⁹ In order to survive and not slide into irrelevance, especially following the outbreak of conflict in the Balkans, the Alliance had to adapt and transform.⁵⁰ It evolved 'from an alliance based on collective defense against a specific threat into an alliance committed to projecting democracy, stability and crisis management' outside the territory of its members.⁵¹ Additionally, it opened up to new members and sought to develop a strategic partnership with Russia, with the signing in 1997 of the NATO-Russia Founding Act and the establishment of the Permanent Joint Council, later replaced by the NATO-Russia Council.

Russia's descent into revisionism, culminating in its 2014 invasion and illegal annexation of the Crimean Peninsula and its full-scale aggression of Ukraine in 2022, however, has made Moscow NATO's principal security concern again, compelling it to redirect its attention towards deterrence and defence.⁵²

⁴⁸ *Ibid.*; Paul E. Gallis, 'NATO: Article V and Collective Defense', Report, *Congressional Research Service*, (17 July 1997), available at <https://www.everycrsreport.com/files/19970717_97-717_c1327f1928fb952a50b4dea74717965c15420124.pdf>; Stanley R. Sloan, *Defense of the West: Transatlantic Security from Truman to Trump* (2nd Edition, Manchester: Manchester University Press, 2020), 15.

⁴⁹ 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>>.

⁵⁰ Julian Lindley-French 'Reinventing NATO', in Julian Lindley-French (ed.) *The North Atlantic Treaty Organization: The Enduring Alliance* (London: Routledge, 2023), 86–97; Jennifer Medcalf, 'NATO, 1990-2013', in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (Routledge, 2024), 55-56.

⁵¹ Asmus, Kugler & Larrabee, (n 49), 32.

⁵² Deni 2017, (n 45), 28-37; Deni 2023, (n 45), 208-221; Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 65-76.

NATO has since adopted assurance measures, such as the Enhanced Air Policing (eAP)⁵³ and Enhanced Forward Presence (eFP)⁵⁴ to reinforce the Eastern flank. The Alliance also expanded⁵⁵ and activated⁵⁶ the NATO Response Force (NRF) – which it later decided to replace⁵⁷ with a new NATO Force Model (NFM) to better deter Russia and ensure it can defend every inch of allied territory, should deterrence fail.⁵⁸ More recently, it launched two activities,⁵⁹ *Baltic Sentry*⁶⁰ and *Eastern Sentry*,⁶¹ to enhance its posture in the Baltic Sea and on the Eastern flank, respectively, in response to Russia’s repeated acts of sabotage of allied critical undersea infrastructure and violations of allied airspace.

⁵³ NATO, ‘NATO and Baltic States sign Agreement to enhance air training opportunities in the Baltic region’, *News*, (14 June 2016), available at <https://www.nato.int/cps/en/natohq/news_132436.htm?selectedLocale=en>; NATO, ‘United States to augment air policing over Bulgaria, demonstrating Allied solidarity’, *News*, (24 August 2016), available at <https://www.nato.int/cps/en/natohq/news_134483.htm?selectedLocale=en>; NATO, ‘NATO jets start air patrols over Romania’, *News*, (24 April 2017), available at <https://www.nato.int/cps/en/natohq/news_143268.htm?selectedLocale=en>. See also Gareth Jennings, ‘NATO steps up airborne patrols of Baltic Sea after subsea infrastructure damage’, *Janes*, (24 October 2023), available at <<https://www.janes.com/osint-insights/defence-news/defence/nato-steps-up-airborne-patrols-of-baltic-sea-after-subsea-infrastructure-damage>>; NATO, ‘Five Allies deploy jets to NATO’s eastern flank for air policing’, *News*, (29 November 2023), available at <https://www.nato.int/cps/en/natohq/news_220956.htm>; NATO AIRCOM ‘Spanish Detachment Continues NATO’s Enhanced Air Policing Mission in Romania’, *Newsroom*, (8 August 2024), available at <<https://ac.nato.int/archive/2024/spanish-detachment-continues-natos-enhanced-air-policing-mission-in-romania>>; NATO, ‘Finnish Air Force leads NATO Air Policing in Iceland for the first time’, *News*, (6 February 2025), available at <https://www.nato.int/cps/en/natohq/news_232861.htm?selectedLocale=en>.

⁵⁴ 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>; NATO, ‘Statement by NATO Heads of State and Government Brussels 24 March 2022’, Press Release (2022), (24 March 2022), available at <https://www.nato.int/cps/en/natohq/official_texts_193719.htm>; 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, (29 June 2022), para. 9, available at <https://www.nato.int/cps/en/natohq/official_texts_196951.htm>. See also Linde Desmaele and Luis Simón, ‘Forward Deployment and Reassurance’, in James Sperling and Mark Webber (eds.) *The Oxford Handbook of NATO* (Oxford: Oxford University Press, 2025), 801–824.

⁵⁵ NATO, ‘Defence Ministers decide to bolster the NATO Response Force, reinforce collective defence’, *News*, (24 June 2015), available at <https://www.nato.int/cps/en/natohq/news_120993.htm>.

⁵⁶ NATO, ‘Press briefing by NATO Secretary General Jens Stoltenberg following an extraordinary meeting of the North Atlantic Council’, *Speeches & transcripts*, (24 February 2022), available at <https://www.nato.int/cps/en/natohq/opinions_192408.htm>; SHAPE, ‘SACEUR Statement on the Activation of the Nato Response Force’, *News Archive*, (25 February 2022), available at <<https://shape.nato.int/news-archive/2022/saceur-statement-on-the-activation-of-the-nato-response-force>>.

⁵⁷ *NATO 2022 Madrid Summit Declaration*, (n 54); 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), para. 34, available at <https://www.nato.int/cps/en/natohq/official_texts_217320.htm>. See also John R. Deni, ‘The new NATO Force Model: ready for launch?’, Research Paper No. 04/2024, War Series, *NATO Defence College*, (27 May 2024), 4, available at <<https://www.ndc.nato.int/the-new-nato-force-model-ready-for-launch/>>; Sven Biscop ‘The New Force Model: NATO’s European Army?’, Egmont Policy Brief 285, *Egmont Institute*, (September 2022), available at <https://www.egmontinstitute.be/app/uploads/2022/09/Sven-Biscop_PolicyBrief285_vFinal.pdf>.

⁵⁸ *NATO 2022 Madrid Summit Declaration*, (n 54).

⁵⁹ It is important to note that, unlike operations, activities do not require the approval of all thirty-two NATO Allies. See NATO, Secretary General Mark Rutte, ‘NATO Public Forum Live| Day 1, 24 June 2025’, *YouTube*, (24 June 2025) at 1:30:30, available at <<https://www.youtube.com/watch?v=wfpkiaiQPfw>>.

⁶⁰ 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>.

⁶¹ 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>.

In addition, over the last decade, NATO Allies have substantially boosted their defence spending. The 2% defence spending target, agreed at the 2014 Wales Summit, was reached by European Allies collectively in 2024,⁶² with all Allies projected to meet or exceed it individually this year.⁶³ At the 2025 Hague Summit in June, Allies agreed on a new defence investment plan under which they will commit to investing 5% of GDP annually by 2035, of which 3.5% for core defence requirements and the remaining 1.5% for defence- and security-related spending.⁶⁴ NATO has also substantially increased the number of exercises and trainings focusing on collective defence scenarios,⁶⁵ including both conventional and nuclear dimensions.⁶⁶ Finally, amid the war in Ukraine, the Alliance also adopted a new Strategic Concept in 2022, in which deterrence and defence feature prominently, and confirmed its commitment to the open-door policy by welcoming Finland and Sweden in 2023 and 2024, respectively.

In light of these developments, a legal and strategic analysis of NATO's collective defence mechanism is urgently needed. The aim of this chapter is, therefore, to review the mutual defence clause enshrined in Article 5 NAT, by looking at its formulation, interpretation and evolution over time. The aim is to understand what kind of legal obligations Article 5 imposes on NATO Allies in order to evaluate the credibility of this commitment in the event of an armed attack on allied territory in the context of Russia's war against Ukraine, and to explore how such a commitment would operate in practice. To this end, historical unclassified and declassified documents relative to the NAT and

⁶² See NATO, 'Secretary General welcomes unprecedented rise in NATO defence spending', *News*, (14 February 2024), available at <https://www.nato.int/cps/en/natohq/news_222664.htm>.

⁶³ NATO Public Diplomacy Division, 'Defence Expenditure of NATO Countries (2014-2025)', Press Release, (28 August 2025), 2, 4 and 9, available at <https://www.nato.int/nato_static_fl2014/assets/pdf/2025/8/pdf/250827-def-exp-2025-en.pdf>.

⁶⁴ 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>.

⁶⁵ SHAPE 'NATO's Largest Exercise in Decades, Steadfast Defender 2024, Set to Get Underway', *News Archive*, (23 January 2024), available at <<https://shape.nato.int/news-archive/2024/natos-largest-exercise-in-decades--steadfast-defender-2024--set-to-get-underway>>. For more information on Steadfast Defender 2024, see SHAPE, 'Steadfast Defender 2024', Exercise Archive, available at <<https://shape.nato.int/stde24>>; NATO AIRCOM, 'NATO Allied Air Command Participate in Exercise Steadfast Duel, Focused on Defence of Euro-Atlantic Area', *Newsroom*, (18 October 2024), available at <<https://ac.nato.int/archive/2024/nato-allied-air-command-participate-in-exercise-steadfast-duel--focused-on-defence-of-euroatlantic-area>>; SHAPE, 'Steadfast Dart 2025: Strength in Unity', *News*, (31 January 2025), available at <<https://shape.nato.int/steadfast-dart/media-centre/news/steadfast-dart-2025-strength-in-unity>>; SHAPE, 'Exercise Steadfast Deterrence 2025, To Strengthen Strategic Readiness, Underway', *News Archive*, (23 May 2025), available at <<https://shape.nato.int/news-archive/2025/steadfast-deterrence-2025-to-strengthen-strategic-readiness-underway>>.

⁶⁶ NATO, 'NATO launches annual deterrence exercise', *News*, (18 October 2021), available at <https://www.nato.int/cps/en/natohq/news_187041.htm>; NATO, 'NATO's annual nuclear exercise gets underway', *News*, (14 October 2022), available at <https://www.nato.int/cps/en/natohq/news_208399.htm?selectedLocale=en>; *2023 NATO 2023 Vilnius Summit Communiqué*, (n 57), para. 39; NATO, 'NATO holds long-planned annual nuclear exercise', *News*, (13 October 2023), available at <https://www.nato.int/cps/en/natohq/news_219443.htm>; NATO, 'NATO holds annual nuclear exercise: Steadfast Noon', *News*, (14 October 2024), available at <https://www.nato.int/cps/en/natohq/news_229447.htm?selectedLocale=en>; SHAPE, 'Nuclear Deterrence Exercise Steadfast Noon Concludes', *News Archive*, (24 October 2024), available at <<https://shape.nato.int/news-archive/2024/nuclear-deterrence-exercise-steadfast-noon-concludes>>.

its negotiations, as well as NATO Strategic Concepts and related decisions of the NATO Military Committee will be analysed and discussed.

The formulation of Article 5 NAT has been central to NATO's adaptability and resilience for almost eight decades. It has provided the Alliance with the flexibility needed to adapt to the changing strategic threat environment by: 1) broadening the interpretation of collective defence to cover potentially all armed attacks, including non-traditional attacks by non-state actors, in cyberspace, as part of hybrid warfare, and to, from or within space; and 2) adjusting its deterrence and defence posture accordingly to incorporate a mix of nuclear, conventional, missile, cyber and potentially even space⁶⁷ capabilities. At the same time, however, this chapter argues that Article 5 NAT establishes *an obligation of result* rather than of means. Article 5 imposes a clear obligation on each Ally to provide assistance in response to an armed attack against another Ally. While that assistance is directed towards the overarching objective of restoring and maintaining the security of the North Atlantic area, the form, scope, and timing of the response are left to the discretion of each Ally. Yet, The NAT lacks enforcement mechanisms to address instances of insufficient or absent responses by its signatories. Consequently, the effectiveness of the collective defence pledge ultimately rests on the political will and readiness of NATO members – above all, the USA– to honour their commitments. This is particularly relevant in the context of the current second Trump presidency.

The chapter is structured as follows. Section 1 examines the history of the NAT, in particular the *travaux préparatoires* of Article 5 and related articles, as well as the establishment of the North Atlantic Alliance and its evolution into the politico-military organisation that it is today. Section 2 provides a legal analysis of Article 5 NAT and resulting collective defence responsibilities. Section 3 offers a strategic analysis of collective defence and its evolution throughout NATO's eight Strategic Concepts. The final section presents the conclusion.

1 The Origins and Evolution of NATO

This section explores the history of the NAT, focusing on the *travaux préparatoires* of Article 5 and related provisions, as well as the formation of the North Atlantic Alliance and its development into NATO.

⁶⁷Although NATO has declaredly no intention to put weapons into space, most space technologies are dual-use.

1.1 *The Negotiations Leading to Article 5 NAT and the Establishment of the North Atlantic Treaty Alliance*

A political and military alliance created to ‘keep the Soviet Union out, the Americans in and the Germans down’, to use the words of its first Secretary General Lord Hastings Ismay,⁶⁸ NATO has been the cornerstone of Europe’s collective defence for over seventy-six years.⁶⁹

As emphasised by Deni, ‘Article 5 is the most well-known and arguably most important part of the Treaty of Washington’,⁷⁰ as the NAT is also known after the place of its signature. This is because this article provides ‘a direct link between the possibility of aggression against member states and the conventional and nuclear capabilities of the United States.’⁷¹ By signing up to NATO’s Article 5, the United States pledged its continued involvement in European security and defence, breaking with its long-standing isolationist policy and committing to defend other nations during times of peace.⁷²

France and the United Kingdom (UK) had signed the Dunkirk Treaty in March 1947 and a year later joined the Benelux countries in signing the Brussels Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, commonly known as the Brussels Treaty, to mutually assist each other against a potential attack from Germany and the Union of Soviet Socialist Republics (USSR).⁷³ In response, then-US President, Harry S. Truman, stated in front of a special joint session of the US Congress that ‘the determination of the free countries of Europe to protect themselves will be matched by an equal determination on our part to help them protect themselves.’⁷⁴ As pointed out by Goldgeier, ‘the core function of NATO was to provide confidence that the United States would come to the aid of its Western European allies, effectively serving to decrease the likelihood of a Soviet attack and curtailing the development of mass hysteria in the West over the Soviet threat’.⁷⁵

⁶⁸ Reference to this famous quote by Lord Hastings Ismay can be found at <https://www.nato.int/cps/en/natohq/declassified_137930.htm>.

⁶⁹ For a comprehensive and detailed account of NATO’s history, see, e.g., Peter Apps, *Deterring Armageddon: A Biography of NATO* (London: Wildfire, 2024).

⁷⁰ Deni 2017, (n 45), 14.

⁷¹ Stanley R. Sloan ‘NATO and the United States’, in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (London: Routledge, 2024), 214.

⁷² Deni 2023, (n 45), 211.

⁷³ For more information on the Brussels Treaty, see Chapter 2, section 1.1.

⁷⁴ On this point, see also US Congress, 81st Congress, 1st Session, ‘NORTH ATLANTIC TREATY-REPORT OF COMMITTEE ON FOREIGN RELATIONS (EX. REPT. NO. 8), Vol. 95, Part 6 —Bound Edition, (6 June 1949), 7250, available at <<https://www.congress.gov/bound-congressional-record/1949/06/06/senate-section>>.

⁷⁵ James Goldgeier, ‘NATO’s Charter: Adaptable but Limited’, in Ian Shapiro and Adam Tooze (eds.) *Charter of the North Atlantic Treaty Organization: Together with Scholarly Commentaries and Essential Historical Documents* (New Haven: Yale University Press, 2018), 289.

In accordance with the Truman Doctrine,⁷⁶ Senator Vandenberg, who was serving as Chairman of the US Senate Foreign Relations Committee at the time, was tasked by the US Department of State with crafting a compromise resolution. The resolution was to provide the Brussels Treaty powers with assurances of defence support, in line with Truman's speech, but without making any specific commitment as to the means or extent of that support, in order to secure Congressional approval.⁷⁷ Specifically, Senate Resolution 239, better known as the Vandenberg Resolution, after its sponsor, called for the '[p]rogressive development of regional and other collective arrangements for individual and collective self-defense in accordance with the purposes, principles, and provisions of the [UN] Charter' and for the '[a]ssociation of the United States, by constitutional process, with such regional and other collective arrangements as are based on continuous and effective self-help and mutual aid, and as affect its national security'.⁷⁸

The resolution was passed in the US Senate on 11 June 1948 by a nearly unanimous vote (sixty-four in favour and four against).⁷⁹ This was an important step in the establishment of NATO.

At the same time, in what Rynning has described as a 'twin-track approach',⁸⁰ secret conversations had been taking place in the Pentagon building in Washington, DC. Known as 'the Pentagon talks', these secret negotiations between Canada, the UK and the USA had begun on 22

⁷⁶ In a previous address to a joint session of Congress in response to the worsening situation in Greece and Türkiye, President Truman had stated that 'it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures'. Greece had claimed to the UNSC in late 1946 that other countries were meddling in its domestic affairs by arming and equipping rebels, while portions of eastern Türkiye had been claimed by the Soviet Union in the attempt to exert some control over the Dardanelles. The US Congress authorised the appropriation of \$400 million (around €342 million) for aid to Greece and Türkiye up until June 1948, and the dispatch of American civilian and military missions to those countries in response to Truman's speech, which marked the beginning of the Cold War. The situation in Western Europe, however, was just as concerning, which is why the Marshall Plan, named after US Secretary of State George C. Marshall, was eventually announced as economic aid for Western Europe that June. Security aid was not included though. For more information, see Truman Doctrine (1947), *National Archives and Records Administration*, available at <<https://www.archives.gov/milestone-documents/truman-doctrine>>. For more information on the Marshall plan, see footnote 434.

⁷⁷ Lord Hastings Ismay, 'The North Atlantic Treaty' in *NATO: The First Five Years 1949-1954* (NATO Archives, 1955), 9, available at <https://archives.nato.int/uploads/r/null/2/1/216977/NATO-The_first_5_years_1949-1954_by_Lord_Ismay_.pdf>. See also Daryl J. Hudson, 'Vandenberg Reconsidered: Senate Resolution 239 and American Foreign Policy', 1/1 *Diplomatic History*, (Winter 1977), 53, available at <<http://www.jstor.org/stable/24910235>>; Schmitt, (n 22), 95; Sloan 2020, (n 48), 22.

⁷⁸ For the full text of the resolution, see US Office of the Historian, 'Senate Resolution 239 (Vandenberg Resolution), June 11, 1948', Document 106, Foreign Relations of the United States, 1948, Western Europe, Volume III, (11 June 1948), available at <<https://history.state.gov/historicaldocuments/frus1948v03/d106>>.

⁷⁹ Ismay, (n 77), 10. US Office of the Historian, 'Editorial Note', Document 3, Foreign Relations of the United States, 1950, The United Nations; The Western Hemisphere, Volume II, 6, available at <<https://history.state.gov/historicaldocuments/frus1950v02/d3>>.

⁸⁰ Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 46.

March 1948,⁸¹ ending on 1 April 1948⁸² with a paper whose aim was ‘to recommend a course of action adequate to give effect to the declaration of March 17 by the President of support for the free nations of Europe’.⁸³ In particular, the ‘Pentagon paper’, as it became known, proposed that invitations be issued to the five Brussels Treaty powers, as well as to Denmark, Iceland, Ireland, Italy, Norway, Portugal and Sweden.⁸⁴ Exploratory talks followed, beginning on 6 July 1948⁸⁵ and concluding on 9 September 1948 with a memorandum which laid down the foundations of the NAT.⁸⁶ The ‘Washington report’ was given careful consideration by the governments of the Brussels Treaty powers, until, on 25 October 1948, they unanimously agreed that they were ‘now prepared to enter into a Treaty with the United States and Canadian Governments on North Atlantic defence’.⁸⁷

During the negotiations that ensued between the Benelux countries, Canada, France, the UK, and the US, a number of issues were raised, such as the countries to be included, the place of signature, the duration and ratification of the treaty, the mutual security guarantee, and the geographical area it would cover.⁸⁸ The inclusion of an ‘expulsion clause’ was also discussed,⁸⁹ but considered ‘undesirable’ by some of the parties, as it would have cast doubts on the political stability of certain members.⁹⁰ An exit clause, allowing any Ally to withdraw from the Alliance twenty years after the Treaty’s entry into force, was eventually be agreed in its place.⁹¹

In terms of membership, the USA initially sought to include Sweden. At the time, however, it was agreed that the best way to persuade Stockholm to participate would be to first bring in the

⁸¹ Tony Insall and Patrick Salmon, *The Brussels and North Atlantic Treaties, 1947-1949: Documents on British Policy Overseas, Series I, Volume X* (1st Edition, London: Routledge 2015), n.77, para. 4, 122. See also US Office of the Historian, ‘Minutes of the First Meeting of the United States–United Kingdom–Canada Security Conversations, Held at Washington, March 22, 1948’, Document 54, Foreign Relations of The United States, 1948, Western Europe, Volume III, (22 March 1948), available at <<https://history.state.gov/historicaldocuments/frus1948v03/d54>>.

⁸² Insall & Salmon, (n 81), n.94, note 1, 142; US Office of the Historian, ‘Minutes of the Sixth Meeting of the United States–United Kingdom–Canada Security Conversations, Held at Washington, April 1, 1948’, Document 63, Foreign Relations of the United States, 1948, Western Europe, Volume III, (1 April 1948), available at <<https://history.state.gov/historicaldocuments/frus1948v03/d63>>.

⁸³ US Office of the Historian, Minutes of the Sixth Meeting, (n 82), 72. See also Apps, (n 69), 60.

⁸⁴ US Office of the Historian, Minutes of the Sixth Meeting, (n 83); Insall & Salmon, (n 82).

⁸⁵ US Office of the Historian, ‘Minutes of the First Meeting of the Washington Exploratory Talks on Security, July 6, 1948, 11:30 a. m.’, Document 112, Foreign Relations of the United States, 1948, Western Europe, Volume III, (6 July 1948), available at <<https://history.state.gov/historicaldocuments/frus1948v03/d112>>.

⁸⁶ Insall & Salmon, (n 81), n.164 paras. 7-8, 262-263; US Office of the Historian, ‘Memorandum by the Participants in the Washington Security Talks, July 6 to September 9, Submitted to Their Respective Governments for Study and Comment’, Document 150, Foreign Relations of the United States, 1948, Western Europe, Volume III, (9 September 1948), available at <<https://history.state.gov/historicaldocuments/frus1948v03/d150>>.

⁸⁷ Insall & Salmon, (n 81), n.165, 263-266.

⁸⁸ Insall & Salmon, (n 81), n.192, 316-318; US Office of the Historian, ‘Memorandum of Conversation, by the Director of the Office of European Affairs (Hickerson)’, Document 1, Foreign Relations of the United States, 1949, Western Europe, Volume IV, (3 January 1949), 1-2, available at <<https://history.state.gov/historicaldocuments/frus1949v04/d1>>; US Office of the Historian ‘Minutes of the Eleventh Meeting of the Washington Exploratory Talks on Security, January 14, 1949, 3 p.m.’, Document 23, Foreign Relations of the United States, 1949, Western Europe, Volume IV, (14 January 1949), available at <<https://history.state.gov/historicaldocuments/frus1949v04/d23>>.

⁸⁹ Insall & Salmon, (n 81), n.224, 360 and n.230, 367.

⁹⁰ In particular Italy, which was considered at risk of ‘going Communist’. *Ibid.*, n.207, 335.

⁹¹ *North Atlantic Treaty*, Washington, DC, (4 April 1949), 63 Stat. 2241, 34 UNTS 243, Article 13.

Alliance the other Scandinavian countries – namely Norway and Denmark, as Finland had signed the Soviet-Finnish Treaty of Friendship, Cooperation and Mutual Assistance in April 1948. Norway's inclusion was strongly supported by the USA later in the negotiations, after the former publicly requested to be associated with the Alliance amid Russian threats.⁹² As for Ireland, as much as its inclusion was desirable, the Irish government let it be known that it could not join the Atlantic Pact unless an end to the country's partition be negotiated first, as the accession of only part of the island could have led to unrest in the Northern counties.⁹³ The accession of a united Ireland, however, would have never been accepted by the British government. As a result, the US government made clear that the question of partition had nothing to do with the Atlantic Treaty and would not be discussed in connection to it.

The participation of Italy was also controversial. On the one hand, it was supported by the French and US governments, though at different stages; on the other hand, it was opposed by Belgium, Luxembourg, the Netherlands, the UK, and originally also by Canada, on the grounds that the country would be a military liability. France wanted Italy included as a form of counterweight to the UK and to prevent the Alliance's centre of gravity from switching northward, which could have led the Americans to deprioritise the defence of France.⁹⁴ The French would go as far as to threaten 'to reconsider their attitude towards the pact as a whole' were Norway to be included without Italy.⁹⁵ The US government, meanwhile, was concerned about the growing Soviet influence in Italy and the need to safeguard communications through the Mediterranean Sea. As for Belgium, Canada, Luxembourg and the Netherlands, it was these countries' belief that Italy could have not adequately contributed to the Alliance militarily, and would have required substantial assistance from the US if attacked, due to the limitations imposed on its armed forces by the post-World War II Peace Treaty as well as the considerable financial hurdles it was sustaining. The inclusion of Italy was also thought likely to discourage the participation of the Scandinavian countries and risked raising the Mediterranean problem.

The UK favoured the adoption of a separate joint declaration, contextual to the signing of the North Atlantic Pact, to provide assurances to Italy, Greece and Türkiye, also covered by the Truman doctrine, as well as Iran, such to activate consultations under Article 4 of the Atlantic Pact were one of these countries to be attacked.

The conclusion of a subsequent Mediterranean and Middle Eastern Pact was also discussed, but rapidly dismissed by the US State Department. Remarks covering Greece, Türkiye and Iran would

⁹² Insall & Salmon, (n 81), n.257, 401 and n.258, 402.

⁹³ *Ibid.*, n.236, 373. See also Apps, (n 69), 67.

⁹⁴ *Ibid.*, n.222, 357.

⁹⁵ *Ibid.*, n.259, 403.

be made by then-US Secretary of State, Dean Acheson, and then-UK Secretary of State for Foreign Affairs, Ernest Bevin, on 18 and 23 March 1949, respectively. However, no formal declaration was issued on the day of the signing of the NAT. Italy was not included in these remarks. On 12 January 1949, the country had put both the Western European and North Atlantic powers in a difficult position by formally applying for an invitation to join the NAT as a founding member⁹⁶ and asking for the then-free territory of Trieste to be recognised as Italian.⁹⁷ As a consequence, Washington began to insist that Italy accede not only to NATO, but also to the Brussels Treaty. It was believed that Italy's association with the Brussels Treaty powers could make its participation in NATO more acceptable to the US Congress and American public opinion since the country was not part of the North Atlantic area. Initially, the Benelux countries and the UK opposed Italy's inclusion in the NAT,⁹⁸ but eventually yielded to French⁹⁹ and American¹⁰⁰ pressure.

Regarding the mutual defence clause, France insisted that Algeria was part of its territory and should, therefore, be covered by the Article 5 guarantee – perhaps out of conviction that any anti-French or nationalist protests in the province could be then treated as an indirect form of aggression.¹⁰¹ However, neither the US nor Canada wished for any part of Africa to be included, fearing that this would create additional difficulties with their respective legislatures as well as with public opinion.¹⁰² In addition, the inclusion of Algeria could create a dangerous precedent, as requests could later be made to also include Belgian Congo and other parts of North and West Africa.¹⁰³ As will be discussed in section 2.2, a separate article – Article 6 – was eventually added by Washington to elaborate on the scope of Article 5.

For these as well as other reasons, Article 5 was redrafted several times. Two treaties served as models¹⁰⁴ in drafting NATO's mutual defence clause: the 1947 Inter-American Treaty of Reciprocal Assistance,¹⁰⁵ better known as Rio Treaty after the city of its signing, and the

⁹⁶ US Office of the Historian, 'Memorandum of Conversation, by the Director of the Office of European Affairs (Hickerson)' Document 19, Foreign Relations of the United States, 1949, Western Europe, Volume IV, (12 January 1949), 23, available at <<https://history.state.gov/historicaldocuments/frus1949v04/d19>>.

⁹⁷ Insall & Salmon, (n 81), n.213, 344, n.217, 350 and n.219, 352.

⁹⁸ *Ibid.*, n.221, 355-356 and n.224, 359.

⁹⁹ *Ibid.*, n.257, 401-402.

¹⁰⁰ *Ibid.*, n.231, 368.

¹⁰¹ *Ibid.*, n.207, 334.

¹⁰² *Ibid.*, n.192, 316, n.200, 328 and n.208, 335.

¹⁰³ *Ibid.*, n.194, 320.

¹⁰⁴ Broderick C. Grady, 'Article 5 of the North Atlantic Treaty: Past, Present, and Uncertain Future', 31 *Georgia Journal of International and Comparative Law* (2002), 177; Insall & Salmon, (n 81), n.94, para. 4, 193; R. James Orr, 'The North Atlantic Treaty', in James Sperling and Mark Webber (eds.) *The Oxford Handbook of NATO* (Oxford: Oxford University Press, 2025), 248; Martin Reichard, 'Collective Self-Defence', in Martin Reichard (ed.) *The EU-NATO Relationship: A Legal and Political Perspective* (1st Edition, London: Routledge 2006), 181-182; Bruno Tetrais, 'Article 5 of the Washington Treaty: Its Origins, Meaning and Future', *Research Paper No. 130/2016, NATO Defense College* (April 2016), 2, available at <<https://www.ndc.nato.int/download/article-5-of-the-washington-treaty-its-origins-meaning-and-future/>>.

¹⁰⁵ For more information on the Rio Treaty, visit <<http://www.oas.org/juridico/english/treaties/b-29.html>>.

aforementioned 1948 Brussels Treaty. The Rio Treaty is still in force today and binds eighteen North and South American countries, obliging them to ‘undertake to assist in meeting the attack’,¹⁰⁶ while leaving each free to choose the means of assistance.¹⁰⁷ By contrast, the now defunct Brussels Treaty, required its five members to ‘afford the party so attacked all the military and other aid and assistance in their power’ in the event of Soviet aggression.¹⁰⁸ Article 5 represents a compromise norm: the drafters incorporated the freedom of choice regarding the forms of aid from the Rio Treaty to appease Americans, particularly the US Senate, while also including references to military support, as provided for in the Brussels Treaty, to satisfy Europeans.¹⁰⁹

This is because, for the Treaty to be ratified by the US Congress, the clause had to be phrased in a way that would not suggest an automatic commitment on the side of the US government to go to war in the event of an attack on any of the other Parties.¹¹⁰ The US President cannot, in fact, commit to go to war without prior congressional authorisation, which is required under the US Constitution¹¹¹ – later reaffirmed by the War Powers Act of 1973¹¹² and, more recently, by the Senate Resolution 266 of 2023.¹¹³ It is for this reason that Senator Vandenberg and then-new Chairman of the Senate Foreign Relations Committee, Senator Tom T. Connally, objected to the use of the words ‘forthwith’, ‘such military or other’ and ‘as may be necessary’, which appeared in a previous version of the Article drafted by the US Department of State.¹¹⁴

In the version redrafted by Senator Connally, following the Senate debate of 14 February 1949, the words ‘forthwith’ and ‘military’ were, therefore, eliminated and ‘action’ replaced with ‘measures’. The draft also adopted the phrasing ‘as it may deem necessary’ in place of ‘as may be necessary’. Most importantly, it removed the crucial reference that ‘an armed attack against one or more of the signatories is an attack against them all’.¹¹⁵ This last deletion was unacceptable to

¹⁰⁶ *Inter-American Treaty of Reciprocal Assistance (Rio Treaty)*, Rio de Janeiro, (2 September 1947), 63 Stat 1437, 21 UNTS 77, Article 3.

¹⁰⁷ Insall & Salmon, (n 81), n.95, paras. 7-8, 147.

¹⁰⁸ Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence (Treaty of Brussels), Brussels, (17 March 1948) UKTS 55, 108 UNTS 55, Article IV.

¹⁰⁹ Insall & Salmon, (n 81), n.95, paras. 9-10, 147.

¹¹⁰ *Ibid.*, n. 233-234, 370-371.

¹¹¹ *The Constitution of the United States of America*, Philadelphia, (17 September 1787), Article 1, Section 8.

¹¹² US Congress, 93rd Congress, 1st Session, ‘H.J.Res.542 - War Powers Resolution’, (11 July 1973), <<https://www.congress.gov/bill/93rd-congress/house-joint-resolution/542/text>>.

¹¹³ US Congress, 118th Congress, 1st Session, ‘S.Res.266 - A resolution expressing the sense of the Senate regarding the relationship between certain obligations under the North Atlantic Treaty and constitutional declarations of war by Congress’, (22 June 2023), available at <<https://www.congress.gov/bill/118th-congress/senate-resolution/266/text?s=1&r=99>>.

¹¹⁴ Insall & Salmon, (n 81), n.233-234, 371, n.235, 372, and n.238, 377. See also *Revised Draft of the North Atlantic Security Arrangement*, Collection the Development of the North Atlantic Treaty Organization (NATO), President's Secretary's Files, *National Archives*, Harry S. Truman Library Museum, (14 January 1949), 1-2, available at <<https://www.trumanlibrary.gov/library/research-files/revised-draft-north-atlantic-security-arrangement?documentid=NA&pagenumber=1>>; US Department of State, ‘Memorandum of Conversation’, (5 February 1949), available at <<https://www.trumanlibrary.gov/node/354225>>. See also Table 1, X.

¹¹⁵ Insall & Salmon, (n 81), n.245, 384, and n.246, 386-387. See also Table 1, X.

Europeans, as even the Rio Treaty contained a similar formula. Furthermore, Europeans regarded an explicit reference to military assistance as essential to the pact's deterrent effect and long-term American commitment to the security of Europe.

Following protests from the European ambassadors and a closed meeting between the US Senate Foreign Relations Committee and US Secretary of State Acheson on 19 February 1949, Article 5 was subsequently redrafted to read as follows:

'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 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 such action including the use of armed force, individually and in concert with the other parties, as it deems necessary to restore and assure the security of the North Atlantic area.'¹¹⁶

The phrasing '*such action including the use of armed force*' replaced '*such military or other action*' and '*as it deems necessary*' replaced '*as may be necessary*'. Therefore, the reference to military force, included in the Brussels Pact, was eventually retained alongside other forms of assistance,¹¹⁷ and each Ally decides what it 'deems necessary', which might not involve the use of military force.¹¹⁸ The word 'forthwith', as well as the so-called 'Musketeer' formula that 'an armed attack against one is an attack against all', were, therefore, maintained. The US Senate Foreign Relations Committee would later make some additional changes to the aforementioned draft text, but these would in no way affect the substance of the Article 5 guarantee.

The reference to 'constitutional processes'¹¹⁹ was inserted in a different article, concerning the ratification process. It was agreed that no reference would be made to Article 53 UNC, but only to Article 51 UNC. The primary purpose of the pact was, in fact, to enhance the security of the North Atlantic area by providing for the *collective self-defence* of the parties, rather than to provide for the peaceful settlement of disputes or the taking of *enforcement action* against any State whether or not party to the Treaty.¹²⁰

The wording of Articles 3 and 4 was also subject to important changes.

Article 3 NAT, which according to Lord Ismay, was motivated by the view that 'a promise to stand together in the event of an armed attack is no real deterrent to an aggressor unless it is backed by armed strength',¹²¹ originally stated that 'the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and

¹¹⁶ *Ibid.*, n.251, 393. See also Table 1, X.

¹¹⁷ *Ibid.*, n.238, 377, n.242, 382; Reichard (n 104), 181-182.

¹¹⁸ For more information, see section 2.3.

¹¹⁹ *North Atlantic Treaty*, (n 91), Article 11.

¹²⁰ See section 2.4 for more information.

¹²¹ Ismay, (n 77), 13.

collective capacity to resist armed aggression'. The final words '*armed aggression*' were later changed to '*armed attack*'.¹²² In addition, it is important to highlight that the signatories agreed that the 'mutual aid' indicated in Article 3 was to consist in 'the contribution by each party, consistent with its geographic location (as well as resources as allowed by economic recovery requirements), of such mutual aid as it can reasonably be expected to contribute in the form in which it can most effectively furnish it e.g. facilities, manpower, productive capacity or military equipment.'¹²³

As for Article 4 NAT, it was originally intended to provide for *consultations* in the event of a threat to 'non self-governing territories'. However, out of concern that this might result in a duplication of the responsibilities of the UN, the article was modified to apply to '*a threat in any part of the world*, to the security of any of the Parties, including a threat to the security of their overseas territories'.¹²⁴ The reference to 'overseas territories' was ultimately removed in the final version of the Treaty. Article 4 is, therefore, considered applicable in the event of a threat to the security of any of the parties arising anywhere the world.¹²⁵

An accession clause was originally envisaged in Article 10 to ensure the pact could be signed quickly, by avoiding consultations with the governments of Denmark, Iceland, Norway, and Portugal over its text, and as a means to bypass the issue of the inclusion of Italy. The abovementioned governments, including Italy, it was reasoned, would be asked to accede at the time of, or immediately after, the signature by the original seven countries – the Anglo-Saxon countries, the Benelux countries and France – and would enjoy the same status and guarantees.¹²⁶ However, questions were raised as to whether a country could legally accede to a pact which had not yet entered into force, since it had not even been ratified by its founding members.¹²⁷ In the end, it was agreed for Denmark, Iceland, Italy, Norway and Portugal to be invited to sign the Pact as original signatories.¹²⁸

In terms of duration, a period of twenty or more years was considered as appropriate by all parties – with the exception of Portugal – because it would signal that the Alliance was not exclusively concerned with the Soviet threat in the short-term, but with the long-term security of Europe more broadly. However, no mention of the pact's duration appears in the final version of Article 12. Canada pushed for a revision at the half-way mark – ten years.¹²⁹

¹²² Insall & Salmon (n 81), n.286, 433. More information in the next section.

¹²³ *Ibid.*, n.281, 428 and n.287, 434.

¹²⁴ *Ibid.*, n.277, 425, n.281, 428, n.287, 434; 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), 223, available at <<https://history.state.gov/historicaldocuments/frus1949v04/d112>>.

¹²⁵ See section 2.2 for further details.

¹²⁶ Insall & Salmon, (n 81), n.264, 409.

¹²⁷ *Ibid.*, n.267, 413.

¹²⁸ *Ibid.*, n.267, 413 and n.271, 417.

¹²⁹ *Ibid.*, n.227, 364.

On 31 March 1949, the Soviet Union issued a memorandum, arguing that the NAT violated the principles of the UNC – specifically Article 53 – as well as the 1942 Anglo-Soviet and 1944 Anglo-French treaties, and the 1945 Yalta and Potsdam agreements. Furthermore, it stated that ‘of the great powers only the Soviet Union is excluded from among the parties to this treaty, which can be explained only by the fact that this treaty is directed against the Soviet Union. The fact that the North Atlantic treaty is directed against the U.S.S.R. as well as against the countries of peoples’ democracy was definitely pointed out also by the official representatives of the United States of America, Great Britain and France’.¹³⁰ The founding members responded to these allegations in individual speeches made during the signing ceremony.¹³¹

The North Atlantic Treaty was approved on 16 March 1949 and published two days later by the governments of Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the UK, and the US. The pact was then officially signed on 4 April 1949 in Washington, DC.¹³²

1.2 *From Alliance to Organisation: The Origins of the NATO Command Structure*

The NAT entered into force on 24 August 1949, following the required ratifications by all signatories. However, it was not until later that NATO emerged as a politico-military organisation of sovereign and independent countries. The term ‘North Atlantic Treaty Organization’ first appeared in the North Atlantic Council Final Communiqué of 17 September 1949.¹³³ NATO was then established as an organisation in 1952, following the adoption of the NATO Status of Forces Agreement,¹³⁴ the Ottawa Agreement,¹³⁵ and the Paris Protocol.¹³⁶

A broad discussion concerning Article 9 and the set-up of the machinery necessary to its implementation had taken place on 2 April 1949, two days before the Treaty’s signing ceremony.¹³⁷ As Rynning has highlighted, it is ‘this provision [that] led allies to create a wider political-military

¹³⁰ Associated Press, ‘Text of the Soviet Memorandum on the Atlantic Pact’, *The New York Times*, (1 April 1949), available at <<https://archive.nytimes.com/www.nytimes.com/library/world/global/040149nato-soviet-text.html>>.

¹³¹ Ian Shapiro and Adam Tooze (eds.), ‘Speeches Delivered at the Treaty Signing Ceremony Washington, DC, April 4, 1949’, in *Charter of the North Atlantic Treaty Organization: Together with Scholarly Commentaries and Essential Historical Documents* (New Haven: Yale University Press, 2018), 40-56.

¹³² Originally the Pact was to be signed in Bermuda. The location was moved to Washington, DC, at the request of the US government, only a month before the signing ceremony.

¹³³ NATO, *Final Communiqué of the first Session of the North Atlantic Council - (Terms of Reference and Organisation)*, (17 September 1949), available at <https://www.nato.int/cps/en/natohq/official_texts_17117.htm>.

¹³⁴ NATO, *Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces*, (19 June 1951), available at <https://www.nato.int/cps/en/natohq/official_texts_17265.htm>.

¹³⁵ NATO, *Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa*, (20 September 1951), available at <https://www.nato.int/cps/en/natohq/official_texts_17248.htm>.

¹³⁶ NATO, *Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty*, (28 August 1952), available at <https://www.nato.int/cps/en/natohq/official_texts_17300.htm>.

¹³⁷ Insall & Salmon, (n 81), n.304, 451.

arrangement that provided the “NAT” (North Atlantic Treaty) with a concluding “O” (organization).¹³⁸ Article 9 NAT mandated the parties to establish a council ‘to consider matters concerning the implementation of the treaty’. This council, named the North Atlantic Council (NAC), is NATO’s highest political decision-making organ. Established in Washington, DC, on 17 September 1949, the NAC was originally composed of foreign ministers from its twelve founding members, who would later continue to meet periodically in different member states’ capitals.¹³⁹

A year later, a Deputy North Atlantic Council was also created, modelled on the Brussels Treaty’s Council, so that representatives (ambassadors) from the member states could meet more frequently in London, as the main NAC convened only occasionally.¹⁴⁰ In 1952, in the NAC’s ninth session, Allies approved the creation of a permanent Council in continuous session, effectively merging the NAC and the Deputy NAC.¹⁴¹ It was, in fact, decided that all NATO civilian activities should take place within a single Headquarters located in or near Paris and that the NAC would move there and function in permanent session through the appointment of permanent representatives, although continuing to hold periodic ministerial sessions as it did in London.¹⁴² Following French President Charles De Gaulle’s decision in 1966 to withdraw France from the Alliance’s integrated military command structure, the NAC relocated to Brussels,¹⁴³ where it meets several times a year at three different levels: Permanent Representatives, Foreign or Defence Ministers, or Heads of State and Government – the so-called NATO Summits.¹⁴⁴ As stated by Lindley-French, ‘[t]he Council remains the only body that derives its authority directly from the 1949 North Atlantic Treaty and every other committee supports the NAC.’¹⁴⁵

As stipulated in Article 9 NAT, ‘[t]he Council shall set up such subsidiary bodies as may be necessary in particular it shall establish immediately a defence committee which shall recommend measures for the implementation of Articles 3 and 5.’ Such Defence Committee (DC) was established at the first meeting of the NAC in September 1949 to deal with defence planning and it consisted of

¹³⁸ Rynning 2024, NATO: From Cold War to Ukraine, 2024, (n 38), 6.

¹³⁹ *Ibid.*, 78. See also Gregory W. Pedlow, ‘NATO, 1949–1967’, in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (London: Routledge, 2024), 28; Gustav Schmidt, ‘From London to Brussels: Emergence and Development of a Politico-Administrative System’, in Sebastian Mayer (ed.) *NATO’s Post- Cold War Politics. The Changing Provision of Security* (London: Palgrave Macmillan, 2014), 34.

¹⁴⁰ Pedlow 2024, (n 139), 29. See also Dieter Krüger, ‘Institutionalizing NATO’s Military Bureaucracy: The Making of An Integrated Chain of Command’, in Sebastian Mayer (ed.) *NATO’s Post- Cold War Politics. The Changing Provision of Security* (London: Palgrave Macmillan, 2014), 54.

¹⁴¹ Pedlow 2024, (n 139).

¹⁴² NATO, ‘The Lisbon Reorganization’, *NATO Archives*, (April 1952-April 1957), available at <<https://www.nato.int/archives/ismayrep/text.htm>>.

¹⁴³ Anne Verhelst and Snezana Trifunovska, *North Atlantic Treaty Organization (NATO)*, (2nd Edition, Alphen aan den Rijn: Wolters Kluwer, 2020), 50. See also NATO, ‘North Atlantic Council’, Last updated: 21 Mar. 2024 15:19, available at <https://www.nato.int/cps/en/natohq/topics_49763.htm>.

¹⁴⁴ *Ibid.*, 50; Julian Lindley-French, ‘NATO 101’, (n 50), 100.

¹⁴⁵ *Ibid.*

defence ministers or their representatives from each member state.¹⁴⁶ Apart from the NAC and the DC, NATO's broader institutional design was left undefined in the NAT.

It was decided that the DC would be aided by a Military Committee (MC), which was set up in October 1949 and originally made up of Chiefs of Defence from eleven of NATO's founding members – all except Iceland, which had a civilian representative and still does today.¹⁴⁷ A Standing Group (SG) composed of representatives of the Chiefs of Staff of France, the UK and the US, was also established in Washington, DC, to assist the MC with strategic direction and military planning while the latter was not in session.¹⁴⁸ Other member countries could send accredited military representatives to the SG, but their influence remained limited until the Military Representative Committee, which included one representative from each member country, was established in Washington, DC, in December 1950.¹⁴⁹ The DC was abolished and incorporated into the NAC when the latter was reorganised in Lisbon in May 1951¹⁵⁰, while the SG dissolved in July 1966, following France's withdrawal from the NATO Command Structure (NCS), which had developed during the 1950s.¹⁵¹ The latter was replaced by the International Military Staff (IMS), which provides the MC with strategic and military advice, as well as staff support.¹⁵²

These changes significantly enhanced the role of the MC, which is today NATO's highest military authority and its oldest permanent body.¹⁵³ The MC is responsible for formulating military strategy and policy, as well as guiding the development of the NCS, which NATO defines as 'the mechanism which enables NATO's military authorities to command and control the forces assigned

¹⁴⁶ NATO Final Communiqué of the First Session of the NAC, (n 133).

¹⁴⁷ NATO International Military Staff, 'The beginnings of NATO's military structure: birth of the Alliance to the fall of the Berlin Wall', 1 *Military Matters*, (2006), 2, available at <<https://www.nato.int/docu/nato-mil-stru/nato-mil-stru-e.pdf>>.

¹⁴⁸ *Ibid.*, 3; Ismay, (n 77), 68; Gregory W. Pedlow, 'The Evolution of NATO Strategy 1949-1969' in Gregory W. Pedlow (ed.), *NATO Strategy Documents 1949-1969*, (NATO 1997), XI, available at <<https://www.nato.int/docu/stratdoc/eng/intro.pdf>>. For more information on the Standing Group and its functions, see US Office of the Historian, 'The Reports of the Temporary Council Committee C9-D/20, 23rd February 1952 - Annex A, Proposed Revised Directive to the Standing Group, MC 2/1, 6 October 1949', Document 124, Foreign Relations of the United States, 1952-1954, Western European Security, Volume V, Part 1, (23 February 1952), 226-228, available at <<https://history.state.gov/historicaldocuments/frus1952-54v05p1/d124>>.

¹⁴⁹ Ismay, (n 77); Pedlow 1997, (n 148); Pedlow 2024, (n 139).

¹⁵⁰ NATO, 'Defence Committee', *NATO Archives Online*, available at <<https://archives.nato.int/defence-committee-2>>. See also US Office of the Historian, 'Communiqué Issued by the Chairman of the North Atlantic Council Deputies (Spofford), London, May 5, 1951', Document 90, Foreign Relations of the United States, 1951, European Security and the German Question, Volume III, Part 1, (5 May 1951), 156, available at <<https://history.state.gov/historicaldocuments/frus1951v03p1/d90>>.

¹⁵¹ Krüger, (n 140), 61 and 63-64; Gregory W. Pedlow, 'The Evolution of NATO's Command Structure, 1951-2009', *SHAPE*, (n.d.), note 1, 4, available at <<https://shape.nato.int/history/information/documents>>; Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 94.

¹⁵² *Ibid.*; Paal Sigurd Hilde 'Military and Command Structures', in James Sperling and Mark Webber (eds.) *The Oxford Handbook of NATO* (Oxford: Oxford University Press, 2025), 314; NATO International Military Staff, (n 147), 4.

¹⁵³ Lindley-French, (n 50), 101; Hilde, (n 152), 313.

to them for joint operations involving more than one service branch – army, navy, air force’.¹⁵⁴ The MC represents a crucial link between NATO’s political decision-making bodies and the military structure responsible for executing those decisions. It provides direction and advice on military policy and operations, strategic assessments, and defence planning to the civilian leadership – currently the NAC and the Secretary General – and translates NAC’s decisions into military strategy.¹⁵⁵ The MC meets daily at the level of national Military Representatives and three times a year at the level of Chiefs of Defence. As in the NAC, decisions in the MC follow the consensus rule. If consensus is not reached, the Chairman of the MC (CMC) may provide independent military advice in the form of a memorandum.¹⁵⁶ A senior European general or admiral elected from among the Chiefs of Defence for a three-year term, the CMC serves as the principal military adviser to the NAC and the Secretary General, and as the senior military spokesperson for the Alliance.¹⁵⁷

Originally, however, the Alliance had no integrated military command structure. Military cooperation among Allies occurred through a less rigid system consisting of five Regional Planning Groups: 1) the Northern European Regional Planning Group, 2) the Western European Regional Planning Group, 3) the Southern European-Western Mediterranean Regional Planning Group, 4) the Canadian-United States Regional Planning Group, and 5) the North Atlantic Ocean Regional Planning Group.¹⁵⁸ These groups consisted of representatives from NATO Allies and were tasked with developing and recommending plans for the defence of their respective regions to the MC, through the SG. In 1950, a common military headquarters existed, but it belonged to WUDO, established under the 1948 Brussels Treaty, which, much like NATO, at the time lacked a real command structure. The headquarters, located in Fontainebleau, France, was led by Field Marshal Bernard L. Viscount Montgomery, who was the Chair of the Western Union’s Commanders-in-Chief Committee. Montgomery had long advocated for the establishment of a command structure, but neither WUDO nor NATO had heeded his calls.¹⁵⁹

On 18 December 1950, however, following the outbreak of the Korean war, the Alliance realised the inadequacy of this loose structure and approved the establishment of an integrated

¹⁵⁴ NATO Public Diplomacy Division, *NATO Handbook* (NATO, 2006), 88, available at <<https://www.nato.int/docu/handbook/2006/hb-en-2006.pdf>>.

¹⁵⁵ NATO, *Allied Command Operations and Allied Command Transformation Public Affairs Handbook 2020*, (May 2020), 232, available at <<https://www.act.nato.int/wp-content/uploads/2023/06/nato-pao-handbook-2020.pdf>>; Verhelst & Trifunovska, (n 143), 51.

¹⁵⁶ Hilde, (n 152), 313. For more information on decision-making in the NAC see sections 2.1 and 2.2.

¹⁵⁷ *Ibid.*; NATO, ACO & ACT Public Affairs Handbook 2020, (n 155); Brick T. Miller, ‘Transforming the NATO Military Command Structure: A New Framework for Managing the Alliance’s Future’, *Atlantic Council*, (August 2003), 4 available at <https://www.atlanticcouncil.org/wp-content/uploads/2003/08/2003-08-Transforming_the_NATO_Military_Command_Structure.pdf>.

¹⁵⁸ Pedlow 1997, (n 148), XI; Krüger, (n 140), 54.

¹⁵⁹ Pedlow 2024, (n 139), 29.

military force under centralised command, something which the USA had originally opposed.¹⁶⁰ The early 1950s were then devoted by the twelve founding members to the creation of the Alliance's integrated military command structure.¹⁶¹ Following the Spofford Compromise, named after Charles Spofford, the US Representative who had put it forward, it was agreed that the rearmament of West Germany would occur within a European framework – specifically the European Defence Forces, as outlined in the European Defence Community Treaty (EDCT)¹⁶²– and that then-General (and later President) Dwight D. Eisenhower would be appointed as the Alliance's first Supreme Allied Commander Europe (SACEUR). Since then, the role has been reserved to American senior military officers. The appointment is made by the US President and confirmed by the NAC.¹⁶³ To avoid duplication, responsibility for WUDO was transferred to General Eisenhower and Field Marshal Montgomery assumed the post of Deputy SACEUR (DSACEUR).¹⁶⁴

In December 1950, the NAC also decided to establish the SACEUR-led Allied Command Europe (ACE)/now Allied Command Operations (ACO), and its Supreme Headquarters Allied Powers Europe (SHAPE), which became operational in April 1951.¹⁶⁵ As a result of the new Headquarters' activation, the three European Regional Planning Groups – the Northern European, Western European, and Southern European-Western Mediterranean Regional Planning Groups – were abolished.¹⁶⁶ The North Atlantic Ocean Regional Planning Group will then be replaced in January 1952 by the Allied Command Atlantic (ACLANT)/now Allied Command Transformation (ACT), led by the Supreme Allied Commander Atlantic (SACLANT)/now Supreme Allied Commander Transformation (SACT).¹⁶⁷ US Admiral Lynde D. McCormick was appointed as the Alliance's first SACLANT on 30 January 1952. As with SACEUR, this role was traditionally held by a US admiral. Since France rejoined the NCS in 2009, however, the post of SACT has been filled by French generals.¹⁶⁸ Only the Canada-United States Regional Planning Group has survived of the originally five Regional Planning Groups.¹⁶⁹ This is because, as stressed by Hilde, '[t]he continental defence of North America has, in fact, never been a task for the NCS.'¹⁷⁰

¹⁶⁰ *Ibid.*, 30.

¹⁶¹ See, e.g., Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 63-87; Krüger, (n 140), 50-68.

¹⁶² For more information, see Chapter 2, section 1.2.

¹⁶³ Lindley-French, (n 50), 101.

¹⁶⁴ See also Chapter 2, section 1.2.

¹⁶⁵ Verhelst & Trifunovska, (n 143), 25. See also Krüger, (n 140), 55-60; Pedlow n.d., (n 151), 14; Pedlow 2024, (n 139), 30.

¹⁶⁶ Krüger, (n 140), 56; Pedlow 1997, (n 148), XV.

¹⁶⁷ Andrés B. Muñoz Mosquera 'The North Atlantic Treaty: Article 9 and NATO's Institutionalization', 34 *Emory International Law Review* (2019), 155. See also Krüger, (n 140), 56-57 and 65-66; and Pedlow n.d., (n 151).

¹⁶⁸ Hilde, (n 152), 313 and 319; Lindley-French, (n 50), 101-102.

¹⁶⁹ NATO, *NATO Handbook 1989*, 74, available at <https://archives.nato.int/uploads/r/null/1/4/145729/0043_NATO_Handbook_1989_ENG.pdf>.

¹⁷⁰ Hilde, (n 152), 315.

ACE was responsible for the defence of Europe, while ACLANT's primary mission was to secure transatlantic sea lines of communication between North America and Europe. A few months later, the Allied Command Channel (ACCHAN) was established alongside SHAPE and ACLANT as a third major command to resolve British objections to having an American SACLANT. Located in Northwood, UK, ACCHAN was tasked with overseeing the defence of the English Channel and North Sea.¹⁷¹ ACCHAN was dissolved in December 1991, when the Defence Planning Committee (DPC) agreed to streamline the NCS and particularly ACE, to adapt it to the post-Cold security environment.¹⁷² Together, ACE, ACLANT and ACCHAN formed the Major NATO Commands (MNCs) of the original NCS.

Originally, SACEUR's responsibilities were rather limited. According to the NAC's fourth meeting resolution of 23 February 1952, in peacetime SACEUR was to ensure that, in case of emergency, the forces made available by NATO nations for the defence of Western Europe would be adequately organised, equipped, trained and ready to implement war plans.¹⁷³ To this end, he would exercise operational control over all national army, navy and air forces assigned to his command area, which included 'the three former European Regional Planning Groups of NATO, exclusive of the Channel Command area';¹⁷⁴ the latter was, in fact, under the responsibility of the Commander-in-Chief Channel (CINCHAN), a British admiral dual-hatted as Commander-in-Chief of the British Channel Command.¹⁷⁵ SACEUR had, therefore, forces assigned to him in peacetime, and in times of war, he would be responsible to the SG for operations within his command area and 'exercise the full powers of a Supreme Commander', holding responsibility for the overall conduct of all operations under his command.¹⁷⁶ These wartime powers and responsibilities were described in greater detail in MC 36 'Division of Responsibilities in Wartime Between National Territorial Commanders and the Supreme Allied Commander Europe (SACEUR)' issued by the MC in 1951, and its subsequent revision MC 36/1 in 1952, both of which are not publicly available. Additionally, indirect insight into the envisioned role of SACEUR as the ultimate operational commander for European Defence Forces

¹⁷¹ Pedlow 2024, (n 139), 31.

¹⁷² Krüger, (n 140), 65; Pedlow n.d., (n 151), 12.; UK Parliament Hansard, House of Commons, 'NATO Headquarters', vol. 243: debated on Monday, (9 May 1994), available at <<https://hansard.parliament.uk/Commons/1994-05-09/debates/2ea1d6e3-8399-4049-8434-e88d9682cd1e/NatoHeadquarters>>.

¹⁷³ For the full list of SACEUR's peace time powers and responsibilities, see US Office of the Historian, 'The Reports of the Temporary Council Committee C9-D/20, 23rd February 1952 – Annex B, Proposed Revised Terms of Reference of the Supreme Commander Allied Powers in Europe', (n 148).

¹⁷⁴ *Ibid.*, 227-228; SHAPE, *Memorandum for: All Chiefs of SHAPE Staff Division – Subject: Revision of SACEUR's Terms of Reference*, AG 2203 SEC, (30 January 1952), 2-3, available at <https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_archives/20121128_19520130_NU_SHAPE_AG-2203-SEC_R.pdf>.

¹⁷⁵ Pedlow 2024, (n 139), 31.

¹⁷⁶ US Office of the Historian, Annex B, Proposed Revised Terms of Reference, (173), 228; SHAPE, *Memorandum for: All Chiefs of SHAPE Staff Division*, (n 174), 3-4.

within the NATO framework, is offered by the 1952 EDCT.¹⁷⁷ Unlike SACEUR, in peacetime SACLANT had no permanent forces assigned to him; they were only periodically assigned to him for training purposes.¹⁷⁸

After the Cold War, SACEUR peacetime authorities remained very limited, at least until the conflict in Ukraine began. In 2015, NATO Defence Ministers adopted Graduated Response Plans – a planning process designed to enable operations plans to be generated quickly, in line with the readiness requirements of the forces. At the outset of the war in Ukraine, then-SACEUR, Todd Walters, petitioned the NAC to activate the five Graduated Response Plans. When the plans were activated, SACEUR then gained significant authority to deploy troops. With the adoption of the Concept for Deterrence and Defence of the Euro-Atlantic Area (DDA) ‘family’ of plans¹⁷⁹ at the 2023 Vilnius Summit, and the transition of SHAPE into a strategic warfighting command,¹⁸⁰ however, one part of the modernisation of NATO’s collective defence has consisted in reforming how authorities are granted to SACEUR. Previously, authorities had to be granted one by one, going through an arcane and thick manual, while now, they are bundled together and linked to specific alert states. SACEUR is authorised to declare up to Alert State Yellow and then inform the NAC, at which point the NAC confers a defined set of authorities. For higher alert states, the NAC must deliberately grant additional authorities in a political decision. Under the new Area of Responsibility(AOR)-Wide Strategic Plan (SASP) – classified and approved in 2022 –¹⁸¹ SACEUR currently has the authority to take all necessary measures in the run-up to a period of conflict, including deploying forces to deter and be prepared for an invocation of Article 5 NAT.

Commanded by SACEUR, ACE was divided into three regional commands, known as Major Subordinate Commands (MSCs) – the Allied Forces Northern Europe (AFNORTH), the Allied Forces Central Europe (AFCENT), and the Allied Forces Southern Europe (AFSOUTH) – covering the Northern, Central, and Southern regions, respectively. Headquartered in Oslo, Norway, and later relocated to Kolsås, AFNORTH was responsible for the defence of NATO’s northern flank; AFCENT, was, instead, based in Fontainebleau, France, and in charge of the central front, including West Germany but not Schleswig Holstein, which was under the operational control of AFNORTH;

¹⁷⁷ See Chapter 2, section 1.2. See also Federica Fazio, ‘What is the relationship between the EDC and NATO?’ ALCIDE Project, *Dublin European Law Institute*, (2 December 2024), available at <<https://alcideproject.eu/what-is-the-relationship-between-the-edc-and-nato/>>.

¹⁷⁸ Ismay, (n 77), 77.

¹⁷⁹ For more information on the plans, see section 3.2 h.

¹⁸⁰ Jack Detsch, ‘NATO’s Military Has a New Nerve Center: The alliance has transformed its once sleepy headquarters into a war command focused on Russia’, *Foreign Policy*, (28 February 2024), available at <<https://foreignpolicy.com/2024/02/28/nato-russia-ukraine-war-shape-command-center-headquarters-military-reforms/>>.

¹⁸¹ General Christopher G. Cavoli, ‘2024 NATO Public Forum | Day 1, 10 July 2024’, *YouTube*, (10 July 2024), at 59:25, available at <<https://www.youtube.com/watch?v=FTPSdOnAxvs>>.

finally, AFSOUTH, was based in Naples, Italy, and responsible for the defence of the NATO's southern flank.¹⁸² This NCS was officially recognised in February 1952, when the NAC met in Lisbon, Portugal, making it a permanent political and military organisation and nominating Lord Ismay as NATO's first Secretary General.¹⁸³ At first a position with extremely limited powers, today the Secretary General is NATO's chief diplomat and serves three primary functions: 1) he heads the International Staff (IS), which supports the work of the NAC, 2) represents the organisation internationally, and 3) shapes the Alliance's policy agenda by chairing the NAC, the Nuclear Planning Group (NPG) and other important committees, with the exception of the MC.¹⁸⁴ The Secretary General is appointed for a four-year term renewable – former Secretary General Jens Stoltenberg's term, for example, was extended four times in 2017,¹⁸⁵ 2019,¹⁸⁶ 2022,¹⁸⁷ and 2023¹⁸⁸ – and exercises the above-mentioned functions from NATO's political Headquarters located in Brussels, Belgium.¹⁸⁹

The three above-mentioned original MSCs – AFNORTH, AFCENT, and AFSOUTH – are the precursors to today's three Operational-Level Headquarters: Joint Force Command Norfolk (JFC-NF) in Virginia, Joint Force Command Brunssum (JFCBS) in the Netherlands, and Joint Force Command Naples (JFCNP) in Italy. As pointed out by Hilde, the regional defence plans¹⁹⁰ agreed upon at the NATO Vilnius Summit in 2023 are, in fact, leading to a 're-regionalization of the NCS' in order to enhance the Alliance's ability to respond to threats in specific geographic areas.¹⁹¹ In an Article 5 scenario, JFC Norfolk, the last to be established in 2019, would be responsible for the defence of the northern flank, including Finland and Sweden; JFCBS for that of the central flank, and JFCNP, for that of the southern flank.¹⁹²

In Lisbon, NATO Allies also agreed that an Annual Review be conducted every year to take stock of existing NATO forces and establish force goals for the next three years. As stated by Lord Ismay, '[t]he [first] 1952 Review was directed largely towards establishing in detail what needed to

¹⁸² Pedlow n.d., (n 151), 1-3.

¹⁸³ Mayer, (n 41), 16-20. See also The Lisbon Reorganization, (n 142).

¹⁸⁴ Verhelst & Trifunovska, (n 143), 54. See also Ryan C. Hendrickson, 'The Changing Role of NATO's Secretary General', in Sebastian Mayer (ed.) *NATO's Post- Cold War Politics. The Changing Provision of Security* (London: Palgrave Macmillan, 2014), 124-137.

¹⁸⁵ Robin Emmott, 'NATO chief Stoltenberg wins extended term to late 2020', *Reuters*, (12 December 2017), available at <<https://www.reuters.com/article/us-nato-stoltenberg-idUSKBN1E62EV/>>.

¹⁸⁶ David M. Herszenhorn, 'NATO allies extend Stoltenberg's term as secretary-general', *Politico*, (28 March 2019), available at <<https://www.politico.eu/article/nato-allies-extend-stoltenbergs-term-as-secretary-general/>>.

¹⁸⁷ David M. Herszenhorn and Lili Bayer, 'NATO chief Stoltenberg to stay for one more year', *Politico*, (24 March 2022), available at <<https://www.politico.eu/article/nato-chef-stoltenberg-stay-one-year/>>.

¹⁸⁸ Andrew Gray, 'NATO extends boss Stoltenberg's term by a year', *Reuters*, (4 July 2023), available at <<https://www.reuters.com/world/nato-agrees-extend-boss-stoltenbergs-term-by-year-stoltenberg-twitter-2023-07-04/>>.

¹⁸⁹ Like SHAPE, NATO permanent Headquarters was originally based in France.

¹⁹⁰ For more information on the plans, see section 3.2 h.

¹⁹¹ Hilde, (152), 324.

¹⁹² *Ibid.* See also John R. Deni and Anca Agachi 'Russia, Ukraine, and collective defence', *Defence Studies*, (19 March 2025), 3.

be done to meet the military programmes which had been accepted in Lisbon earlier in the year'.¹⁹³ This included the creation of ninety-six NATO divisions by 1954 to deter Soviet aggression.¹⁹⁴ The Lisbon conventional force goals, however, were never met as they were considered too costly and unachievable.¹⁹⁵ It is for this reason that, as part of its 'New Look' strategy, the Eisenhower administration, which had begun work on 20 January 1953, invested heavily on nuclear forces, considered as 'more sustainable economically and more effective at deterring communist aggression'.¹⁹⁶ NATO was 'effectively Americanized and nuclearized' as a result.¹⁹⁷ In 1954, the NAC decided, in fact, to reduce the Lisbon force goals and include nuclear weapons into NATO's strategy.¹⁹⁸

The Alliance's military strategy came, therefore, to rely on the threat of *massive retaliation*, meaning that were the Soviets to attack a member of the Alliance, the United States would not simply retaliate in kind but even resort to the use of nuclear weapons.¹⁹⁹ However, As Moscow started to make significant advances in the nuclear arms race, in the 1960s this doctrine was first abandoned in favour of one of *flexible response*, consisting in the option to deploy either nuclear or conventional forces to Europe in response to an attack, and then of the *Harmel doctrine*, based on maintaining adequate territorial defence while promoting political détente.²⁰⁰ These doctrines²⁰¹ would eventually lead to arms control and disarmament initiatives, such as the 1963 Limited Nuclear Test Ban Treaty (LTBT), the 1968 Nuclear Non-Proliferation Treaty (NPT), and later the 1987 Intermediate-Range Nuclear Forces (INF) Treaty.²⁰²

It is under these circumstances that the DPC and the NPG were created. The DPC was established in 1963, in response to Allies' rising concerns with the balance between conventional and nuclear forces and consequent adoption of the doctrine of flexible response.²⁰³ Until 2010, when it

¹⁹³ The Lisbon Reorganization, (n 142).

¹⁹⁴ Alvin J. Cottrell, 'NATO: Cornerstone of U.S. Foreign Policy', 39/229 *Current History* (September 1960), 142. See also Alain C. Enthoven and K. Wayne Smith, 'NATO Strategy and Forces', in *How Much Is Enough?: Shaping the Defense Program, 1961-1969* (1st Edition, RAND Corporation, 1971), 119, available at <<https://www.jstor.org/stable/10.7249/cb403.9>>.

¹⁹⁵ Enthoven & Smith, (n 194), 120.

¹⁹⁶ Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 70.

¹⁹⁷ *Ibid.*, 74.

¹⁹⁸ See section 3.1 c.

¹⁹⁹ Sloan 2020, (n 48), 62. See also section 3.1 c.

²⁰⁰ Apps, (n 69), 138, 151, 180 and 183; Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 99-103; Jamie Shea, 'How the Harmel Report Helped Build the Transatlantic Security Framework', *Atlantic Council*, (9 April 2019), available at <<https://www.atlanticcouncil.org/blogs/new-atlanticist/how-the-harmel-report-helped-build-the-transatlantic-security-framework/>>>; Sloan 2020, (n 48), 62-71. See also section 3.1 d.

²⁰¹ For more information on these doctrines and how they influenced NATO strategies, see sections 3.2 c and d.

²⁰² The Trump administration withdrew the US from the INF Treaty in 2019, in response to Russia's repeated violations of its treaty obligations. See US Department of State. Michael R. Pompeo, Secretary of State, 'U.S. Withdrawal from the INF Treaty on August 2, 2019', Press statement, (2 August 2019), available at <<https://2017-2021.state.gov/u-s-withdrawal-from-the-inf-treaty-on-august-2-2019/>>.

²⁰³ Krüger (n 140), 61-64. See also Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 93-94.

dissolved and its competences were taken up by the NAC, the DPC was responsible for all matters pertaining to the Alliance's integrated military structure and had the same level of authority as the NAC and the NPG.²⁰⁴ Established three years later, the NPG aimed, instead, at avoiding centralised (American) control of nuclear weapons and provide the Alliance with a consultative process on nuclear doctrine.²⁰⁵ The NPG is a forum for nuclear strategy discussions and nuclear posture deliberations, and remains to this day one of the most important policy and decision-making bodies in the Alliance, together with the NAC and the MC.²⁰⁶ The NPG, however, exercises no control over the weapons systems of its members – all NATO members except France – or over decisions regarding target selection, which are retained by the Alliance's three nuclear powers: France, the UK and the US.²⁰⁷

The NCS has been reformed several times: in 1992/1994 (initial post-Cold War adjustments), 1997 (major restructuring),²⁰⁸ 2002/2003²⁰⁹ and 2004 (post-9/11 transformations),²¹⁰ and 2010 (comprehensive streamlining). More recently, it has been adapted in response to the renewed potential for conventional threats to NATO Allies, following Russia's annexation of Crimea in 2014 and its full-scale invasion of Ukraine in 2022.

2. *Legal Analysis of Article 5*

Article 5 NAT states:

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence 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.

²⁰⁴ See NATO, 'Defence Planning Committee (1963-2010), Last Updated: 12 September 2022 at 10:32, available at <https://www.nato.int/cps/en/natohq/topics_49201.htm#:~:text=The%20Defence%20Planning%20Committee%20was,oversaw%20the%20force%20planning%20process>.

²⁰⁵ Krüger, (n 1410, 62-63. See also Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 82-84 and 92-96; and Sloan 2020, (n 48), 64.

²⁰⁶ Verhelst & Trifunovska, (n 143), 48 and 50.

²⁰⁷ Lindley-French, (n 50), 101.

²⁰⁸ Pedlow n.d., (n 151), 11-13. See also W. Bruce Weinrod and Charles L. Barry, 'NATO Command Structure: Considerations for the Future', Center for Technology and National Security Policy, *National Defense University* (September 2010), 9.

²⁰⁹ NATO, *Prague Summit Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Prague, Czech Republic*, Press Release (2002) 127, (21 November 2002), para. 4b, available at <https://www.nato.int/cps/en/natohq/official_texts_19552.htm>; see NATO, "'NATO Reform" Speech by the Deputy Secretary General', NATO Speeches, (17 October 2002), available at <<https://www.nato.int/docu/speech/2002/s021017a.htm>>; Weinrod & Barry, (n 208), 10.

²¹⁰ Weinrod & Barry, (n 208), 13.

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.²¹¹

Four points deserve particular attention:

1. The use of the words ‘armed attack’ rather than ‘armed aggression’;
2. The fact that the armed attack must have taken place ‘in Europe or North America’;
3. The framework of the response: ‘individually and in concert with the other Parties’;
4. The express reference to Article 51 UNC.

2.1 *Armed Attack and the Right to Collective Defence*

Article 5 is the pulsing heart of the NAT, famously containing the aforementioned Musketeer clause ‘an attack against one is an attack against all’. Yet what precisely constitutes an ‘armed attack’ remains unclear.

As discussed in the Introductory Chapter, in *jus ad bellum*, an armed attack represents the threshold for the legitimate use of force in self-defence, either individual or collective. In line with the principle of state sovereignty, NATO leaves it to the attacked state(s) to determine what constitutes self-defence, as interpretations may vary.²¹² However, soon after the beginning of the war in Iraq in 2003, in MC 362/1 NATO Rules of Engagement, NATO came up with an operational definition of self-defence as ‘the use of such necessary and proportional force, including deadly force, by NATO/NATO-led forces and personnel to defend themselves against attack or an imminent attack’. In addition, the Alliance put forward the concept of ‘extended self-defence’, according to which ‘NATO/NATO-led forces and personnel also have the right to take appropriate measures, including the use of necessary and proportional force to defend other NATO/NATO-led forces and personnel from attack or imminent attack.’²¹³

The determination of the *casus foederis* is likewise left to each Ally’s discretion. However, neither Article 5, the other thirteen articles of the NAT, nor international law provide a definition of ‘armed attack.’²¹⁴ Article 5 specifies only that the attack must have occurred in ‘Europe or North America’, while Article 6 expands the geographical scope of the attacks that can trigger the mutual defence clause.²¹⁵ Telegrams exchanged between the UK Foreign Office and the US State Department during 1947-1949, published by Insall and Salmon, reveal that NATO founding members agreed that

²¹¹ *North Atlantic Treaty*, (n 91), Article 5. See also Table 1, X.

²¹² Cooper, (n 20), 95.

²¹³ NATO, *Military Decision on MC 362/1: NATO Rules of Engagement*, (30 June 2003), paras. 7 and 8, 4, available at <<https://govtribe.com/file/government-file/rfpactsact1646-mc-362-1-nato-roe-dot-pdf>>.

²¹⁴ See Table 3, XII.

²¹⁵ Article 6 was originally conceived as Article 5 paragraph 2. See the full draft of Article 5 NAT dated 14 January 1949, available at <<https://www.trumanlibrary.gov/library/research-files/revised-draft-north-atlantic-security-arrangement?documentid=NA&pagenumber=2>>. See also Table 3, XII.

‘an armed attack is understood to mean one of sufficient gravity to constitute an attack by one State upon another’ and that it must ‘endanger the maintenance of international peace and security’.²¹⁶ Nonetheless, as Sari noted, this definition was not formally included in the Treaty’s agreed interpretations.²¹⁷ However, in MC 362/1, NATO broadly defines an attack as ‘the use of force against NATO/NATO-led forces and personnel.’²¹⁸

Yet, Schmitt has emphasised that ‘the meaning of the term as used in Article 5 cannot be broader than that which applies to Article 51 of the U.N. Charter.’²¹⁹ Not every use of force qualifies as an armed attack. Dinstein also highlighted that the framers of the UNC deliberately preferred in Article 51 ‘armed attack’ rather than ‘aggression’, a term used elsewhere in the UNC as well as in its French version.²²⁰ The NAT, by contrast, refers only to ‘armed attack’, having replaced the initially proposed ‘armed aggression’ in Article 3 shortly before the Treaty’s signing.²²¹

As is evident from the Eighteenth Meeting of the Washington Exploratory Talks on Security,²²² Europeans regarded ‘armed aggression’ as broader than ‘armed attack’, whereas Americans considered the two terms as equivalent. Furthermore, the US Law of War Manual describes aggression as ‘the most serious and dangerous form of the illegal use of force’.²²³ The threshold distinction between armed attack and armed aggression may, therefore, vary according to the country targeted. In 1974, UNGA Resolution 3314 defined 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’.²²⁴ This resolution remains the most authoritative source on the definition of aggression.²²⁵ Article 4 NAT similarly states 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.’²²⁶ While Article 5 is invoked

²¹⁶ Insall & Salmon, (n 81), n.281, 428 and n.287, 435.

²¹⁷ 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, Eighteenth Meeting of the Washington Exploratory Talks, (n 124), 222-223.

²¹⁸ NATO MC 362/1, 2003, (n 213), para.7d, 4.

²¹⁹ Schmitt, (n 22), 101. See also, US Office of the Historian, Minutes of the Eighteenth Meeting (n 124), 219. See also Table 3, XII.

²²⁰ Dinstein, (n 25), 196.

²²¹ Insall & Salmon, (n 122). See also section 2.1 and Table 3, XII.

²²² US Office of the Historian, Minutes of the Eighteenth Meeting, (n 124), 221-222.

²²³ 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>>.

²²⁴ UNGA, 1974, (n 27), Article 1. See also Table 3, XII.

²²⁵ This is demonstrated, among other things, by the fact that the exact same definition was adopted over three decades later by the International Criminal Court (ICC). See Article 8 bis of the ICC Rome Statute adopted at the 2010 Kampala Review Conference, available at <<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>>.

²²⁶ *North Atlantic Treaty*, (n 91), Article 4.

after an attack, Article 4 is intended to trigger consultations before an attack, serving a deterrent function.²²⁷ Additionally, Resolution 3314 specifically identifies the following as acts of aggression:

‘a) The invasion or attack by the armed forces of a State on the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.’²²⁸

The near-identical language used in Article 1, UNGA Resolution 3314 and Article 4 NAT suggests that ‘armed attack’ and ‘armed aggression’ may be used as synonyms. An armed attack constitutes in fact a form of aggression, as also confirmed by Article 3, UNGA Resolution 3314.

Although the NAT does not specify an enemy, as outlined in the introduction, the historical context indicates that the Soviet Union represented the primary threat at the time. The deliberately ambiguous language of Article 5, therefore, allowed any Soviet military action to be considered as an armed attack, potentially justifying a US response and providing a deterrent effect.²²⁹ Today, however, NATO faces unprecedented threats, which are not limited to traditional attacks by the armed forces of another State. The nebulous wording of the collective defence clause has afforded NATO considerable flexibility, enabling the organisation to adapt to the post-Cold War environment and

²²⁷ The recent request for consultations by Poland is a case in 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 [²²⁸ UNGA, 1974, \(n 27\), Article 3.](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>.>.” For more information on Article 4, see the next section.</p></div><div data-bbox=)

²²⁹ Grady, (n 104), 186.

broaden the interpretation of armed attacks to include those carried out by terrorist groups,²³⁰ in cyberspace²³¹, as part of hybrid warfare,²³² and to, from or within space.²³³ In fact, Article 5 has been activated only once in the history of NATO – and not in response to a conventional attack, but to the coordinated hijackings of four commercial airliners in New York, Washington, DC, and Pennsylvania at the hands of the Al-Qaeda terrorist network. Notably, it was the European Allies who invoked Article 5 in defence of the USA, contrary to Cold-War expectations.

The US Law of War Manual states that ‘[t]he United States has long taken the position that the inherent right of self-defence potentially applies against any illegal use of force’.²³⁴ This suggests that Article 5 NAT might be invoked in response to actions the USA considers illegal, even if they do not reach a certain threshold. However, with no historical precedent, it remains unclear how the NAC would respond to such a request.²³⁵

NATO’s decision-making is intergovernmental, requiring all thirty-two members to reach unanimous agreement in the NAC for an action to qualify as an armed attack. Without consensus, no Article 5 response can be initiated.²³⁶ For this reason, some scholars have suggested adopting a ‘more operational definition of “consensus”’ to cover cases when ‘an overwhelming majority’ supports action²³⁷. Sloan, however, has noted that ‘votes at NATO are ‘weighted’, not ‘counted’’, with the United States carrying the greatest influence.²³⁸

²³⁰ NATO, ‘Statement by NATO Secretary General, Lord Robertson’, *NATO Speeches*, (2 October 2001), available at <<https://www.nato.int/docu/speech/2001/s011002a.htm>>; 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 on 4 October 2001’, *NATO Speeches*, (4 October 2001), available at <<https://www.nato.int/docu/speech/2001/s011004b.htm>>.

²³¹ 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>; 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>; 2022 NATO Strategic Concept, (n 43), para. 25.

²³² *NATO 2016 Warsaw Summit Communiqué*, (n 54), para. 72; 2022 NATO Strategic Concept, (n 46) para. 27.

²³³ 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>; 2022 NATO Strategic Concept (n 232). See also Table 3, XII.

²³⁴ US Law of War Manual (2015, updated July 2023), (n 223), para.1.11.5.2, 47 and para.16.3.3.1, 1030.

²³⁵ Schmitt, (n 22), 102-103.

²³⁶ James A. Green, ‘Collective Self-Defence Treaty Arrangements’ in *Collective Self-Defence in International Law* (Cambridge: Cambridge University Press, 2014), 237-238. Buckley has argued that the invocation of Article 5 after the 9/11 terrorist attacks ‘showed the political, rather than technical nature of the treaty threshold’, noting that ‘[a]n attack is only an Article V violation if Nato agrees to declare it as such’. See Andrew Rettman, ‘Edgar Buckley —Author of Nato’s Article V on 9/11’, *EUobserver*, (3 June 2025), available at <<https://euobserver.com/the-eus-unsung-heroes/ar7d706407>>. For more information, see the next section.

²³⁷ Zbigniew Brzezinski, ‘An Agenda for NATO: Toward a Global Security Web’ 88/5 *Foreign Affairs*, (2009), 15, available at <<https://www.foreignaffairs.com/articles/europe/2009-09-01/agenda-nato>>.

²³⁸ Sloan 2024, (n 71), 217.

2.2 *An Attack in Europe or North America*

Article 5 clearly affirms that the armed attack against one or more NATO Allies must be committed in ‘*Europe or North America*’. Further to that, Article 6, states:

‘For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack:

- on the territory of any of the Parties in Europe or North America, on the Algerian Departments of France, on the territory of Turkey or on the Islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer;
- on the forces, vessels, or aircraft of any of the Parties, when in or over these territories or any other area in Europe in which occupation forces of any of the Parties were stationed on the date when the Treaty entered into force or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer.’

This legal provision complements Article 5, widening the geographical range of the armed attack that can trigger the mutual defence obligation.²³⁹ Like Article 5, Article 6 was modified numerous times during the negotiations.²⁴⁰ Unlike Article 5, or any other article of the NAT, however, it was also amended following its adoption.²⁴¹

Originally conceived as paragraph 2 of Article 5 in the draft of 14 January 1949, at first it referred to ‘an armed attack *against the territory, the population or the armed forces* of any of the Parties in Europe or North America [...]’ [emphasis added].²⁴² However, Washington eventually decided to opt for a separate clause and the formulation was changed and restricted to ‘*the occupation forces*’.²⁴³ This terminology allowed to include British and American forces stationed in Germany²⁴⁴ and the Free territory of Trieste²⁴⁵, but not British forces on Greek territory.²⁴⁶

The final text, as adopted on 4 April 1949, read as follows:

‘For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack on the territory of any of the Parties in Europe or North America, on the Algerian departments of France, on the occupation forces of any Party in Europe, on the islands under the jurisdiction of any Party in the North Atlantic area north of the Tropic of Cancer or on the vessels or aircraft in this area of any of the Parties.’²⁴⁷

²³⁹ As observed by Schmitt, however, Article 6 does not apply to NATO Article 5 operations or non-Article 5 operations, but only to the area where the armed attack has taken place. Schmitt, (n 22), 110-111.

²⁴⁰ Insall & Salmon, (n 81), n.212, 342, n.224, 359, n.235, 372, n.262, 405, n.281, 428.

²⁴¹ Antoaneta Boeva and Ivan Novotny, ‘Scope and Historical Developments of Article 6’, 34 *Emory International Law Review*, (2019), 122.

²⁴² See *supra* n 215.

²⁴³ Insall & Salmon, (n 81), n.212, 342, n.224, 359 and n.262, 405.

²⁴⁴ *Ibid.*, n.235, 372 and n.287, 435.

²⁴⁵ *Ibid.*, n.281, 428 and n.287, 435. See also US Office of the Historian, Minutes of the Eighteenth Meeting, (n 124).

²⁴⁶ *Ibid.*, n.262, 406.

²⁴⁷ NATO, *The Original North Atlantic Treaty*, (4 April 1949), Article 6, available at <https://www.nato.int/nato_static_fl2014/assets/pdf/history_pdf/20161122_E1-founding-treaty-original-tre.pdf>.

Overseas territories outside of Europe and North America are, therefore, not covered by Article 6 and colonial territories were never included – with the sole exception of Algeria. This is because in 1949 Algeria was considered part of metropolitan France and, as discussed in section 1.1, France had made Algeria’s inclusion a *condition sine qua non* for its participation in the Pact.²⁴⁸ The reference to ‘the Algerian Departments of France’, although still present in the text of Article 6, is no longer applicable, however, as Algeria became independent in 1962. A footnote was subsequently added to reflect this change.²⁴⁹

The article was also modified in 1951. Upon accession of Greece and Türkiye, Article 2 of the relative accession protocol²⁵⁰ extended Article 6 to include the latter’s territory starting from 18 February 1952, which is when the country deposited its instrument of ratification. Subsequent accession protocols, the last of which were signed for Finland and Sweden in July 2022, have indeed modified the geographical scope of Article 6 (and, therefore, Article 5),²⁵¹ but not its text since acceding countries have, so far, always been part of what is now known as the Euro-Atlantic area.²⁵²

In the words of Lord Ismay, NATO was designed as ‘a military organization established to defend all NATO territories against armed attack, including a network of commands covering the North Atlantic Ocean and the European continent from the North Cape to North Africa and from the Channel to the Caucasus mountains.’²⁵³ As highlighted by Boeva and Novotny, however, while the NATO area is clearly delimited to the south by the Tropic of Cancer, the northern edge is not nearly as well-defined. In fact, this upper limit is not even inferred.²⁵⁴ Everything south of the Tropic of Cancer was logically excluded because it was already covered by the Rio Treaty. The area north of the Tropic was, on the other hand, broadly defined to include ‘the general area of the North Atlantic Ocean north of that line, including adjacent sea and air spaces between the territories covered by that Article.’²⁵⁵

Therefore, the geographical area covered by Article 5 includes the land, air and sea – the North Atlantic Ocean and North Sea, as well as the Mediterranean Sea, as explicitly stated – between North America and Europe, and not just a ground attack but even one on ships or aircraft in the area could

²⁴⁸ Insall & Salmon, (n 81) n.200, 328.

²⁴⁹ *North Atlantic Treaty*, (n 91), Note 2. On 16 January 1963, the French Representative made a declaration in the NAC in this respect and the NAC noted that relevant clauses of the NAT had become inapplicable to Algeria as from 3 July 1962. See NATO, ‘Following a Statement by the French Representative, the Council Notes that Insofar as the Former Algerian Departments of France are Concerned, the Relevant Clauses of the North Atlantic Treaty Became Inapplicable as of 3 July 1962’, *News*, (16 January 1963), available at <https://www.nato.int/cps/en/natohq/news_26599.htm?selectedLocale=en>. See also Table 3, XII.

²⁵⁰ NATO, *Protocol to the North Atlantic Treaty on the accession of Greece and Turkey*, available at <https://www.nato.int/cps/en/natohq/official_texts_17245.htm>.

²⁵¹ Verhelst & Trifunovska, (n 143), 46.

²⁵² Boeva & Novotny, (n 241), 126-127.

²⁵³ Ismay, (n 77), IX.

²⁵⁴ Boeva & Novotny, (n 241), 123.

²⁵⁵ *Ibid.*, 124.

potentially trigger Article 5.²⁵⁶ The most part of the Baltic Sea is also included – with the addition of Finland and Sweden, today all countries surrounding it, with the exception of Russia, are NATO Allies, something which has led some commentators to jokingly dub the Baltic Sea ‘NATO lake’.²⁵⁷

Interestingly enough, while Finland and Sweden are now covered by Article 5 and Article 6, the two norms do not apply to the US state of Hawaii. Located in the Pacific Ocean, south of the Tropic of Cancer, the island is not part of the North Atlantic area, and the text of Article 6 was not modified when it joined the USA as its fiftieth State in August 1959.²⁵⁸ As a consequence, Hawaii is not covered by the Article 5 security guarantee and, were it to be attacked, NATO Allies would have no legal obligation to assist it, despite the fact that it forms part of US territory. This exclusion is all the more bizarre considering the fact that, before the 9/11 terrorist attacks, the only attack the USA had suffered on its territory had been on its naval base at Pearl Harbor, Hawaii. In light of the deteriorating situation in the Indo-Pacific, there have been calls by American security experts to modify Article 6 to include Hawaii as well as Guam, home to an important US air base, due to the threats posed respectively by China and North Korea to the safety of the two islands.²⁵⁹

However, it is important to remember that a threatening situation *in any part of the globe*, including Hawaii and Guam, can activate security consultations pursuant to Article 4. In the words of Rynning, this makes the NAT ‘geographically bounded’, but ‘politically unbounded’ because if, on the one hand, Article 5 applies only to the NATO area, on the other hand, as already mentioned in the previous section, Article 4 makes sure that an issue arising anywhere in the world can be a cause for concern and consultation.²⁶⁰

If Article 5 is the heart of NATO, Article 4 is its soul. As the Alliance’s motto ‘*Animus in consulendo liber*’ adorning the walls of the NAC²⁶¹ clearly suggests, consultations play an important role in the Alliance. NATO is a crucial forum for consultation on any matter that might affect the interests and security of its members on both sides of the Atlantic. There are at least five different forms of consultations in NATO and they are designed to: 1) exchange information and opinion among NATO Allies; 2) communicate actions or decisions that member state governments may have

²⁵⁶ Clarifications on the exact territory covered by Article 5 were provided in the Appendix to NATO’s third Strategic Concept. See section 3.1 c for more information. See also Table 3, XII.

²⁵⁷ Laura Kayali ‘Sorry Russia, the Baltic Sea is NATO’s lake now’, *Politico*, (13 July 2023), available at <<https://www.politico.eu/article/nato-lake-what-sweden-and-finland-will-change-in-the-baltics-russia-ukraine-war/>>; Richard Milne and Max Seddon, ‘Sweden joins ‘Nato lake’ on Moscow’s doorstep’, *Financial Times*, (7 March 2024), available at <<https://www.ft.com/content/c6375406-df00-4e1d-801f-9435b6a8d253>>.

²⁵⁸ Boeva & Novotny, (n 241), 130. See also Table 3, XII.

²⁵⁹ 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#>>.

²⁶⁰ Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 7.

²⁶¹ *Ibid.*, 1-2. See also NATO, ‘NATO’S MOTTO’, (20 October 2016), available at <https://www.nato.int/cps/en/natohq/declassified_136217.htm?selectedLocale=en>.

already taken or may be in the process of taking and that could affect, directly or indirectly, the interests of other NATO Allies; 3) provide advance notice of future decisions or actions to be taken by member state governments so that they can be endorsed or commented upon by other Allies; 4) reach agreement on policies to be adopted or actions to be contextually taken; 5) enable Allies to reach consensus on collective decisions and actions taken by the Alliance as a whole.²⁶²

The first four are forms of *political consultation* that take place on a day-to-day basis. The fifth one though refers to a form of *emergency consultation* that can be requested by either the Allies or the Secretary General²⁶³ during extraordinary times that may lead to the invocation of Article 4, Article 5 or even both. According to Rynning, consultations under Article 4 – and Article 5 – are ‘mandatory’.²⁶⁴ However, as highlighted by Bumgardner, there is no mention in Article 4 or the *travaux préparatoires* of the NAT of whether the consultation process it triggers is ‘mandatory or permissive’ nor of whether it would result in ‘decisions or actions’.²⁶⁵ This is because the Treaty is silent concerning the decision-making process that follows Article 4 consultations, as with decision-making in NATO more broadly.²⁶⁶ Consultations, as former US President Richard Nixon once reminded NATO Allies, are not a legally binding obligation.²⁶⁷ They were never established as a formal procedure, but rather developed as customary practice, like the consensus rule.²⁶⁸ It is, therefore, common practice that if Article 4 is invoked Allies will consult, which means that once the consultation procedure is put in motion, all thirty-two NATO Allies will gather in the NAC and unanimously decide on the next steps to take, which can be either actions or decisions.

Since the Alliance’s founding in 1949, Article 4 has been invoked nine times, most recently by Poland²⁶⁹ and Estonia.²⁷⁰ The day before the twenty-fourth anniversary of the 9/11 terrorist attacks, Polish airspace was violated by close to twenty Russian drones,²⁷¹ leading the Polish government to

²⁶² NATO Handbook 2006, (n 154), 38-39; Verhelst & Trifunovska, (n 143), 65.

²⁶³ Schmidt, (n 139), 40.

²⁶⁴ Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 59.

²⁶⁵ Sherrod Lewis Bumgardner, ‘Article 4 of the North Atlantic Treaty’, 34 *Emory International Law Review* (2019), 77-78.

²⁶⁶ *Ibid.*, 78. See also Leo G. Michel, ‘NATO Decision-Making: The “Consensus Rule” Endures Despite Challenges’, in Sebastian Mayer (ed.) *NATO’s Post-Cold War Politics* (London: Palgrave Macmillan, 2014), 107-123.

²⁶⁷ Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 2.

²⁶⁸ *Ibid.*, 107-108.

²⁶⁹ See *supra* n 227.

²⁷⁰ 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’, (23 September 2025), available at <https://www.nato.int/cps/en/natohq/official_texts_237721.htm?utm_source=socmed&utm_medium=multi&utm_campaign=230925%26NAC%26airspace>.

²⁷¹ Brad Lendon *et al.*, ‘NATO shoots down Russian drones in Polish airspace, accusing Moscow of being ‘absolutely reckless’, *CNN*, (11 September 2025), available at <<https://edition.cnn.com/2025/09/09/europe/poland-scramble-jets-russian-drone-reports-intl-hnk-ml>>.

request Article 4 consultations. Poland, whose defence budget reached 4.07% of GDP in 2024,²⁷² was on the brink of activating Article 4 already in November 2022 and December 2024, after its airspace was violated by two missiles coming from the Ukrainian border. While in the first case, the object was found to be a Ukrainian air defence weapon and, therefore, Article 4 was not triggered,²⁷³ in the second, the rocket, which was out of the country's airspace within three minutes of entry, was allegedly Russian.²⁷⁴ Another such incident was reported by the Armed Forces Operational Command of Poland in March 2024.²⁷⁵ A few days after the Polish drones incident, on 19 September 2025, three Russian MIG-31 fighter jets violated Estonia's airspace. The breach lasted for around twelve minutes, until they were intercepted by Italian F-35 fighter jets stationed there as part of *Eastern Sentry*, launched by NATO in response to Russia's provocations on the Eastern flank.²⁷⁶ Although neither Poland nor any other NATO Ally has any desire to escalate the conflict, these so-called 'incidents' are becoming increasingly frequent in the context of the war in Ukraine. Worryingly, Russia has also been responsible for major cyber attacks in the region.²⁷⁷ These hybrid warfare tactics are clear provocations by the Russian Federation that heighten the risk of an Article 5 response.

Previously Article 4 consultations had been requested on 24 February 2022, by eight NATO Allies – Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania and Slovakia. Until then, the Article had been invoked only by one single Ally at a time: five times by Türkiye between 2003 and 2020, in the run up to the 2003 Iraq war and in response to the 2012 Syrian crisis and the fight against the Islamic State of Iraq and Syria (ISIS); and one by Poland in 2014, in the aftermath of Russia's illegal invasion and annexation of Crimea.

²⁷² NATO, *The Secretary General's Annual Report 2024*, (24 April 2025), 18, available at <https://www.nato.int/nato_static_fl2014/assets/pdf/2025/4/pdf/sgar24-en.pdf>.

²⁷³ Reuters, 'Poland likely to invoke NATO's Article 4, will raise missile blast with UN – officials', (16 November 2022), available at <<https://www.reuters.com/world/europe/poland-considering-nato-article-4-activation-says-spokesman-2022-11-15/>>.

²⁷⁴ The Guardian, 'Moscow wants 'hard evidence' missile in Poland was Russian before giving explanation – as it happened', (30 December 2023), available at <<https://www.theguardian.com/world/live/2023/dec/30/russia-ukraine-war-airstrikes-on-belgorod-and-bryansk?page=with%3Ablock-658ff0e08f087c86f6957ea7>>.

²⁷⁵ Reuters, 'Russia violates Poland's air space in attack on Ukraine, Poland's armed forces say', (24 March 2024), available at <<https://www.reuters.com/world/europe/russia-violates-polands-air-space-attack-ukraine-polands-armed-forces-say-2024-03-24/>>.

²⁷⁶ See *supra* n 61.

²⁷⁷ Pascale Davies, 'Estonia hit by 'most extensive' cyberattack since 2007 amid tensions with Russia over Ukraine war', *Euronews*, (18 August 2022), available at <<https://www.euronews.com/next/2022/08/18/estonia-hit-by-most-extensive-cyberattack-since-2007-amid-tensions-with-russia-over-ukrain>>; Sam Clark and Victor Jack 'Baltics brace for cyberattacks as they depart Russian electricity grid', *Politico*, (6 February 2025), available at <<https://www.politico.eu/article/baltics-brace-cyberattacks-depart-russian-electricity-grid-brell/>>; The Brussels Times, 'Russia steps up cyberattacks on Poland ahead of presidential poll', (16 April 2025), available at <<https://www.brusselstimes.com/1537248/russia-steps-up-cyberattacks-on-poland-ahead-of-presidential-poll>>; TVP World 'Polish critical infrastructure targeted by '20 to 50 cyberattacks a day' as Russia tensions rise', (16 September 2025), available at <<https://tvpworld.com/88947950/polands-critical-infrastructure-hit-by-20-to-50-cyberattacks-a-day>>.

2.3 *Individual and Collective Action*

Following Article 5 consultations, the Secretary General takes the political decision to take military action and NATO military structures execute NAC's decisions (in certain member states, including the USA, this may still be subject to parliamentary approval).²⁷⁸ Collective action by the Allies is generally accompanied by individual national responses, as seen after 9/11.

According to Lord George Robertson, NATO Secretary General at the time of the attacks, an urgent, ambassador-level meeting of the NAC was called at NATO Headquarters in Brussels upon news of the Twin Towers collapsing in New York City.²⁷⁹ During this meeting, the option of invoking Article 5 was first discussed²⁸⁰ and a key question raised was whether civilian aircraft could be treated as weapons.²⁸¹ To qualify under Article 5 NAT, an attack should, in fact, be 'armed'. It was concluded that since commercial aircraft had been used as 'missiles', the attack was indeed armed.²⁸² Allies also debated how the attacks differed from actions by terrorist groups such as the Irish Republican Army (IRA) or Euskadi ta Askatasuna (ETA), for which Article 5 had not been invoked. Two distinguishing factors were identified in the scale of the attacks and their external direction.²⁸³

The following day, a formal NAC meeting at foreign-minister-level considered a draft statement invoking Article 5 on the basis of the abovementioned criteria. While the majority supported it, some Allies requested assurances that the 'nature, scale and timing' of any response would remain under national control, with further consultation required for collective action. NATO's legal adviser, Baldwin De Vidts, confirmed that each state would decide its own response, while collective consultation would precede NATO-wide action.²⁸⁴ With these assurances, NATO unanimously agreed that the attacks would be considered covered by Article 5 *if directed from abroad* and signalled readiness to provide assistance.²⁸⁵ At a later press conference Lord Robertson declared that the Allies would take 'such actions as deemed necessary, including the use of force',

²⁷⁸ Verhelst & Trifunovska, (n 143), 66.

²⁷⁹ George Robertson, 'Being NATO's Secretary General on 9/11', *NATO Review*, (4 September 2011), available at <<https://www.nato.int/docu/review/articles/2011/09/04/being-nato-s-secretary-general-on-9-11/index.html>>; NATO, '9/11 and Beyond: The Day After - Lord Robertson and the Self-Defence Clause', (2 November 2016), available at <https://www.nato.int/cps/en/natohq/declassified_137121.htm>.

²⁸⁰ NATO, 'Statement by the North Atlantic Council', Press Release (2001) 122, (11 September 2001), available at <https://www.nato.int/cps/en/natohq/official_texts_18863.htm?selectedLocale=en>. See also Rettman, (n 236). See also Table 3, XII.

²⁸¹ 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>>.

²⁸² *Ibid.*

²⁸³ *Ibid.* See also Rettman, (n 236).

²⁸⁴ *Ibid.* See also Table 3, XII.

²⁸⁵ NATO 'NATO reaffirms Treaty commitments in dealing with terrorist attacks against the US', *News*, (12 September 2001), available at <https://www.nato.int/cps/en/natohq/news_18569.htm?selectedLocale=en>; 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>>.

‘commensurate with their judgement and resources’.²⁸⁶ The Secretary General then informed then-UN Secretary General Kofi Annan, as required by Article 5 NAT.

Article 5 formally took effect on 2 October 2001, following confirmation that Al-Qaeda had orchestrated the attacks from Afghanistan.²⁸⁷ The Allies subsequently reconvened in the NAC to agree upon and implement eight collective measures to operationalise Article 5 and comply with US requests.²⁸⁸ In application of these measures, NATO launched its first counterterrorism operations: Operation Eagle Assist and Operation Active Endeavour. Between 9 October 2001 and 16 May 2002, seven Airborne Warning & Control System (AWACS), a fleet of Boeing 707s provided with radar for air and maritime surveillance under the operational control of Allied Air Forces North (AIRNORTH)/now Allied Air Command (AIRCOM), were sent to patrol US skies as part of the former.²⁸⁹ As for the latter, it was launched a couple of weeks later, on 26 October 2001, when elements of the Standing Naval Force, a fleet of rapidly deployable frigates or destroyers under the operational control of Allied Naval Forces South (NAVSOUTH)/now Allied Maritime Command (MARCOM), were sent to detect and deter potential terrorist activities in the Mediterranean Sea. The operation was terminated in 2016 and replaced by Operation Sea Guardian. Additionally, although NATO did not participate directly in the initial US-led Operation Enduring Freedom in Afghanistan, Allies supported the campaign and later contributed to the UN-mandated, NATO-led International Security Assistance Force (ISAF) mission.²⁹⁰

Over ten years from the conclusion of ISAF, international security scholars and practitioners are now wondering what would happen if the scenario that Article 5 was originally designed to address were to materialise in the context of the war in Ukraine. Would the USA be both willing and able defend a European Ally attacked by Russia? Under Article 6 clause 2 of the US Constitution – the so-called ‘supremacy clause’ – ‘all Treaties made, or which shall be made, under the Authority of

²⁸⁶ NATO reaffirms Treaty commitments, (n 285). See also Table 3, XII.

²⁸⁷ NATO Statement by NATO Secretary General, Lord Robertson, (n 230). 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>.

²⁸⁸ Suzanne Daley, ‘A NATION CHALLENGED: THE ALLIES; NATO Quickly Gives the U.S. All the Help That It Asked’, *The New York Times*, (5 October 2001), available at <<http://www.nytimes.com/2001/10/05/world/nation-challenged-allies-nato-quickly-gives-us-all-help-that-it-asked.html>>; Dick Marty, ‘Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report. Explanatory memorandum’, Committee on Legal Affairs and Human Rights, *Council of Europe Parliamentary Assembly*, (7 June 2007), para. 92, 18. 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>>.

²⁸⁹ NATO, ‘Statement by the Secretary General on the conclusion of Operation Eagle Assist’, Press Release (2002) 057, (30 April 2002), available at <<https://www.nato.int/docu/update/2002/04-april/e0430a.htm>>.

²⁹⁰ NATO, ‘International Security Assistance Force (ISAF): Key Facts and Figures’, (7 November 2014), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2014_11/20141111_141107-ISAF-Placemat-final.pdf>. See also Table 3, XII.

the United States, shall be the supreme Law of the Land'.²⁹¹ The US President has the constitutional authority to make binding commitments and exercise all the powers of the federal government, including deploying military forces and declaring war, subject to Senate authorisation. However, as highlighted in section 1.1, Senators Vandenberg and Connally made sure that the US government could only be obliged to undertake 'such action as it deems necessary', not 'as may be necessary', leaving it to the President, with Congressional approval, to decide what measures to take, if any. As NATO's legal adviser clarified in 2001, decisions on 'the nature, scale and timing of actions deemed necessary' rest with individual Allies.²⁹²

This flexibility has become politically charged decades later. In 2016, then-presidential candidate Donald Trump declared that the US would only defend Allies who 'fulfil their obligations to us',²⁹³ implying compliance with the 2% GDP defence spending target set at the 2014 Wales Summit.²⁹⁴ During his first presidency, then Trump repeatedly questioned NATO's value to the USA, even threatening at the 2018 NATO Brussels Summit to withdraw unless Allies met the spending benchmark by 2024.²⁹⁵ As mentioned in section 1.1, while Article 13 NAT allows for withdrawal, it has never been triggered. US Congress has since moved to constrain such a step. The 2024 National Defence Authorisation Act (NDAA) prohibits any president from unilaterally leaving NATO without Senate approval or an act of Congress,²⁹⁶ and the NATO Support Act of 2024 likewise prohibits the appropriation or use of funds to carry out a withdrawal, reinforcing Congress's role in preventing unilateral exits.²⁹⁷ Additionally, in June 2024 a bipartisan resolution was introduced in the US House of Representatives reaffirming America's 'full and unwavering commitment' to NATO and Article 5,²⁹⁸ Later, in September 2025, the bipartisan Eastern Flank Strategic Partnership Act was introduced in the US Senate '[t]o strengthen strategic defense cooperation' with NATO Allies on the Eastern

²⁹¹ *The Constitution of the United States of America*, (n 111), Article 6.

²⁹² Buckley 2006, (n 281).

²⁹³ David E. Sanger and Maggie Haberman, 'Donald Trump Sets Conditions for Defending NATO Allies Against Attack', *The New York Times*, (20 July 2016), available at <<https://www.nytimes.com/2016/07/21/us/politics/donald-trump-issues.html>>.

²⁹⁴ *NATO 2014 Wales Summit Declaration*, (n 231), para. 14.

²⁹⁵ The White House, 'Remarks by President Trump at Press Conference After NATO Summit | Brussels, Belgium', (12 July 2018), available at <<https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-press-conference-nato-summit-brussels-belgium/>>. See also Henry Foy, 'The untold Story of the most chaotic NATO summit ever', *Financial Times*, (3 July 2024), available at <<https://www.ft.com/content/8985b970-0015-479f-9585-7a9b234715a4>>.

²⁹⁶ US Congress, 118th Congress, 1st Session, 'H.R. 2670 - National Defense Authorization Act for Fiscal Year 2024, Sec. 1250A—Limitation on withdrawal from North Atlantic Treaty Organization', (6 December 2023), 1127, available at <<https://www.congress.gov/118/crpt/hrpt301/CRPT-118hrpt301.pdf>>.

²⁹⁷ US Congress, 118th Congress, 2nd Session, 'H.R. 7387- NATO Support Act of 2024', (15 February 2024), available at <<https://www.congress.gov/bill/118th-congress/house-bill/7387/text>>.

²⁹⁸ US Congress, 118th Congress, 2nd Session, 'H.Res.1063 - Reaffirming the United States full and unwavering commitment to the North Atlantic Treaty Organization in its 75th anniversary year and its goals of achieving collective security through transatlantic partnerships', (6 March 2024), available at <<https://www.congress.gov/bill/118th-congress/house-resolution/1063/text>>.

Flank.²⁹⁹ Yet, despite his formal endorsement of Article 5 at the NATO Hague Summit in 2025³⁰⁰ and recent statements regarding Poland and the Baltic states,³⁰¹ European Allies remain wary that Trump – now in his second term – might not honour the mutual defence pledge.

The underlying problem is structural. Since Article 5 binds members to provide assistance aimed at ‘restor[ing] and maintain[ing] the security of the North Atlantic area’, without prescribing specific means, allied responses may vary. Consequently, in the event of an attack, US assistance might not take a military form, could prove insufficient, or arrive too late. The credibility of the Article 5 guarantee, therefore, depends as much on NATO’s political cohesion as on Allies’ military capacity.³⁰² It is precisely this deterrent credibility that has prevented any member from experiencing a major attack since NATO’s founding.

Yet, as De Vidts also noted, any action must be ‘appropriate to the scale of the attack’.³⁰³ However, Article 5 contains no sanctioning mechanism against an Ally that provides inadequate assistance or none at all.³⁰⁴ In addition, even with the NDAA’s constraints,³⁰⁵ the US President could still weaken NATO indirectly, for instance by scaling back participation in joint exercises, reducing troop deployments in Europe, cutting defence spending, or withholding contributions to NATO infrastructure.³⁰⁶ These possibilities explain the repeated calls before the 2024 US elections to ‘Trump-proof’ the Alliance.³⁰⁷

2.4 *The Express Reference to Article 51 UNC*

Since its establishment, academics have questioned whether NATO is a regional organisation or a defensive organisation. What makes the distinction of fundamental importance is the fact that Chapter VIII of the UNC subjects a ‘regional arrangement or agency’ designed to fulfil regional

²⁹⁹ US Congress, 119th Congress, 1st Session, ‘S.2914 - Eastern Flank Strategic Partnership Act of 2025’, (19 September 2025), available at <<https://www.congress.gov/bill/119th-congress/house-bill/5793/text>>.

³⁰⁰ NATO, ‘NATO Secretary General with US President Donald Trump’, *YouTube*, (25 June 2025), at 0:01, available at <<https://www.youtube.com/watch?v=oHJGeyP3x20>>.

³⁰¹ Ryan King, ‘Trump warns US will defend Poland and Baltics if Russia keeps escalating: “We don’t like it”’, *New York Post*, (21 September 2025), available at <<https://nypost.com/2025/09/21/us-news/trump-warns-us-will-defend-poland-and-baltics-if-russia-keeps-escalating-we-dont-like-it/>>.

³⁰² 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>>.

³⁰³ Buckley 2006, (n 281).

³⁰⁴ See Table 3, XII.

³⁰⁵ Joe Gould, Jack Detsch and Connor O’Brien, ‘The law is not ‘airtight’: Trump may have a way out of NATO’, *Politico*, (8 November 2024), available at <<https://www.politico.com/news/2024/11/08/trump-nato-congress-courts-00188426>>.

³⁰⁶ Zachary B. Wolf, ‘Congress acted to protect NATO. But it might not be enough to stop Trump’, *CNN*, (13 February 2024), available at <<https://edition.cnn.com/2024/02/13/politics/congress-trump-nato-what-matters>>.

³⁰⁷ Michael Birnbaum *et al.*, ‘NATO leaders move to ‘Trump-proof’ the alliance in Washington’, *The Washington Post*, (10 July 2024), available at <<https://www.washingtonpost.com/national-security/2024/07/10/trump-proof-nato-summit/>>; Lotje Boswinkel, ‘Trump-proofing NATO: 2% won’t cut it’, Commentary, *Royal United Services Institute (RUSI)*, (7 March 2024), available at <<https://www.rusi.org/explore-our-research/publications/commentary/trump-proofing-nato-2-wont-cut-it>>.

functions and peacefully settle disputes among its members to stricter UNSC controls.³⁰⁸ Pursuant to Article 53 UNC, the UNSC must authorise ‘regional arrangements or agencies’ to take enforcement action. This means that, as a permanent member, the USSR could have vetoed NATO’s action in the UNSC before it could legally be undertaken. Under Article 51 UNC, on the other hand, no such authorisation is required for self-defence purposes; there is only a requirement to immediately report steps taken to the UNSC and refrain from taking further action once the UNSC intervenes.

The issue of the applicability of Article 53 UNC, and Chapter VIII more broadly, was long debated by the drafters during the negotiations leading to the adoption of the NAT. In the Minutes of the Sixteenth and Eighteenth meetings of the Washington Exploratory Talks on Security, European negotiators stressed the importance of avoiding language that could suggest that the NAT was primarily intended as a regional agreement, limiting NATO’s action.³⁰⁹ As a consequence, it was decided that no reference to Chapter VIII be made, either in the Treaty or its Preamble. Article 5 NAT would rest solely on Article 51 UNC.³¹⁰

Despite its intervention in Kosovo and other parts of the Former Yugoslavia,³¹¹ NATO does not consider itself as a regional entity and has claimed it from the outset.³¹² The inclusion of non-North Atlantic countries such as Italy, Greece, Türkiye and Eastern European countries has only strengthened this argument.³¹³ As rightly pointed out by Hakimi, ‘[t]his distinction [between regional organisations and defensive alliances], however, has essentially been rendered obsolete, as agencies traditionally conceived in terms of Chapter VIII have assumed functions of collective self-defence, and military alliances have assumed Chapter VIII functions.’³¹⁴ NATO’s actions in Libya following UNSC approval are a case in point.

3. *Strategic Analysis*

To assess what the invocation of Article 5 entails and how NATO’s deterrence and defence has evolved in response to changes in the international security environment, particular attention must

³⁰⁸ Grady, (n 104), 183.

³⁰⁹ US Office of the Historian, ‘Minutes of the Sixteenth Meeting of the Washington Exploratory Talks on Security, March 7, 1949, 3 p. m.’, Document 92, Foreign Relations of the United States, 1949, Western Europe, Volume IV, (7 March 1949), 168-172, available at <<https://history.state.gov/historicaldocuments/frus1949v04/d92>>; US Office of the Historian, Minutes of the Eighteenth Meeting (n 124), 214-221.

³¹⁰ See also Table 3, XII.

³¹¹ Bruno Simma ‘NATO, the UN and the use of force: legal aspects’, 10/1 *European Journal of International Law* (1999), 1–22.

³¹² See, e.g., Ismay (n 77), 12-13.

³¹³ US Office of the Historian, Minutes of the Sixteenth Meeting (n 309); US Office of the Historian, Minutes of the Eighteenth Meeting (n 124), 216.

³¹⁴ Monica Hakimi, ‘To Condone or Condemn? Regional Enforcement Actions in the Absence of Security Council Authorization’, 40/3 *Vanderbilt Journal of Transnational Law* (2007), 651. See also Christoph Schreuer ‘Regionalism v. Universalism’, 6 *European Journal of International Law* (1995), 490.

fail – was made though. The document generically urged for the development of ‘methods to compensate for numerical inferiority’.³²⁰

b. The 1952 Strategic Concept for the Defence of the North Atlantic Area

Adopted by the NAC on 3 December 1952, following the addition of Greece and Türkiye, NATO’s second Strategic Concept – MC 3/5(Final) – was in many ways identical to the first and retained the implicit reference to both the USSR and to nuclear deterrence.³²¹ On the other hand, the explicit reference to the USSR was kept in the revised Strategic Guidance – MC 14/1 – approved a few days later.³²² The latter stated that in the event of war, the Alliance’s overall strategic objective would have been ‘to ensure the defense of the NATO area and to *destroy the will and capability of the Soviet Union and her satellites to wage war*, initially by means of an air offensive, while at the same time conducting air, ground and sea operations’[emphasis added]. It specified that air offensives could have been conducted ‘*by all means possible and with all types of weapons*’ [emphasis added].³²³

c. The 1957 Overall Strategic Concept for the Defence of the North Atlantic Organisation Area

The third Strategic Concept, unlike the first two, made specific reference to both the Soviet Union and nuclear weapons; the words ‘Soviet’ and ‘nuclear’ are mentioned fifty-six and fifty-five times respectively.³²⁴ Adopted on 21 February 1957 as MC 14/2, the Concept acknowledged that the development of nuclear weapons had fundamentally changed the nature of war.³²⁵ As a consequence, deterrence would have to be based on resort to an integrated and ‘fully effective nuclear retaliatory force’, while defence on ‘the ability to carry out an instant and devastating nuclear counter-offensive’ in the event of all-out war,³²⁶ as well as ‘the ability to use land, sea and air forces’³²⁷ promptly in response to covert operations such as ‘infiltrations, incursions or hostile local actions in the NATO

³²⁰ NATO, ‘North Atlantic Military Committee Decision on M.C. 14 Strategic Guidance for North Atlantic Regional Planning, M.C. 14, 28 March 1950’, in Gregory G. Pedlow (ed.) *NATO Strategy Documents 1949-1969* (NATO 1997), 90, available at <<https://www.nato.int/docu/stratdoc/eng/a500328c.pdf>>.

³²¹ NATO, ‘Note by the Secretary to the North Atlantic Military Committee on the Strategic Concept for the Defense of the North Atlantic Treaty Area, M.C.3/5 (Final), 3 December 1952’, in Gregory G. Pedlow (ed.) *NATO Strategy Documents 1949-1969* (NATO 1997), 190, available at <<https://www.nato.int/docu/stratdoc/eng/a521203a.pdf>>. See also Table 4, XIII.

³²² See Table 4, XIII.

³²³ NATO, ‘North Atlantic Military Committee Decision on M.C. 14/1 A Report by the Standing Group on Strategic Guidance, M.C. 14/1, 9 December 1952’, in Gregory G. Pedlow (ed.) *NATO Strategy Documents 1949-1969* (NATO 1997), 205-206, available at <<https://www.nato.int/docu/stratdoc/eng/a521209a.pdf>>.

³²⁴ 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), available at <<https://www.nato.int/docu/stratdoc/eng/a570523a.pdf>>. See also Table 4, XIII.

³²⁵ *Ibid.*, para. 10, 287.

³²⁶ *Ibid.*, paras. 15, 289, and 25a, 293. See also Table 4, XIII.

³²⁷ *Ibid.*, para. 25b, 293.

area'³²⁸ short of all-out war. Additionally, unlike past documents, the fact that land, sea and air operations could involve 'nuclear strategic campaign[s]' was expressly stated.³²⁹

The reason behind the use of such bold language is presumably that, following the outbreak of the Korean War and the failure to implement the 1952 Lisbon Force Goals, then-US Secretary of State, John Forster Dulles, had called for NATO 'to use atomic weapons as conventional weapons against the military assets of the enemy whenever and wherever it would be of advantage to do so' when addressing the NAC on 23 April 1954.³³⁰ This doctrine of *massive retaliation* was first incorporated into 'The Most Effective Pattern of NATO Military Strength for the Next Few Years' – MC 48 –,³³¹ adopted to provide strategic guidance until a complete review of NATO defence planning was accomplished, and later made its way into MC 14/2³³² and its implementation strategy – MC 48/2.

Importantly, NATO's third strategy document was also the first to clarify the geographical scope of Article 5: 'Continental Europe (consisting of Western Europe, flanked by Scandinavia and Southern Europe), Algeria, Asian Turkey, Iceland, the British Isles and North America. The security and defense of these involves also the Seas and NATO Islands in the NATO area. In particular this includes the North Atlantic, Davis Strait, Denmark Strait, Norwegian Sea, North Sea, English Channel, Western Baltic, and the Mediterranean and Black Seas.'³³³

d. The 1968 Overall Strategic Concept for the Defence of the North Atlantic Organisation Area

The Alliance's fourth Strategic Concept – MC 14/3 – was adopted on 1 January 1968 and reiterated the importance of nuclear deterrence and forward defence for the collective defence of the Alliance³³⁴. The ultimate goal remained to avert war by building a potent deterrent to all forms of Soviet aggression. However, this deterrent would consist of both nuclear and conventional capabilities. Officially, the reasoning behind this choice was that a certain degree of flexibility was deemed necessary to 'prevent the potential aggressor from predicting with confidence NATO's

³²⁸ *Ibid.*, para. 19, 291.

³²⁹ *Ibid.*, para. 14, 289.

³³⁰ US Office of the Historian, 'Statement by the Secretary of State to the North Atlantic Council Closed Ministerial Session, Paris, April 23, 1954', Document 264, Foreign Relations of the United States 1952–1954, Western European Security, Volume V, Part 1, (23 April 1954), 512, available at <<https://history.state.gov/historicaldocuments/frus1952-54v05p1/d264>>.

³³¹ Sloan 2020, (n 48), 62.

³³² Pedlow 1997, (n 148) XVII–XVIII; Pedlow 2024, (n 139), 34.

³³³ MC 14/2 Revised, (n 324), Appendix, para. 2, 295. See also Table 4, XIII.

³³⁴ NATO 'Military Decision on MC 14/3: A Report by the Military Committee to the Defense Planning Committee on Overall Strategic Concept for the Defense of the North Atlantic Treaty Organization Area, MC 14/3 (Military Decision), 22 September 1967', in Gregory G. Pedlow (ed.) *NATO Strategy Documents 1949-1969*, (NATO 1997), paras. 1 and 2, 351, 10, 355, and 18a and 18b, 359-360, available at <<https://www.nato.int/docu/stratdoc/eng/a680116a.pdf>>. See also Table 4, XIII.

specific response to aggression [...]’.³³⁵ Unofficially, this *flexible response* strategy was embraced by the Allies because Soviet advances in nuclear weapons and intercontinental ballistic missiles had led to nuclear parity with the USA, affecting the applicability of the doctrine of massive retaliation due to the risk of mutually assured destruction.³³⁶

Adopted in the aftermath of the Berlin and Cuban missile crises, this last strategic document of the Cold War era underscored how NATO should be prepared for a surprise attack of either non-nuclear or nuclear nature, both inside and outside its area, by increasing its conventional force levels – deterrence by reinforcement.³³⁷ Addressing the NAC on 14 December 1962, then-US Secretary of Defence, Robert McNamara, had argued that NATO strategic concepts were risking getting ‘out of touch with international and technological developments’, and called for the Alliance to develop a ‘stronger non-nuclear posture’ since nuclear forces ‘did not serve as a universal deterrent against all forms of Communist political and military aggression’.³³⁸

The nuclear option, therefore, would be both the ‘ultimate deterrent’ and the ‘ultimate military response’.³³⁹ According to the Concept, NATO retained its first-use policy, while at the same time opting to activate the nuclear button following consultations under Article 4 – except in the event of a nuclear attack – only after ‘direct defence’ and ‘deliberate escalation’ had been tried and failed.³⁴⁰ The former aimed to stop aggression at whatever level the enemy chose to engage in combat, while the latter to counter aggression by purposefully stepping up the fight and making the prospect of a nuclear escalation more likely. For a credible deterrent, NATO Allies would have to commit sufficient land, sea and air forces, capable of conducting both conventional and nuclear defence. These would be kept in a high state of readiness during peacetime, and rapidly incremented should a sudden military build-up of Soviet forces occur. To enhance the deterrent effect, Allies were encouraged to keep their national forces at high readiness as well, so that they could easily be sent to reinforce the former.

Finally, it is worth noting that the 1968 Concept was also the first to consider the possibility of bacteriological and chemical warfare,³⁴¹ arguing that Warsaw Pact members were in possession of such weapons,³⁴² which could have given them a significant advantage. The Concept’s

³³⁵ *Ibid.*, para. 16c, 358.

³³⁶ Monaghan (n 317), 4; Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 271; Sloan 2020, (n 48), 152; Sloan 2024, (n 71), 215.

³³⁷ Monaghan, (n 317), 5. See also Table 4, XIII.

³³⁸ US Office of the Historian, ‘Address by US Secretary of Defense McNamara at the Ministerial Meeting of the North Atlantic Council, Paris, December 14, 1962’, Document 120, Foreign Relations of the United States, 1961–1963, Volume VIII, National Security Policy, (14 December 1962), 439, 444, available at <<https://history.state.gov/historicaldocuments/frus1961-63v08/d120>>.

³³⁹ MC 14/3, (n 334), para. 17c, 359. See also Table 4, XIII.

³⁴⁰ *Ibid.*, paras. 17a and 17b, 358, 22a, 362 and 35a, 367. See also Table 4, XIII.

³⁴¹ *Ibid.*, para. 30, 366. See also Table 4, XIII.

³⁴² *Ibid.*, para. 5b, 353.

accompanying implementation strategy ‘Measures to Implement the Strategic Concept for the Defense of the NATO Area’ – MC 48/3 –³⁴³ was also based on the doctrine of flexible response.

As mentioned in section 1.2, by the end of the 1960s, flexible response was complemented by the *Harmel doctrine*.³⁴⁴ As the Alliance’s twentieth anniversary was fast approaching and with it the possibility of individual Allies’ withdrawal – especially following France’s decision to abandon the NCS – Belgian foreign minister, Pierre Harmel, was tasked with compiling a ‘Report on the Future Tasks of the Alliance’ to look ahead to the next twenty years and the responsibilities that the Alliance would need to undertake.³⁴⁵ The ‘Harmel report’, as it came to be known, was approved by the NAC in December 1967 and advocated for a two step-approach of deterrence/defence and détente/dialogue in East-West relations.³⁴⁶ A balanced reduction of military forces was not yet considered feasible at the time, mostly due to the unsolved issue of German reunification. Therefore, the study suggested that the Alliance ‘maintain adequate military strength and political solidarity to deter aggression [...] and to defend the territory of member countries if aggression should occur’, while also pursuing ‘a greater relaxation of tensions’ with the USSR.³⁴⁷

Collective defence, and specifically deterrence and defence would, therefore, remain the Alliance’s ‘first function’, allowing for stabilisation and improvement in relations with the Soviet Union and Eastern European countries, NATO’s ‘second function’.³⁴⁸ This doctrine is the one currently governing relations with Russia in the context of the 2022 war in Ukraine.³⁴⁹

3.2 Post-Cold War Strategic Concepts

Unlike the four Cold-War Strategic Concepts, the four post-Cold War concepts – adopted in 1991, 1999, 2010 and 2022 – were released upon adoption and are markedly different in nature. At the 1990 London Summit, Allies agreed to abandon the idea of *forward defence* in favour of a reduced

³⁴³ NATO, ‘Final Decision on MC 48/3 Measures to Implement the Strategic Concept for the Defence of the NATO Area, MC 48/3(Final), 8 December 1969’, in Gregory G. Pedlow (ed.) *NATO Strategy Documents 1949-1969*, (NATO 1997), available at <<https://www.nato.int/docu/stratdoc/eng/a691208a.pdf>>.

³⁴⁴ Ian Hope ‘NATO, 1968-1989’, in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (London: Routledge, 2024), 42; Pedlow 2024, (139), 37.

³⁴⁵ NATO, ‘Resolution on future tasks of the Alliance’, (16 December 1966), available at <<https://archives.nato.int/uploads/r/null/7/1/710/05-V1.pdf>>. See also Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 99-103.

³⁴⁶ NATO ‘Press Communique M4(67)3, Final Communique’, (14 December 1967), available at <<https://archives.nato.int/uploads/r/null/2/1/2126/69-V9.pdf>>. See also Table 4, XIII.

³⁴⁷ NATO ‘Future Tasks of the Alliance Report 1’, NATO Confidential Document C-M(67)74(Revised), (13 December 1967), para. 5, 2, available at <<https://archives.nato.int/uploads/r/null/2/1/2110/65-V9.pdf>>. See also Stephen J. Flanagan, ‘Sustaining NATO’s Political Cohesion’, in John Andreas Olsen (ed.) *Routledge Handbook of NATO* (London: Routledge, 2024), 347; Rynning 2024, NATO: From Cold War to Ukraine, (n 345).

³⁴⁸ NATO, Future Tasks of the Alliance Report 1, (n 347); Rynning 2024, NATO: From Cold War to Ukraine, (n 38), 100.

³⁴⁹ Rynning 2024, NATO: From Cold War to Ukraine, (n 345). See also Sten Rynning, ‘Sweden and Finland Add Both Muscle and Risk to NATO’, *Carnegie Europe*, (7 March 2024), available at <<https://carnegieeurope.eu/strategieurope/91922>>. See also Table 4, XIII.

forward presence and to update the Alliance's military doctrine to reflect a decreased reliance on nuclear weapons. NATO took stock of the profound political and security developments that had taken place in Central and Eastern Europe since the fall of the Berlin wall in 1989 and decided to undergo an in-depth strategic review to develop a 'broad approach to security'.³⁵⁰ From 1991 onwards, as the threat of simultaneous, full-scale attacks on different European fronts had seemingly disappeared with the disintegration of the USSR, deterrence and defence increasingly became a low priority and were included into a wider range of tasks.

e. The Alliance's New Strategic Concept 1991

This review resulted in the first strategic concept of the post-Cold War era. Endorsed at the Rome Summit on 8 November 1991, the new Strategic Concept put forward a new approach, which added to the Harmel formula of collective defence and dialogue/cooperation, crisis management and conflict prevention.³⁵¹ With the end of the Cold War, NATO was increasingly looking to disarm itself. However, although seeking a 'non-adversarial and cooperative relationship' with the former enemy, NATO was looking to keep a 'strategic balance'.³⁵² The Alliance was in fact making substantial progress with regards to arms control in both conventional and nuclear forces, as demonstrated by the signing in 1990 of the Treaty on Conventional Armed Forces in Europe (CFE) and the Strategic Arms Reduction (START) Treaty a year later.³⁵³ The signing of an international chemical weapons ban was also part of these arms control efforts. This new disarmament policy contributed to both dialogue and cooperation with Russia as well as with other nations.

The maintenance of an adequate military capability sufficient to prevent war and provide for effective collective defence was, however, still a necessity as the Alliance was beginning to face 'multi-faceted and multi-directional' threats.³⁵⁴ Unlike Cold-War Strategic Concepts, which only made explicit reference to Article 3 NAT, the 1991 Strategic Concept made clear reference to both Articles 5 and 6, by expressly stating that '[a]ny armed attack on the territory of the allies, from whatever direction, would be covered by Articles 5 and 6 of the Washington Treaty'³⁵⁵ and that '*the security of all allies is indivisible: an attack on one is an attack on all*'. [emphasis added].³⁵⁶ This fostered a sense of '*equal security*'³⁵⁷ among Allies. In addition, the Concept was also the first to

³⁵⁰ NATO, *The Alliance's New Strategic Concept (1991) agreed by the Heads of State and Government participating in the Meeting of the North Atlantic Council*, (7-8 November 1991), paras. 14, 24, 34, available at <https://www.nato.int/cps/en/natohq/official_texts_23847.htm>.

³⁵¹ *Ibid.*, paras. 28, 29, 30 and 31. See also Table 5, XIV.

³⁵² *Ibid.*, paras. 13 and 38.

³⁵³ *Ibid.*, para. 3. See also Table 5, XIV.

³⁵⁴ *Ibid.*, para. 8. See also Table 5, XIV.

³⁵⁵ *Ibid.*, para. 12. See also Table 5, XIV.

³⁵⁶ *Ibid.*, para. 36.

³⁵⁷ *Ibid.*, para.18.

acknowledge the importance of the countries in Europe's Southern periphery for the stability of Europe and to notice that allied security interests could also be affected by 'risks of a wider nature, including proliferation of *weapons of mass destruction* [...] and *actions of terrorism and sabotage*'.³⁵⁸ In order to address them, NATO would serve as a framework for consultations under Article 4, allowing Allies to decide and coordinate on the appropriate measures to manage crises and to prevent conflicts.³⁵⁹

f. *The Alliance's Strategic Concept 1999*

Adopted eight years later on 24 April 1999 at the Washington Summit, the Alliance's sixth Strategic Concept acknowledged the significance of political, economic, social and environmental factors in addition to the defence dimension.³⁶⁰ It also reiterated and elaborated on many of the elements and principles expressed in the previous strategy, such as the new broad approach to security, the indivisibility of European and North American security, and the multi-directionality of the threats faced by the Alliance. This approach would enable NATO to accomplish its now *three core tasks: security, consultation, and deterrence and defence*.³⁶¹ Euro-Atlantic stability and security were to be enhanced through: 1) the preservation of the transatlantic link; 2) the European Security and Defence Identity (ESDI); 3) the maintenance of effective military forces; 4) the promotion of partnerships, cooperation and dialogue with other countries, including Russia and Ukraine, and with other international organisations – namely the UN, the OSCE, the EU and the WEU; 5) the development of arms control, disarmament and non-proliferation agreements; and 6) the involvement in conflict prevention and crisis response operations, such as those launched in the Balkans.³⁶²

The Alliance sought to deepen cooperation and dialogue with both Russia and Ukraine, as these countries played a 'unique role' and occupied a 'special place' in Euro-Atlantic security, respectively.³⁶³ The NATO-Russia Founding Act aimed at fostering common interest with the Russian Federation, as well as reciprocity and transparency, while the NATO-Ukraine Charter was a first step towards strengthening the Alliance's partnership with Ukraine, which had joined the Partnership for Peace (PfP) programme alongside Georgia in 1994.³⁶⁴ The strategy also touched upon the importance

³⁵⁸ *Ibid.*, paras. 11 and 12. See also Table 5, XIV.

³⁵⁹ *Ibid.*, para. 12.

³⁶⁰ NATO, *The Alliance's Strategic Concept (1999) Approved by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C.*, (24 April 1999), para. 25, available at <https://www.nato.int/cps/en/natohq/official_texts_27433.htm>. See also Table 5, XIV.

³⁶¹ *Ibid.*, para.10. See also Table 5, XIV.

³⁶² *Ibid.*, paras. 26-40.

³⁶³ *Ibid.*, paras. 36 and 37. See also Table 5, XIV.

³⁶⁴ See also Table 5, XIV.

of the Mediterranean region and of the Mediterranean Dialogue process as part of NATO's cooperative approach to security.³⁶⁵

In terms of partnership with other organisations, in line with statements made at the 1994 and 1996 Summits concerning support for the development of the ESDI within NATO, to enable European Allies to assume greater responsibilities in the security and defence field, the Concept stated that the EU's decision to develop a common foreign and security policy and common defence policy under the 1997 Treaty of Amsterdam was compatible with obligations made under the Washington Treaty and that it would allow European allies to make 'a more coherent and effective contribution to the missions and activities of the Alliance' and to share responsibilities.³⁶⁶

Finally, the Concept focused on the Alliance's open-door policy pursuant to Article 10 NAT and stated that 'nations willing and able to assume the responsibilities and obligations of membership, and [...] serve the overall political and strategic interests of the Alliance, strengthen its effectiveness and cohesion, and enhance overall European security and stability' could expect an invitation in the coming years.³⁶⁷

g. *The 2010 Strategic Concept 'Active Engagement, Modern Defence'*

At the Lisbon Summit on 19 November 2010, NATO adopted its seventh Strategic Concept, which reaffirmed the Alliance's determination to adapt to a rapidly evolving security environment. The document identified *three fundamental tasks: collective defence, crisis management, and cooperative security*.³⁶⁸ This latter concept – cooperative security – was used to englobe some of the elements mentioned in the previous strategy, namely the Alliance's partnership, arms control, non-proliferation and disarmament, and open-door policies.

Reflecting the international climate of the time, the Concept judged a large-scale conventional attack on allied territory to be improbable. Nevertheless, unlike in the previous strategy, *collective defence*, which was to be pursued through a mix of nuclear and conventional forces including the NRF – a land, air and sea rapid reaction force launched at the 2002 Prague Summit –³⁶⁹ was listed *first*, not last among NATO's core tasks.³⁷⁰ This was certainly in response to the militarisation process that several nations and regions around the world were undergoing,³⁷¹ as well as emerging, non-traditional threats such as terrorism, the proliferation of nuclear weapons and of WMDs.³⁷² In

³⁶⁵ *Ibid.*, para. 38.

³⁶⁶ *Ibid.*, para. 17. See also Table 5, XIV.

³⁶⁷ *Ibid.*, para. 39. See also Table 5, XIV.

³⁶⁸ *2010 NATO Strategic Concept*, (n 46), paras. 4a, 4b and 4c, 7-8. See also Table 5, XIV.

³⁶⁹ *Ibid.*, para. 19, 15. See also *2002 NATO Prague Summit Declaration*, (n 209), para. 4a.

³⁷⁰ *2010 NATO Strategic Concept*, (n 46), para. 4a, 7. See also Table 5, XIV.

³⁷¹ *Ibid.*, paras. 8 and 10.

³⁷² *Ibid.*, para. 7, 9 and 10.

particular, terrorism was described as a ‘direct threat’ to the Alliance,³⁷³ building on initiatives already launched at the abovementioned Prague Summit, when NATO first sought to develop counterterrorism capabilities under the Military Concept for Defence Against Terrorism – MC 472.³⁷⁴ It was only after 2010, however, that NATO adopted a more coherent counterterrorism policy.³⁷⁵ Cyber operations were also recognised as a major concern, with the Concept warning that such attacks could ‘reach a threshold that threatens national and Euro-Atlantic prosperity, security and stability’.³⁷⁶

Another central theme was partnerships. In this respect, the EU was characterised as NATO’s ‘unique and essential partner’, with the Concept welcoming the entry into force of the Lisbon Treaty.³⁷⁷ Yet, strikingly, the document avoided addressing how NATO’s Article 5 commitments related to the EU’s new mutual defence clause under Article 42(7) TEU.³⁷⁸ Russia was also labelled a partner of ‘strategic importance’³⁷⁹ with the NATO-Russia Council launched to enhance cooperation and consultations on common interests.³⁸⁰ Additionally, NATO reaffirmed its support for Ukraine and Georgia, with the establishment of the NATO-Ukraine and NATO-Georgia Commissions.³⁸¹ This aligned with NATO’s decision at the 2008 Bucharest Summit to welcome the two countries’ membership aspirations.³⁸²

Significantly, unlike the two earlier post–Cold War strategies, the 2010 Concept discussed *defence and deterrence first* and underscored that they remained ‘the greatest responsibility of the Alliance’.³⁸³ The text also affirmed that while NATO did not regard any state as an adversary, its resolve to defend allied territory should not be doubted.³⁸⁴

Although Russia was still officially treated as a strategic partner, the shadow of the 2008 Russo-Georgian war loomed large. Moscow’s invasion of Georgia and recognition of South Ossetia and Abkhazia represented a serious breach of the 1975 Helsinki Final Act. In retrospect, the Lisbon Concept marked a transitional moment: NATO sought to preserve a framework of dialogue with

³⁷³ *Ibid.*, para. 10, 11. See also Table 5, XIV.

³⁷⁴ In 2016, MC472 was superseded by MC472/1. See NATO, *Final Decision on MC0472/1 MC Concept for Counterterrorism*, (6 January 2016), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_01/20160817_160106-mc0472-1-final.pdf>.

³⁷⁵ NATO, *NATO’s Policy Guidelines on Counter-Terrorism - Aware, Capable and Engaged for a Safer Future - NATO Chicago Summit*, May 20-21, 2012, (21 May 2012), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_topics/ct-policy-guidelines.pdf>. See also Stefano Santamato and Marie-Therese Beumler, ‘The New NATO Policy Guidelines on Counterterrorism: Analysis, Assessment, and Actions’, 13 *Strategic Perspectives* (2013), 1-47.

³⁷⁶ *2010 NATO Strategic Concept*, (n 46), para. 12, 11. See also Table 5, XIV.

³⁷⁷ *Ibid.*, para. 32, 28. See also Table 5, XIV.

³⁷⁸ See Table 5, XIV.

³⁷⁹ *2010 NATO Strategic Concept*, (n 46), para. 19, 16, and para. 33, 29.

³⁸⁰ *Ibid.*, para. 34, 30. See also Table 5, XIV.

³⁸¹ See Table 5, XIV.

³⁸² *2010 NATO Strategic Concept*, (n 46), para. 35, 31.

³⁸³ *Ibid.*, para. 16, 14. See also Table 5, XIV.

³⁸⁴ *Ibid.*

Russia while simultaneously beginning to prepare for the possibility of renewed confrontation – a shift that foreshadowed today’s climate of strategic competition.³⁸⁵

h. The 2022 Strategic Concept

NATO’s most recent Strategic Concept, its eighth, was adopted at the Madrid Summit on 29 June 2022 against the backdrop of Russia’s large-scale assault on Ukraine. From the outset, the document struck a markedly political note: it declared that ‘a strong, independent Ukraine is vital to the stability of the North Atlantic area’³⁸⁶ and reiterated both the Alliance’s open-door commitment and the promise made in 2008 in Bucharest regarding Ukraine and Georgia’s future membership.³⁸⁷

The Concept reaffirmed the three core missions introduced in 2010 – deterrence and defence, crisis prevention and management, and cooperative security³⁸⁸ – while placing greater emphasis on the first. Collective defence was, in fact, described as NATO’s ‘greatest responsibility’, and the need to reinforce deterrence and defence was presented as urgent, given that armed attack against allied territory could no longer be dismissed as an abstract or unlikely scenario.³⁸⁹

The most dramatic departure from the 2010 framework was the reassessment of Russia. No longer portrayed as a strategic partner, Moscow was now described as ‘the most significant and direct threat to Allies’ security and to peace and stability in the Euro-Atlantic area.’³⁹⁰ At the same time, the Alliance stressed that it does not seek confrontation and ‘poses no threat’ to the Russian Federation,³⁹¹ though it emphasised its determination and ability to defend every inch of allied territory to preserve members’ sovereignty.³⁹² This rhetorical shift was matched by a practical return to deterrence and forward defence.³⁹³ The roots of this change lay in Russia’s annexation of Crimea in 2014, which spurred the adoption of the Readiness Action Plan. That plan had introduced the Very High Readiness

³⁸⁵ Peter Dickinson, ‘The 2008 Russo-Georgian War: Putin’s green light’, *Atlantic Council* (7 August 2021), available at <<https://www.atlanticcouncil.org/blogs/ukrainealert/the-2008-russo-georgian-war-putins-green-light/>>; Michael Hirsh, ‘We Are Now in a Global Cold War: With NATO expanding its focus to China, new battle lines are being drawn’, *Foreign Policy* (27 June 2022), available at <<https://foreignpolicy.com/2022/06/27/new-cold-war-nato-summit-united-states-russia-ukraine-china/>>.

³⁸⁶ *2022 NATO Strategic Concept*, (n 46), Preface, 1, and para. 41, 10. See also Table 5, XV.

³⁸⁷ *Ibid.* See also Table 5, XV.

³⁸⁸ *Ibid.*, para. 4, 3. See also Table 5, XV.

³⁸⁹ *Ibid.*, para. 1, 3. See also Nicolas Camut, ‘Putin could attack NATO in “5 to 8 years,” German defense minister warns’, *Politico*, (19 January 2024), available at <<https://www.politico.eu/article/vladimir-putin-russia-germany-boris-pistorius-nato/>>; Richard Milne and Marton Dunai, ‘Russia could attack a Nato country within 3 to 5 years, Denmark warns’, *Financial Times*, (9 February 2024), available at <<https://www.ft.com/content/b3101099-9516-4b0b-92c6-179997d7e4cf>>; Dan Sabbagh, ‘Russia could be ready to attack Nato within five years, says secretary general’, *The Guardian*, (9 June 2025), available at <<https://www.theguardian.com/world/2025/jun/09/nato-chief-russia-quantum-leap-defence>>; Patrick Wintour, ‘Russia could attack Nato states if west fails to support Ukraine, Macron says’, *The Guardian*, (26 February 2024), available at <<https://www.theguardian.com/world/2024/feb/26/emmanuel-macron-paris-conference-aims-to-show-the-west-has-means-to-defeat-putin>>.

³⁹⁰ *2022 NATO Strategic Concept*, (n 46), para. 8, 4. See also Table 5, XV.

³⁹¹ *Ibid.*, para. 9, 4; *2010 NATO Strategic Concept*, (n 46), para. 33, 29.

³⁹² *2022 NATO Strategic Concept*, (n 46), para. 20, 6 and para. 28, 7.

³⁹³ *Ibid.*, para. 21, 6. See also Table 5, XV.

Joint Task Force (VJTF), expanded the NRF, established four rotational battlegroups in Poland and the Baltic states as part of the eFP, and recommitted members to higher defence spending.³⁹⁴ Russia's 2022 invasion accelerated this trend: four additional battlegroups were stationed in Bulgaria, Hungary, Romania, and Slovakia,³⁹⁵ and in subsequent summits – Vilnius in 2023 and Washington in 2024 – Allies agreed that the 2% defence spending benchmark should serve as a baseline rather than a ceiling.³⁹⁶

The Alliance also codified its evolving military posture in the classified 2019 Military Strategy, implemented through the publicly available Warfighting Capstone Concept (NWCC),³⁹⁷ approved in 2021, and the classified DDA Concept, first approved in 2020 and then endorsed in Vilnius in 2023. While the NWCC sets out warfare-development initiatives to build military advantage and proactively shape the operating environment through 2040,³⁹⁸ the DDA Concept – the first extensive redesign of NATO's defence planning since the Cold War – has implemented a 'family' of plans across strategic, regional, and domain-specific levels³⁹⁹ to reinforce the Alliance's deterrence and defence posture by transitioning from crisis management toward large-scale collective defence operations in the NATO area.⁴⁰⁰ This 'family' of plans seeks to blend NATO's and national military plans in through a new Force Structure Requirement (FSR).⁴⁰¹ The FSR specifies the assets and

³⁹⁴ *NATO 2014 Wales Summit Declaration*, (n 231), paras. 8 and 14; NATO, 'Defence Ministers decide to bolster the NATO Response Force, reinforce collective defence', *News*, (24 June 2014), available at <https://www.nato.int/cps/en/natohq/news_120993.htm>; NATO, 'Press conference by NATO Secretary General Jens Stoltenberg following the meeting of NATO Defence Ministers', *Speeches & transcripts*, (24 June 2015), available at <https://www.nato.int/cps/en/natohq/opinions_120967.htm>; *NATO 2016 Warsaw Summit Communiqué*, (n 54), para. 40.

³⁹⁵ *NATO 2022 Madrid Summit Declaration*, (n 54), para. 9; NATO, 'Statement by NATO Heads of State and Government' Press Release (2022) 061, (24 March 2022), available at <https://www.nato.int/cps/en/natohq/official_texts_193719.htm>; NATO, *The Secretary General's Annual Report 2023*, (14 March 2024), 26, available at <https://www.nato.int/cps/en/natohq/opinions_223291.htm>.

³⁹⁶ *NATO 2023 Vilnius Summit Communiqué*, (n 57), para. 27; NATO, 'Speech by Secretary General Jens Stoltenberg at the NATO-Industry Forum', *Speeches & transcripts*, (25 October 2023), available at <https://www.nato.int/cps/en/natohq/opinions_219128.htm?selectedLocale=en>; 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), para. 6, available at <https://www.nato.int/cps/en/natohq/official_texts_227678.htm>; NATO, 'Keynote speech Defense Industry Forum by NATO Secretary General Jens Stoltenberg at the NATO Industry Forum in Washington', *Speeches & transcripts*, (22 July 2024), available at <https://www.nato.int/cps/en/natohq/opinions_227389.htm?selectedLocale=en>.

³⁹⁷ NATO ACT, *NATO Warfighting Capstone Concept* (2021), available at <<https://www.act.nato.int/wp-content/uploads/2023/06/NWCC-Glossy-18-MAY.pdf>>.

³⁹⁸ *Ibid.*, Introduction, 2.

³⁹⁹ Bauer, (n 45); 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>>.

⁴⁰⁰ Nele Loorents, 'NATO's Regional Defence Plans', *5 International Centre for Defence and Security*, (July 2024), 1, available at <https://icds.ec/wp-content/uploads/dlm_uploads/2024/07/No-5_NATOs-Regional-Defence-Plans_Nele-Loorents.pdf>; NATO, 'NATO Chiefs of Defence discuss executability of Regional Plans', *News*, (18 September 2023), available at <https://www.nato.int/cps/en/natohq/news_218538.htm>; Rynning 2024, *NATO 2014-2024*, (n 41), 72-73; US Department of Defence, 'SACEUR Provides Update on Deterrence, Defense of Euro-Atlantic Area', *News*, (10 May 2023), available at <<https://www.defense.gov/News/News-Stories/Article/Article/3391802/saceur-provides-update-on-deterrence-defense-of-euro-atlantic-area/>>.

⁴⁰¹ Deni 2024, (n 57), 2.

capabilities that NATO would require in a crisis or conflict, identifying where, what and how Allies must deploy, to ensure the Alliance is equipped to confront its two primary threats, as defined in the 2022 Strategic Concept: Russia and terrorism, the latter described as ‘the most direct asymmetric threat’ to the Alliance.⁴⁰² To this end, under the 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.⁴⁰³

For the first time, China was explicitly mentioned in a Strategic Concept. The text described the People’s Republic of China as a source of ‘systemic challenges’ to Euro-Atlantic security.⁴⁰⁴ Beijing is seeking to dominate important technological and industrial sectors, control critical infrastructure, as well as strategic materials and supply chains. It is also increasingly strengthening its worldwide influence and establishing strategic dependencies by using its economic clout. Furthermore, it is no mystery that the Chinese government harbours territorial ambitions for Taiwan and there is a very high risk that it might be tempted to replicate the Russian experiment on the island in the near future. In the attempt to deter China from doing so, the Concept highlights for the first time the importance of the Indo-Pacific region for NATO, claiming that ‘developments in that region can directly affect Euro-Atlantic security’.⁴⁰⁵

The Concept also warned of the destabilising effect of China’s growing partnership with Russia.⁴⁰⁶ At the 2024 Washington Summit, Allies went even further, labelling Beijing a ‘decisive enabler’ of Moscow’s war in Ukraine and cautioning that its ties with the West would incur repercussions if it continued to back what was recognised as ‘the largest war in Europe in recent history.’⁴⁰⁷ The communiqué also noted the emergence of a wider ‘axis of upheaval’⁴⁰⁸ – involving not only Russia and China, but also Iran and North Korea– which are collectively seeking to undermine the liberal international order.⁴⁰⁹ In response, the Concept stressed that ‘a single or cumulative set of malicious cyber activities; or hostile operations to, from, or within space; could

⁴⁰² *Ibid.*; NATO, ‘Opening remarks by the Chair of the NATO Military Committee, Admiral Rob Bauer and NATO Secretary General Jens Stoltenberg at the start of the Military Committee in Chiefs of Defence session’, *Multimedia*, (10 May 2023), available at <<https://www.natomultimedia.tv/app/asset/690624>>. See also Table 5, XV.

⁴⁰³ *Ibid.*, 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>>.

⁴⁰⁴ *2022 NATO Strategic Concept*, (n 46), para. 14, 5. See also Table 5, XV.

⁴⁰⁵ *Ibid.*, (n 46), para. 45, 11. See also Table 5, XV.

⁴⁰⁶ *Ibid.*, para. 13, 5. See also Table 5, XV.

⁴⁰⁷ 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>>; *NATO 2024 Washington Summit Declaration*, (n 396), para. 26.

⁴⁰⁸ Andrea Kendall-Taylor and Richard Fontaine, ‘The Axis of Upheaval. How America’s Adversaries Are Uniting to Overturn the Global Order’, *Foreign Affairs*, (May/June 2024), available at <<https://www.foreignaffairs.com/china/axis-upheaval-russia-iran-north-korea-taylor-fontaine>>.

⁴⁰⁹ *NATO 2024 Washington Summit Declaration*, (n 396), para. 4.

reach the level of armed attack and could lead the North Atlantic Council to invoke Article 5 of the North Atlantic Treaty’,⁴¹⁰ as could hybrid attacks.⁴¹¹

Iran and North Korea had already been flagged in 2022 for their nuclear and missile ambitions⁴¹²; the 2024 Summit declaration went further, noting that both countries are now providing direct military support to Russia, including artillery shells and ballistic missiles in North Korea’s case. NATO cautioned that any Iranian transfer of ballistic weapons would constitute a dangerous escalation.⁴¹³ The Alliance reaffirmed that its nuclear deterrent remained the cornerstone of its security, even as its practical focus continued to be on conventional defence.⁴¹⁴ Notably, the brief 2025 Hague Summit Declaration did not reiterate any of this, mentioning only Russia as a ‘long-term threat’ to Euro-Atlantic security, alongside the ‘persistent threat of terrorism’.⁴¹⁵

Finally, the Concept reaffirmed the EU’s role as NATO’s ‘unique and essential partner.’ In light of Russia’s aggression, this partnership was presented as even ‘more significant’.⁴¹⁶

Conclusion

This chapter has examined the formulation, interpretation and evolution of NATO’s Article 5 in order to assess the legal obligations it creates for the members of the Alliance, as well as the credibility of the collective defence commitments. First of all, it examined the negotiations leading to the signing of the NAT and the Alliance’s development into the enduring politico-military organisation that it is today. In reviewing its origins and development, it has argued that NATO’s adaptability – and its survival after the Cold War – stemmed in large part from the deliberately vague formulation of the collective defence clause.

The legal analysis showed that NATO was created to provide deterrence from armed attacks on multiple European fronts by the Soviet Union and to bind its signatories to the collective defence, should deterrence fail. The NAT itself, however, makes no reference to the USSR, which appeared only in strategic documents such as MC14. Nor does the Treaty define what constitutes an ‘armed attack’ or specify the precise threshold that the use of force must reach to trigger a collective defence response. Instead, Article 5 was deliberately left broad enough that virtually any Soviet military action could have justified a US response. At the same time, its language preserved the sovereign discretion

⁴¹⁰ 2022 NATO Strategic Concept, (n 46), para. 25, 7.

⁴¹¹ *Ibid.*, (n 46), para. 27, 7.

⁴¹² *Ibid.*, (n 46), para. 18, 5. See also Table 5, XV.

⁴¹³ *NATO 2024 Washington Summit Declaration*, (n 396), para. 25.

⁴¹⁴ *Ibid.*, para. 9; *2022 NATO Strategic Concept*, (n 46), para. 30, 8. See also Table 5, XV.

⁴¹⁵ 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>>; *NATO 2025 Hague Summit Declaration*, (n 64).

⁴¹⁶ *2022 NATO Strategic Concept*, (n 46), para. 43, 10; *NATO 2024 Washington Summit Declaration*, (n 396), para. 29. See also Table 5, XV.

of each signatory to decide the nature and scale of assistance. This vague formulation has allowed the Alliance to successfully adapt to the post-Cold War threat environment and broaden the interpretation of armed attack to include also non-traditional attacks, including terrorist, cyber, hybrid and space attacks. More broadening should be expected in the coming years as new threats emerge.

The chapter highlighted that on 11 September 2001, in an unprecedented display of solidarity, NATO Allies agreed to activate Article 5 NAT to assist the USA. Whether the current US administration would reciprocate for a European Ally – particularly one that will not reach the 5% of GDP defence spending target – remains, however, uncertain. Article 5 NAT creates an *obligation of result*, not of means. The United States vowed to provide assistance by taking ‘*such action as it deems necessary*’, including the use of armed force. Following De Vidts’ interpretation after 9/11, this means that in the event of an attack on Europe, US action might not necessarily align with European expectations in terms of speed, scope, or even substance. Moreover, given the absence of any disciplinary mechanism, nothing prevents Washington, or any other Ally, from choosing to do nothing at all.

The strategic analysis traced how NATO’s approach to collective defence has shifted over the last seventy-six years. After reviewing the Cold-War Strategic Concepts, the chapter showed that, with the end of the Cold War and the disappearance of the existential nuclear standoff, deterrence and defence were deprioritised, with the Alliance embracing new missions – namely crisis management and cooperative security – to adapt to the new threat environment. Yet Russia’s revisionism, starting with the August war and culminating in the full-scale invasion of Ukraine, has fundamentally altered this dynamic. Conventional armed attacks against European Allies are no longer regarded as a distant prospect, and NATO’s most recent Strategic Concepts, alongside the NWCC and DDA Concept, show an Alliance reorienting decisively back to deterrence and territorial defence. This strategic reorientation is evident in the stronger and more direct language of the 2010 – and especially the 2022 – Strategic Concepts, as well as in the increasingly assertive tone of NATO Summit declarations and in recently launched activities aimed at enhancing military presence in the Baltic Sea and Eastern flank. Further examination of Summit communiqués, together with statements by NATO Secretaries Generals and SACEURs, could provide a deeper understanding of how the Alliance’s approach to collective defence has evolved.

Ultimately, the chapter advances the view that credibility of Article 5 NAT rests on both military and political foundations: on the one hand, NATO’s capacity to deter and, if necessary, defend every inch of allied territory relies on its integrated arsenal of conventional forces and nuclear capabilities at all levels; on the other hand, the effectiveness of the mutual defence commitment depends on the unity and resolve of the Allies to uphold the indivisibility of their security. Despite

recent progress in rebuilding NATO's deterrence and defence posture, its credibility could be undermined if political will falters – particularly in the USA, where President Trump's ambiguous statements and (in)action could substantially weaken Allies' confidence in its security guarantee.

Chapter 2

Collective Defence in the EU: A Law-in-Context Analysis of Article 42(7) TEU

Introduction

In 1991, then-Belgian Minister of Foreign Affairs, Mark Eyskens, described the EU as ‘an economic giant, a political dwarf and a military worm’.⁴¹⁷ Today, the EU is no longer a political dwarf or a military worm, though military capability shortfalls remain.

In 2007, the Lisbon Treaty modified the 1992 Maastricht Treaty (or TEU) – as well as the other founding treaty, the Treaty Establishing the European Community (TEC), which it renamed as TFEU – and transformed the European Security and Defence Policy (ESDP), establishing the Common Security and Defence Policy (CSDP). Outlined in Articles 42-46 of Title V, Chapter 2, Section 2, the CSDP has made security and defence an integral part of the Common Foreign and Security Policy (CFSP) intergovernmental framework and allows EU Member States to make security and defence policy decisions on the basis of unanimity.⁴¹⁸

While reaffirming the Maastricht Treaty's principle that a common defence policy would develop progressively, with a common defence requiring unanimous agreement by the European Council,⁴¹⁹ the Lisbon Treaty introduced a mutual assistance obligation for EU Member States in Article 42(7) TEU. This obligation requires Member States to assist one another in the event of an armed aggression. Consequently, although the failure of the 1952 European Defence Community (EDC) project means that the EU lacks a common defence – such as NATO's integrated military command structure, shared nuclear doctrine, and other traditional defensive alliance characteristics – the EU Treaty now includes a qualified mutual defence clause.

Despite acknowledging that NATO remains the cornerstone of territorial defence for those countries that are members of both organisations, the 2016 EU Global Strategy and, more recently, the 2022 Strategic Compass, have stressed the need for EU Member States to be prepared to translate mutual assistance commitments into action.⁴²⁰ The strategic autonomy envisaged in 2016 remains

⁴¹⁷ As quoted by Craig R. Whitney, ‘War in the Gulf: Europe; Gulf Fighting Shatters Europeans’ Fragile Unity’, *The New York Times*, (25 January 1991), available at <<https://www.nytimes.com/1991/01/25/world/war-in-the-gulf-europe-gulf-fighting-shatters-europeans-fragile-unity.html>>.

⁴¹⁸ *Consolidated Version of the TEU*, (n 2), Article 42(4).

⁴¹⁹ *Ibid.*, Article 42(2); *Treaty of Maastricht*, OJ [1992] C 191/59, 29.07.1992, Article J.4(1).

⁴²⁰ 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), 9, 14, 19 and 20, available at <https://www.eeas.europa.eu/sites/default/files/eugs_review_web_0.pdf>; European External Action Service, *A Strategic Compass for Security and Defence. For a European Union that Protects its Citizens, Values and Interests and Contributes*

largely a work in progress, as highlighted by the continued need to negotiate and align with the USA, exemplified by the EU-US Framework on Reciprocal, Fair, and Balanced Trade announced in August.⁴²¹ Yet, the EU has made considerable steps forward, particularly since Russia launched an all-out war against Ukraine on 24 February 2022.⁴²²

The Union has supplied Ukraine with €11.1 billion in military aid through the European Peace Facility (EPF), an off-budget fund which enabled it to provide lethal weapons for the first time,⁴²³ and launched a training mission for Ukrainian forces (EUMAM Ukraine) on its soil, another first.⁴²⁴ The EU has also introduced initiatives like the European Defence Industry Reinforcement through common Procurement Act (EDIRPA)⁴²⁵ to address capability gaps, the Act in Support of Ammunition Production (ASAP)⁴²⁶ to boost artillery shell production, the European Defence Industry Strategy (EDIS)⁴²⁷, its first defence industrial strategy, supported by the European Defence Industry

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.eas.europa.eu/sites/default/files/documents/strategic_compass_en3_web.pdf>.

⁴²¹ 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>.

⁴²² 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; Daniel Fiott, ‘In every crisis an opportunity? European Union integration in defence and the War on Ukraine’, 45/3 *Journal of European Integration* (2023), 447–462; Govaere 2025, (n 1), 13–29; Heidi Maurer, Richard G. Whitman and Nicholas Wright, ‘The EU and the invasion of Ukraine: a collective responsibility to act?’, 99/1 *International Affairs* (2023), 219–238.

⁴²³ Council of the European Union, ‘European Peace Facility: Timeline - European Peace Facility’, (n.d.), available at <<https://www.consilium.europa.eu/en/policies/european-peace-facility/>>. See also Federico Fabbrini, ‘Funding the War in Ukraine, the European Peace Facility, the Macro-Financial Assistance Instrument, and the Slow Rise of and EU Fiscal Capacity’, 11/4 *Politics & Governance* (2023), 52–61.

⁴²⁴ Council of the European Union, ‘Ukraine: EU launches Military Assistance Mission’, Press Release, (15 November 2022), available at <<https://www.consilium.europa.eu/en/press/press-releases/2022/11/15/ukraine-eu-launches-military-assistance-mission/>>.

⁴²⁵ European Commission, *Commission Implementing Decision of 15.3.2024 on The Financing of The Instrument for the Reinforcement of the European Defence Industry through Common Procurement (EDIRPA) Established by Regulation (EU) 2023/2418 of the European Parliament and of the Council and the Adoption of the Work Programme for 2024-2025*, C(2024) 1700 final, (15 March 2024), available at <https://defence-industry-space.ec.europa.eu/document/download/8b38112b-a9e2-499e-bb1e-b8dbfc6dfb27_en?filename=EDIRPA%20Implementing%20Decision%20EN.pdf>.

⁴²⁶ European Commission, *Commission Implementing Decision of 18.10.2023 on the Financing of the Instrument on Supporting Ammunition Production (ASAP) Established by Regulation (EU) 2023/1525 of the European Parliament and of the Council and the Adoption of the Work Programme for 2023-2025*, C(2023) 7320 final, (18 October 2023), available at <https://defence-industry-space.ec.europa.eu/document/download/5845b34d-bb2f-4381-aca3-ec9ff965f687_en?filename=C_2023_7320_1_EN_ACT_and_annex.pdf>. See also Federico Fabbrini, (n 43), 167.

⁴²⁷ European Commission, *Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A New European Defence Industrial Strategy: Achieving EU Readiness Through a Responsive and Resilient European Defence Industry*, JOIN(2024) 10 final, (5 March 2024), available at <https://defence-industry-space.ec.europa.eu/document/download/643c4a00-0da9-4768-83cd-a5628f5c3063_en?filename=EDIS%20Joint%20Communication.pdf>.

Programme (EDIP)⁴²⁸ for long-term readiness, and the ReArm Europe Plan/Readiness 2030⁴²⁹ to facilitate national defence budget increases.⁴³⁰ In addition, a dedicated post of Defence and Space Commissioner was established within the European Commission in September 2024, followed by the upgrade of the Subcommittee on Security and Defence (SEDE) to a fully-fledged Committee in the European Parliament a few months later. It is also worth noting that the Strategic Compass envisions the creation of a Rapid Deployment Capacity (RDC) of 5,000 troops by the end of 2025.⁴³¹ Therefore, the EU has adopted important defence initiatives and, by endangering the credibility of NATO's Article 5 security guarantee, the second Trump administration is likely to accelerate this trend further.

In light of these developments, this chapter aims to review the EU's mutual assistance clause, enshrined in Article 42(7) TEU. This is done by mirroring the approach taken for NATO's mutual defence clause in Chapter 1. As with the NAT, declassified and unclassified documents relating to the 1948 Brussels Treaty, the 1952 European Defence Community Treaty, 1954 Modified Brussels Treaty, the 2004 Constitutional Treaty, and the 2007 Lisbon Treaty will be analysed and discussed. Examining these past treaties and related documents will not only shed light on the evolution of the mutual assistance clause but also highlight how the EU's legal framework has been influenced by the priorities and challenges of its Member States over time.

The next section will examine the evolution of the collective defence clause through the above-mentioned treaties. This will be followed by a legal analysis of Article 42(7) TEU and the collective defence responsibilities it entails for EU members, including differences and overlaps with similar obligations under the solidarity clause codified in Article 222 TFEU. These norms have seemingly attracted little attention from legal scholars. With the growing likelihood of military and

⁴²⁸ European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products ('EDIP')*, COM(2024) 150 final, (5 March 2024), available at <https://defence-industry-space.ec.europa.eu/document/download/6cd3b158-d11a-4ac4-8298-91491e5fa424_en?filename=EDIP%20Proposal%20for%20a%20Regulation.pdf>.

⁴²⁹ European Commission, 'Letter by President von der Leyen on defence', (4 March 2025), available at <<https://ec.europa.eu/commission/presscorner/api/files/attachment/880628/Letter%20by%20President%20von%20der%20Leyen%20on%20defence.pdf>>. See also European Commission, *Communication from the Commission Accommodating increased defence expenditure within the Stability and Growth Pact*, C(2025) 2000 final, (19 March 2025), available at <https://defence-industry-space.ec.europa.eu/document/download/a57304ce-1a98-4a2c-aed5-36485884f1a0_en?filename=Communication-on-the-national-escape-clause.pdf>; European Commission, *Proposal for a Council Regulation establishing the Security Action for Europe (SAFE) through the reinforcement of European defence industry Instrument*, COM(2025) 122 final, (19 March 2025), available at <https://defence-industry-space.ec.europa.eu/document/download/6d6f889c-e58d-4caa-8f3b-8b93154fe206_en?filename=SAFE%20Regulation.pdf>; Council of the European Union, 'SAFE: Council adopts €150 billion boost for joint procurement on European security and defence', Press Release, (27 May 2025), available at <<https://www.consilium.europa.eu/en/press/press-releases/2025/05/27/safe-council-adopts-150-billion-boost-for-joint-procurement-on-european-security-and-defence/>>.

⁴³⁰ While highly significant, these instruments are not examined in detail in this thesis, as their legal and policy dimensions have already been subject to extensive scholarly analysis. Further discussion would, therefore, add limited analytical value within the scope of this research.

⁴³¹ 2022 Strategic Compass, (420), 6, 11, 25, and 31.

hybrid attacks on Europe and concerns over Trump not upholding NATO's mutual security guarantee, the question of how credible the EU's mutual defence commitment is has become increasingly pressing. Equally important is understanding how this commitment would be operationalised and how it interacts with the solidarity obligation under Article 222 TFEU, as well as NATO's mutual defence obligations under Article 5 NAT.

The legal analysis shows that, similarly to Article 5 NAT, Article 42(7) TEU envisages an *obligation of result*, not of means but no disciplinary measures are contemplated in the event of inaction or inadequate action by one or more Member States. Furthermore, Article 42(7) TEU, like Article 5 NAT, covers both conventional and unconventional attacks – including cyber, hybrid, and space attacks, as well as state-sponsored and non-state sponsored terrorist attacks. This chapter, however, argues that the defence obligations triggered by the invocation of Article 42(7) TEU are *automatic*, unlike those under Article 5 NAT, but not, as some authors have suggested,⁴³² *unconditional*, due to the presence of both the Irish and NATO clauses.

The chapter concludes with a strategic analysis supporting a broad interpretation of Article 42(7) TEU, under whose scope both conventional and unconventional forms of aggression fall. To support this view, the chapter examines the 2003 European Security Strategy, 2016 EU Global Strategy and the 2022 Strategic Compass, along with their associated implementation strategies and progress reports. These documents reveal, however, that the EU has consistently prioritised unconventional threats such as terrorism, cyberattacks, hybrid warfare, and space-based risks while giving comparatively limited attention to conventional military threats. The fact that this remains the case despite Russia's full-scale invasion of Ukraine suggests that NATO is likely to continue to serve as the primary framework for traditional collective defence in Europe.

The chapter is structured as follows: Section 1 looks at the genesis of Article 42(7) TEU; Section 2 analyses the clause from a legal perspective, while also looking at the genesis of Article 222 TFEU and the differences between the two; Section 3 explores EU mutual assistance and solidarity from a strategic standpoint. The final section draws together the main findings and presents the conclusion.

1. Mutual Defence through the Treaties

This section traces the evolution of the mutual defence clause, from its origins in the 1948 Brussels Treaty, through the 1952 European Defence Community Treaty, 1954 Modified Brussels Treaty, and 2004 Constitutional Treaty, to its final form in the 2007 Lisbon Treaty.

⁴³² Hermann-Josef Blake and Stelio Mangiameli 'Article 42 [CSDP: Goals and Objectives; Mutual Defence] (ex-Article 17 TEU), in *The Treaty on European Union (TEU): A Commentary* (Berlin: Springer-Verlag Berlin Heidelberg, 2013), 1228.

1.1 *The Negotiations Leading to Article IV of the Brussels Treaty*

The EU's mutual assistance clause, also known as mutual defence clause, traces back to the 1948 Brussels Treaty (BT). A year after the UK and France had signed the Dunkirk Treaty against Germany, the emerging Soviet threat led the two Allied powers to conclude a similar defensive arrangement with the Benelux countries.⁴³³ The Marshall Plan, while providing crucial economic aid could not protect Western European countries from the Communist threat, as it did not include military assistance.⁴³⁴

Unable to delay or halt the Marshall Plan,⁴³⁵ in September 1947 the Soviet government had called for the establishment of a Communist Information Bureau (COMINFORM) to coordinate the activities of the Communist parties of Bulgaria, Czechoslovakia, France, Hungary, Italy, Poland, Romania, the USSR and Yugoslavia.⁴³⁶ The COMINFORM Declaration, which followed on 5 October, announced the setting up of such a bureau in Belgrade, Yugoslavia, and denounced the Marshall Plan as the expression of the expansionist aspirations of the 'imperialist and anti-democratic' camp led by the UK and USA.⁴³⁷ Soviet actions in Eastern Europe since the end of World War II, including the coup in Czechoslovakia in February 1948 and the imposition of the Agreement of Friendship, Cooperation, and Mutual Assistance on Finland two months later, demonstrated that it was, in fact, Soviet Russia that harboured imperialist ambitions.⁴³⁸

In order to protect Western nations and civilisation from the threat of Communism, in a speech before the House of Commons on 22 January 1948, then-UK Foreign Secretary, Ernst Bevin, proposed the creation of a 'United Western Union'.⁴³⁹ This Western European association would, in the mind of the British Foreign Office, involve the conclusion of bilateral agreements – initially with Belgium, Greece, Italy, Luxembourg, the Netherlands, Portugal, and Scandinavia, and eventually also with Germany and Spain – and would be supported by both the USA and the members of the Commonwealth.⁴⁴⁰ The aim was to strengthen political, economic, social and military cooperation among these countries, including by providing mutual assistance in the event of aggression.

⁴³³ Insall & Salmon, (n 81), n.7, 14-16, and n.12, 28.

⁴³⁴ Insall & Salmon, (n 81), n.29, 51-52. See Chapter 1, (n 76). The famous (Marshall plan) speech delivered on 5 June 1947 by Secretary of State George C. Marshall at Harvard University can be found at <<https://www.marshallfoundation.org/the-marshall-plan/speech/>>; the 1948 European Recovery Act (known as Marshall Plan) can be consulted at <<https://catalog.archives.gov/id/299857>>.

⁴³⁵ Aps, (n 69), 51.

⁴³⁶ Central Intelligence Agency, 'THE COMINFORM: SEPTEMBER 1947 - APRIL 1948'. CIA RDP78-00915R000100090004-7 Approved for release, 2, available at <<https://www.cia.gov/readingroom/docs/CIA-RDP78-00915R000100090004-7.pdf>>.

⁴³⁷ *Ibid.*, 2-3; Insall & Salmon, (n 81), n.4, 20.

⁴³⁸ Insall & Salmon, (n 81), n.49, 77-80, n.52, 83, n.54, 86 n.57, 91 n.63, 97, n.71, 110, n.69, 105, and n.80,125. See also Chapter 1, section 1.1. For the full text of the Soviet-Finnish Pact, visit <<https://doi.org/10.7312/wuor91426-025>>.

⁴³⁹ UK Parliament Hansard, House of Commons, 'Foreign Affairs', HC Deb, (22 January 1948), vol. 446, cc. 395 and 432, available at <<https://api.parliament.uk/historic-hansard/commons/1948/jan/22/foreign-affairs>>.

⁴⁴⁰ Insall & Salmon, (n 81), n.7, 15, and n.15, 33.

Following Mr Bevin's address, a draft agreement modelled on the Dunkirk Treaty, which was a collective defence treaty based on Article 51 UNC, was presented first to France on 5 February and then to the Benelux countries on 19 February 1948.⁴⁴¹ While France accepted it without reservation, the Low Countries expressed some concerns. Led by Belgium, which played a prominent role in the negotiations, they advocated for the adoption of a single pact modelled on the Rio Treaty and not multiple bilateral agreements following the Dunkirk model. Additionally, they preferred it to be grounded in Article 52 rather than Article 51 UNC.⁴⁴²

The Rio Treaty, which remains in force today, although it has effectively fallen into disuse,⁴⁴³ obligates its eighteen members to 'undertake to assist in meeting the attack', while allowing them to choose the means of assistance.⁴⁴⁴ The Treaty has been invoked twice in recent history – after the 9/11 terrorist attacks in 2001 and during the Venezuelan crisis in 2019. In contrast, the now-defunct Dunkirk Treaty required each of the two parties to provide the other with 'all the military and other support and assistance in his power' in the event of a German armed attack.⁴⁴⁵

As for Article 52 UNC, it is generally interpreted as constrained by Article 53 UNC, which requires previous authorisation by the UNSC for enforcement action.⁴⁴⁶ Therefore, had express reference been made to Article 52 UNC, any action could have been blocked by a Soviet veto in the UNSC before it could be implemented. In contrast, Article 51 UNC does not require UNSC authorisation for acts of individual or collective self-defence and, thus, no veto is possible. Then-Prime Minister of Belgium, Paul-Henri Spaak, however, held a different opinion. He believed that a regional pact under Article 52 UNC would not have been constrained by Article 53 UNC, which he argued applied only to enforcement actions lacking prior UNSC authorisation.⁴⁴⁷

Eventually, a document based on an adjusted Dunkirk model and on Article 51 UNC was signed on 17 March 1948, jointly by the Benelux countries, France and the UK.⁴⁴⁸ The five powers were to form the 'hard core' of the Western Union, but included a clause in the Treaty allowing for other anti-Communist states to accede by invitation.⁴⁴⁹ They prioritised the inclusion of Italy and Scandinavian countries, alongside Portugal and potentially also Ireland and Iceland.⁴⁵⁰ Regarding

⁴⁴¹ *Ibid.*, n.12, 28, n.14, 31, and n.17, 34.

⁴⁴² *Ibid.*, n.23, 43, n.26, 48, n.27, 49, n.28, 51, n.29, 52-53, n.33, 60-61, and n.37, 67.

⁴⁴³ See, e.g., Nevada Joan Lee and Christopher Preble, 'The Quiet Demise of the Rio Treaty', *Stimson Center*, (1 August 2025), available at <<https://www.stimson.org/2025/the-quiet-demise-of-the-rio-treaty/>>.

⁴⁴⁴ *Rio Treaty*, (n 106).

⁴⁴⁵ *Treaty of Alliance and Mutual Assistance between the United Kingdom and France, Dunkirk*, (4 March 1947), 9 UNTS. 187, Article 2.

⁴⁴⁶ Insall & Salmon, (n 81), n.29, 52 n.33, 60, and n.37, 67.

⁴⁴⁷ Insall & Salmon, (n 81), n.27, 48.

⁴⁴⁸ *Ibid.*, n.46, 73, n.55, 88-89, n.73, 112-113.

⁴⁴⁹ *Ibid.*, n.74, 115. See also Brussels Treaty, (n 108), Article IX.

⁴⁵⁰ *Ibid.*, n.5, note 4, 12, n.12, 28, n.13, 30, n.14, 32, n.33, 60, n.56, 90, n.61, 95-96, n.68, 104, n.82, 127, n.84, 130, n.96, 100-101, and n.109, note 2, 164.

Greece, where a provisional Democratic Government led by the Greek Communist Party had been declared,⁴⁵¹ it was decided that it could eventually be associated, along with Iran and Türkiye, with a Middle Eastern security system.⁴⁵² Spain could not be invited to join as long as Francisco Franco remained in power. Finally, concerning Germany, the Preamble initially stated that the country would eventually be admitted, as its integration into the Western European system was considered essential.⁴⁵³ However, both the Preamble and Article VII later mentioned the possibility of ‘a renewal by Germany of an aggressive policy’, although no reference to Germany was made in the mutual defence clause.

The final text of Article IV stated:

‘If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power’.⁴⁵⁴

Although, as for Article 5 NAT, the determination of the *casus foederis* was left to the individual parties to the Treaty, compared to Article 5 NAT, the obligations imposed by Article IV BT were somewhat more stringent, at least in theory. The wording ‘*all the military and other aid and assistance in their power*’ seems to suggest that the signatories would have been required to undertake military action in case of an ‘unprovoked attack’ on one of the parties.⁴⁵⁵

Yet, without concrete US military support, the clause amounted to nothing more than a paper tiger, powerless against the Soviet bear.⁴⁵⁶ Article IV allowed the five powers to rearm and reorganise,⁴⁵⁷ but ‘[t]he only real deterrent to Russian aggression [was and still] is the possession by the Americans of the atomic bomb’.⁴⁵⁸

In the words of US Secretary of State, George C. Marshall, the BT was an ‘*essential prerequisite* to any wider arrangement in which other countries including the United States might play a part’ [emphasis added].⁴⁵⁹ Since the US could not formally accede to the BT, a separate and parallel Atlantic security system was contemporarily pursued and then established a year later with the signing of the NAT.⁴⁶⁰

⁴⁵¹ *Ibid.*, n.9, 20, n.11, 26, n.19, 38, n.61, 96, and n.84, 130.

⁴⁵² *Ibid.*, n.84, 130, n.94, 143, n.95, 146, and n.109, 164-165. See also Chapter 1, section 1.1.

⁴⁵³ *Ibid.*, n.15, 33, and n.56, 90.

⁴⁵⁴ *Brussels Treaty*, (n 108), Article IV. See also Table 2, XI.

⁴⁵⁵ Insall & Salmon, (n 81), n.90, 137 and n.95, 147.

⁴⁵⁶ *Ibid.*, n.127, 203.

⁴⁵⁷ *Ibid.*, n.4, 10, n.6, 13 and n.120, 182-183.

⁴⁵⁸ *Ibid.*, n.46, 74.

⁴⁵⁹ *Ibid.*, n.79, 124.

⁴⁶⁰ *Ibid.*, n.62, 96, n.63, 97-98, n.65, note 3, 100, n.68, 103-104, n.71, 110, n.77, 122, n.81, 126, n.82, 127-128, n.83, 128, n.84, 130, n.87, 132-134, n.88, 134-135, n.89, 135-136, n.90, 137-138, n.91, 138-140, n.92, 140-141, n.94, 142-143, n.95, 145-147, n.96, 149, n.107, 162, n.109, 164-165, n.110, 166, n.111, 168, n.112, 169-170, n.145, 234.

1.2 *The Failure of the European Defence Community Treaty and the Negotiations Leading to Article V of the Modified Brussels Treaty*

In application of Article VII BT, the signatories established a Consultative Council of Foreign Ministers, which met in Paris on 17 April 1948 and created a Permanent Commission and a Military Committee (MC) to oversee treaty enforcement and implement Article IV.⁴⁶¹ The MC, set up in London soon after, aimed to build ‘a powerful Western Union which would not be completely dependent on the United States and would present a strong front to Soviet expansion’⁴⁶².

However, the US and Canada participated as ‘non-members’ in its workings, offering comments and suggestions.⁴⁶³ The MC eventually developed into WUDO.⁴⁶⁴ Headquartered in Fontainebleau, France, WUDO was tasked with intensifying, coordinating and integrating the military and logistical effort of its member nations; analysing strategic and tactical challenges for Western Europe’s defence; and establishing a command structure to handle potential emergencies.⁴⁶⁵ Led by Field Marshal Montgomery, this military organisation was later absorbed into NATO following the signing of the NAT on 4 April 1949 and the establishment in 1950 of ACE/now ACO.⁴⁶⁶ WUDO’s headquarters, staff and plans were, in fact, transferred to SHAPE, under the leadership of General Eisenhower, and Montgomery was named DSACEUR.⁴⁶⁷

As discussed in the previous chapter, the Korean War in the summer of 1950 had prompted the creation of the NCS. The Spofford compromise bridged American and French positions on (West) German rearmament and NATO membership – Washington considered German rearmament essential,⁴⁶⁸ while Paris strongly opposed the idea, having been invaded by Germany no less than three times in eight years⁴⁶⁹ – leading to the appointment of Eisenhower as NATO’s first SACEUR in December 1950.

Meanwhile, the Schuman declaration, named after then-French Foreign Affairs Minister, Robert Schuman, had called for Franco-German steel and coal production to be put under an independent High Authority in order to make future conflicts between the two nations ‘not only

⁴⁶¹ *Ibid.*, n.155, 247. See also Field Marshal the Viscount Montgomery of Alamein KG GCB DSO, ‘The Western Union and its defence organisation’, 138/4 *The RUSI Journal* (1993), 52.

⁴⁶² Insall & Salmon, (n 81), n.131, 212.

⁴⁶³ *Ibid.*, n.121, 188, n.122, 190, n.123, 194, n.129, 207, n.135, 217, n.151, 241, n.155, 247-248. See also Field Marshal Montgomery, (n 461), 57.

⁴⁶⁴ Insall & Salmon, (n 81), n.155, 247.

⁴⁶⁵ Field Marshal Montgomery, (n 461), 53. See also G. Wyn Rees. ‘The History of the WEU’, in *The Western European Union at the Crossroads. Between Trans-atlantic Solidarity and European Integration* (New York: Routledge, 2019), 20.

⁴⁶⁶ See Chapter 1, section 1.2.

⁴⁶⁷ Rees, (n 465), 22; Antonio Missiroli, *La Difesa dell’Europa: chi garantisce la difesa del continente?* (Milan: ISPI, Mondadori, 2024), 20-21; SHAPE, ‘Did you know that Europe already had a defensive military alliance prior to NATO?’, (n.d.), available at <<https://shape.nato.int/page214845116>>. See also Chapter 1, section 1.2.

⁴⁶⁸ Apps, (n 69), 19; Missiroli, (n 467), 19.

⁴⁶⁹ Victor Gavin, ‘Power through Europe? The case of the European Defence Community in France (1950-1954)’, 23/1 *French History* (20 January 2009), 70-75.

unthinkable but materially impossible'.⁴⁷⁰ With the Ruhr region set to gradually return to German control, France feared the resurgence of German military power.⁴⁷¹

Germany viewed its participation in the Schuman Plan 'as an instrument to gain full or partial sovereignty'.⁴⁷² However, by pushing for German rearmament and NATO membership, the US was *de facto* offering Germany 'an alternative route to normality' and France worried that the country might, therefore, lose any incentive to commit to the Schuman Plan.⁴⁷³

It is for this reason that the French government devised a second complementary plan, the Pleven Plan. Named after then-French Prime Minister, René Pleven, the Pleven Plan applied the Schuman Plan to defence, aiming to integrate German forces into a European structure so that Germany would have no national troops of its own.⁴⁷⁴

The Schuman Plan paved the way to the signing of the Treaty of Paris establishing the European Coal and Steel Community (ECSC). Signed in April 1951, by what are now known as the six founding members of the EU – Belgium, France, (West) Germany, Italy, Luxemburg, and the Netherlands – the ECSC Treaty (ECSCT) was an important step towards European economic integration as it established a common market for coal and steel. The Pleven Plan resulted, instead, in the signing of the EDCT in May 1952 by the same six founders, but eventually collapsed.

The EDCT envisaged the setting up of a supranational defence community with common institutions, budget and a common European army – the European Defence Forces – to ensure the security of Western Europe and deter Soviet aggression.⁴⁷⁵ Unlike the NAT, the EDCT envisioned the creation of 'a Community largely replacing the defence efforts of the Member States rather than forming a military alliance of still independent national forces'.⁴⁷⁶ The Treaty proposed the establishment of a supranational Commissariat with executive and supervisory powers.⁴⁷⁷ This powerful institution was to be overseen by two bodies adapted from the ECSCT: 1) an indirectly-elected Assembly with merely consultative functions;⁴⁷⁸ and 2) a Council responsible for aligning the

⁴⁷⁰ European Commission, Publications Office, *Schuman Declaration of 9 May 1950*, available at <<https://data.europa.eu/doi/10.2775/065>>.

⁴⁷¹ Daniel Chalmers, Gareth Davies and Giorgio Monti, 'European Integration and the Treaties on European Union', in *European Union Law* (5th Edition, Cambridge: Cambridge University Press, 2024), 12.

⁴⁷² Martin Trybus, 'The Vision of the European Defence Community and a Common Defence for the European Union', in Martin Trybus and Nigel White (eds.) *European Security Law* (Oxford: Oxford University Press, 2007), 36.

⁴⁷³ Gavin, (n 469), 75.

⁴⁷⁴ Apps, (n 69) 83.

⁴⁷⁵ *European Defense Community Treaty*, (Unofficial Translation), US Senate Foreign Relations Committee 1952, Article 1, available at <<https://aei.pitt.edu/5201/1/5201.pdf>>.

⁴⁷⁶ Trybus, (n 472), 24. Although today NATO and national defence planning are more integrated, as the former CMC, Admiral Rob Bauer, pointed out last year. See NATO, 'Speech by Admiral Rob Bauer, Chair of the NATO Military Committee Berlin Security Conference', *Speeches & transcripts*, (20 November 2024), available at <https://www.nato.int/cps/iw/natohq/opinions_230693.htm?selectedLocale=en>.

⁴⁷⁷ *European Defense Community Treaty*, (n 475), Articles 19-32.

⁴⁷⁸ *Ibid.*, Articles 33-38.

Commissariat's activities with the policies of the Member State governments it represented.⁴⁷⁹ Additionally, a Court was to be established to serve as the constitutional court of the EDC.⁴⁸⁰ This would have arguably been its most significant feature. As pointed out by Trybus, 'the strong position of a court of law in a defence organisation was unprecedented. Neither the WU of 1948, NATO nor later the WEU provided for judicial review'.⁴⁸¹ As will be discussed in section 2.6, this largely remains the case today as the Court of Justice of the European Union (CJEU) has, in principle, no jurisdiction over the CFSP and CSDP.⁴⁸²

The EDC was to closely coordinate with NATO⁴⁸³ and the European Defence Forces to be placed under the authority of SACEUR.⁴⁸⁴ Additionally, a mutual defence clause was contemplated in Article 2(3) EDCT, which stated that:

'Any armed aggression directed against any one of the member States in Europe or against the European Defense Forces shall be considered as an attack directed against all of the Member States. The Member States and the European Defense Forces shall furnish to the State or Forces thus attacked all military and other aid and assistance in their power'.⁴⁸⁵

The article incorporated elements of both Article 5 NAT⁴⁸⁶ and Article IV BT. For example, it adopted the Musketeer language of Article 5 NAT 'an attack against one is as an attack against all', while also referencing the commitment to provide 'all military and other aid and assistance in their power' of Article IV BT. Additionally, like Article 5 (and Article 6) NAT, the clause suggested that the geographical scope of the attack that would trigger the exercise of the right to collective self-defence might not be limited to Europe. In fact, it could have extended to the NATO area as well.⁴⁸⁷

Interestingly enough, the article also presents some features that set it apart from both articles. Unlike both Articles IV BT and 5 NAT, Article 2(3) EDCT used the term 'armed aggression' and not 'armed attack'⁴⁸⁸. Additionally, there was no reference in the article or any other article of the EDCT to Article 51 UNC specifically; the only reference appeared in Article 1 of a separate treaty signed with the UK.⁴⁸⁹ Finally, '[n]ot only the Member States but also the supranational EDF [European

⁴⁷⁹ *Ibid.*, Articles 39-50.

⁴⁸⁰ *Ibid.*, Articles 51-67. For a more detailed analysis of the institutions of the EDC, see Federico Fabbrini, 'European Defense Integration after Trump's Re-Election: A Proposal to Revive the European Defense Community Treaty and its Legal Feasibility', 3/24 DELI Working Paper Series, *Dublin European Law Institute*, (6 November 2024), 13-16.

⁴⁸¹ Trybus, (n 472), 23-24.

⁴⁸² See *supra* n 4 and *Consolidated Version of the Treaty on the Functioning of the European Union*, (consolidated as of 15 March 2025), Article 275.

⁴⁸³ *European Defense Community Treaty*, (n 475), Article 5. See also Fazio, What is the relationship between the EDC and NATO?, (n 177).

⁴⁸⁴ *Ibid.*, Article 18.

⁴⁸⁵ *Ibid.*, Article 2(3). See also Table 2, XI.

⁴⁸⁶ Fazio, What is the relationship between the EDC and NATO?, (n 177).

⁴⁸⁷ *Ibid.* See also Trybus, (n 472), 30 and 40.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ *Treaty Between the United Kingdom and the Member States of the European Defense Community*, (n 475), Article 1.

Defense Forces] [would have been] obliged to take unlimited military and other action to the aid of the attacked member state'.⁴⁹⁰

The EDCT was ultimately ratified by four out of six members – the three Benelux countries and Germany. Italy never ratified it; it was preparing to do so when, on 30 August 1954, the French National Assembly voted to postpone ratification of the Treaty by a vote of 319 to 264, with forty-three abstained, largely because of its supranational character.⁴⁹¹ As Sloan has noted, 'The EDC failure virtually guaranteed that the United States would remain the dominant force leading Western defence against the Soviet Union',⁴⁹² and that the intergovernmental nature of European defence would persist.⁴⁹³

After the French parliament rejected the EDCT, negotiations – initiated by the UK – soon followed to amend the BT to include also Italy and West Germany, and bring the latter into NATO. In September 1954, the signatories of the EDCT, plus Canada, the UK, and the US, met in London to devise an alternative plan. The Modified Brussels Treaty (MBT) was signed in Paris a month later, on 23 October 1954, and entered into force on 6 May 1955, replacing the BT. On the same day, after its occupation by the Western Allies ended, Germany joined NATO, and any references to the potential renewal of an aggressive policy by Germany disappeared from the MBT.⁴⁹⁴

The MBT retained the mutual defence clause in Article V,⁴⁹⁵ which fully replicated the content of Article IV BT,⁴⁹⁶ and established the WEU to serve as a framework for coordination on security and defence policy, renaming WUDO's Consultative Council as the Council of the WEU. The WEU, however, did not have any of the supranational features of the EDC, but was rather intergovernmental in nature. Additionally, it did not possess an integrated military command structure to avoid duplicating the NCS, relying, therefore, on the latter for its implementation. In the words of Rees 'The WEU was a facilitating mechanism to enable NATO to play the leading defence role in Europe'.⁴⁹⁷

The WEU played a key role for nearly two decades, serving as a platform for Western European powers – particularly France, Germany, and UK – to discuss security and defence-related

⁴⁹⁰ Trybus, (n 472), 33.

⁴⁹¹ Apps, (n 69), 112; Fabbrini, *European Defense Integration after Trump's Re-Election*, (n 480), 18; Gavin, (n 469), 85; Rees, (n 465), 26; Trybus, (n 472), 18-19.

⁴⁹² Sloan 2024, (n 71), 217.

⁴⁹³ Rees, (n 465), 28; Trybus, (n 472), 27-30, 33 and 41. See also Tom Dyson and Theodore Konstadinides, 'The Legal Underpinnings of European Defence Cooperation' in *European Defence Cooperation in EU Law and IR Theory* (New Security Challenges Series, London: Palgrave Macmillan, 2013), 58.

⁴⁹⁴ NATO, *German Reunification*, (1 January 1990), available at <https://www.nato.int/cps/en/natohq/declassified_136311.htm#:~:text=Meanwhile%2C%20in%20Germany%2C%20families%20were,effect%20on%205%20May%201955>. See also Pedlow 2024, (n 140), 32.

⁴⁹⁵ *Protocol Modifying and Completing the Brussels Treaty (Modified Brussels Treaty)*, Paris, (23 October 1954), 221 UNTS 59, Article V.

⁴⁹⁶ See Table 2, XI.

⁴⁹⁷ Rees, (n 465), 28

matters until the latter joined the European Community in 1973. It also provided a framework for France to engage in military discussions with its European Allies following its withdrawal from the NCS in 1966.⁴⁹⁸ Between 1973 and 1984, however, the WEU's importance and activity then declined due to the influence of other international organisations, such as the Organisation for European Economic Co-operation (OEEC) and the Council of Europe, as well as the development of European Political Cooperation (EPC). The EPC, described as the 'foreign policy arm of the European Community',⁴⁹⁹ provided a framework for intergovernmental discussions on foreign policy among Member States, further reducing the role of the WEU and earning it the nickname 'Sleeping Beauty of Europe'.⁵⁰⁰

Yet, before the Cold War came to an end, the WEU experienced a relaunch ushered in first by the Rome Declaration in 1984 and then by the Hague Platform in 1987. The first was signed on the occasion of the thirtieth anniversary of the MBT by the Foreign and Defence Ministers of the seven members of the WEU to 'reactivate' it. In the declaration, the Ministers stated that they were determined to make better use of the WEU framework to increase security policy cooperation among them and that this would 'not only contribute to the security of Western Europe but also to an improvement in the common defence of all the countries of the Atlantic Alliance and to greater solidarity among its members'.⁵⁰¹ Additionally, they affirmed that 'the implications for Europe of crises in other regions of the world' could also be considered by the Council.⁵⁰²

As for the second, it was a 'Platform on European Security Interests' launched by the Ministers on 27 October 1987, in light of new developments on East-West relations, to revitalise the WEU in order 'to develop a more cohesive European defence identity' and 'strengthen the European pillar of the Alliance'.⁵⁰³ The Ministers highlighted that the collective defence pledge enshrined in Article V MBT reinforced their commitments under the Atlantic Alliance⁵⁰⁴ and expressed their 'conviction that a more united Europe w[ould] make a stronger contribution to the Alliance and [...] ensure the basis for a balanced partnership across the Atlantic.' 'We are each determined to carry our share of

⁴⁹⁸ Missiroli, (n 467), 26.

⁴⁹⁹ Simon Nuttal, 'Introduction', in Simon Nuttal (ed.), *European Political Co-operation* (Oxford: Oxford University Press, 1992), 1.

⁵⁰⁰ Historical Archives of the European Union, 'WEU Assembly of Western European Union', Documents from [1955] to [2010], *European University Institute*, (December 2012), 4, available at <<https://archives.eui.eu/en/fonds/194161?item=WEU>>. See also Lluís Bassets, 'La UEO, la 'bella durmiente' de Europa', *El País*, (25 January 1993), available at <https://elpais.com/diario/1993/01/25/internacional/727916404_850215.html>.

⁵⁰¹ Luxembourg Centre for Contemporary and Digital History, 'Declaration by the WEU Foreign and Defence Ministers (Rome, 27 October 1984)', paras. 3 and 4, 2 and 3, available at <https://www.cvce.eu/en/obj/declaration_by_the_weu_foreign_and_defence_ministers_rome_27_october_1984-en-c44c134c-aca3-45d1-9e0b-04d4d9974ddf.html>.

⁵⁰² *Ibid.*, para. 8, 4.

⁵⁰³ *Ibid.*, paras. 3 and 4.2 and III.a.2 and 3, 6.

⁵⁰⁴ *Ibid.*, para. III.a.1, 6.

the common defence in both the conventional and nuclear field', the declaration went on.⁵⁰⁵ The Platform was, therefore, an early attempt at burden sharing.

A period of operational activity followed for the WEU in the Gulf region and the Balkans between 1988 and 2000.⁵⁰⁶ During this time, the WEU also expanded: Portugal and Spain signed accession protocols in November 1988, completing the ratification process in March 1990. Greece followed, signing its accession protocol in 1992 and ratifying it in 1995, but subject to an agreement that Article V MBT would not apply in the event of a conflict with a NATO Ally, such as Türkiye.⁵⁰⁷ These rounds of enlargement brought the total number of WEU members to ten.⁵⁰⁸

1.3 *The Negotiations Leading to Article I-41(7) of the Draft Constitutional Treaty*

In 1992, the Maastricht Treaty created the CFSP as a second pillar of the EU and envisioned 'the eventual framing of a common defence policy' within it. Under the Treaty, however, it was the WEU that carried out decisions and actions with defence implications.⁵⁰⁹ The WEU would, in fact, become the 'defence component of the European Union and a means to strengthen the European pillar of the Atlantic Alliance'.⁵¹⁰ To this end, WEU Foreign and Defence Ministers signed the Petersberg Declaration, which gave its name to the crisis management tasks that the WEU would undertake alongside the common defence.⁵¹¹

At the Intergovernmental Conference (IGC) of 1996, however, the signatories of the failed EDCT were already pushing for the EU to absorb the WEU and become responsible for all aspects of security and defence, including collective defence.⁵¹² Reichard reported of a German proposal to include Article V MBT into the EU treaty framework by amending Article J.4(2) TEU, or alternatively

⁵⁰⁵ *Ibid.*, para. IIIa2 and 3, 6.

⁵⁰⁶ Maxime H.A. Larivé, 'The Western European Union (WEU)', *Oxford Research Encyclopedia of Politics*, (29 July 2019), available <<https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1093?p=emailAAACOKh.5N9Lw&d=/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1093>>.

⁵⁰⁷ Missiroli, (n 467), 32.

⁵⁰⁸ Rees (n 465), 28. See also Luxembourg Centre for contemporary and Digital History, 'The composition of Western European Union and the different categories of membership', available at <<https://www.cvce.eu/en/recherche/unit-content/-/unit/72d9869d-ff72-493e-a0e3-bedb3e671faa/2d870bab-478c-454f-b3b8-ce1d393d2576>>.

⁵⁰⁹ See *Treaty of Maastricht*, (n 419), Article J.4(2).

⁵¹⁰ *Ibid.*, *Declaration on Western European Union*.

⁵¹¹ Namely 'humanitarian and rescue tasks; peacekeeping tasks; tasks for combat forces in crisis management, including peacemaking'. See Luxembourg Centre for contemporary and Digital History 'Petersberg Declaration made by the WEU Council of Ministers, (Bonn, 19 June 1992)', para. II.4, 7, available at <https://www.cvce.eu/en/obj/petersberg_declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html>.

⁵¹² J. Javier Fernández Fernández, 'White Paper on the 1996 Intergovernmental Conference - Volume II, Summary of Positions of the Member States of the European Union with a View to the 1996 Intergovernmental Conference', Intergovernmental Conference Task Force, Directorate-General for Research, Political and Institutional Affairs Division, *European Parliament*, (29 March 1996), 22, 27, 37, 40, 90, 104, 114-115, 124, available at <<http://aei.pitt.edu/50079/1/A9218.pdf>>.

through an additional protocol to the TEU.⁵¹³ This would have triggered Article XII MBT, allowing for the Treaty to be terminated after 1998. These changes were not implemented though and the clause was not incorporated into the 1997 Treaty of Amsterdam, which clarified that ‘the progressive framing of a common defence policy [...] might lead to a common defence, should the European Council so decide’.⁵¹⁴ The WEU would give the EU ‘access to an operational capability’ for the Petersberg tasks, which came to be incorporated into the EU treaty framework.⁵¹⁵ Additionally, the Treaty stated that ‘closer institutional relations’ between the two organisations should be pursued with the aim of integrating the WEU into the EU.⁵¹⁶

After the ESDP was launched in 1999,⁵¹⁷ the Petersberg tasks were then progressively transferred to the EU, and eventually so was the Article V MBT mutual defence clause before the WEU was disbanded in 2011.⁵¹⁸ Most transfers occurred at the 2000 Nice European Council, but debates on a mutual defence clause gained momentum only after the Laeken European Council convened the European Convention in 2001.

In the final report of the Working Group VIII on Defence, the Chairman, Michel Barnier, noted that ‘Several members of the Group proposed a collective defence clause [...] Such a collective defence clause was considered unacceptable by some Member States for reasons connected with the non-aligned status of certain Member States, and by others who considered that collective defence was covered by the Atlantic Alliance’.⁵¹⁹

These ‘certain Member States’ were identified in section C. The non-aligned states were Austria, Finland, Ireland and Sweden,⁵²⁰ while the common members of the EU and NATO – at the time ten – were Belgium, Denmark, France, Germany, Greece, Italy, Luxemburg, the Netherlands, Portugal, Spain and the UK.⁵²¹ Additionally, Denmark represented a ‘special case’ as it did not

⁵¹³ Reichard, (n 104), 193.

⁵¹⁴ *Treaty of Amsterdam*, OJ [1997] C 340/157-158, 10.11.1997, Article 17(1).

⁵¹⁵ *Ibid.*

⁵¹⁶ *Ibid.*

⁵¹⁷ European Parliament, *Cologne European Council 3-4 June 1999, Conclusions of the Presidency*, (3-4 June 1999), available at <https://www.europarl.europa.eu/summits/kol1_en.htm>.

⁵¹⁸ Dyson & Konstadinides, (n 493), 67; Ramses A. Wessel, ‘The EU as black widow; Devouring the WEU to give birth to a European Security and Defence Policy’, in Vincent Kronenberger (ed.) *The European Union and the International Legal Order: Discord or Harmony* (The Hague: T.M.C. Asser Press, 2001), 405-434.

⁵¹⁹ European Convention, *Barnier Report, Final Report of Working Group VIII on Defence Chaired by Michel Barnier*, (16 December 2002), paras. 62-63, 21-22, available at <<https://data.consilium.europa.eu/doc/document/CV-461-2002-INIT/en/pdf>>. For this reason, during the debates that took place on 20 December 2002, it was suggested that the mutual defence clause be added as a Protocol to the Constitutional Treaty, allowing each country to voluntarily decide whether to accede or not. See Brok (EPP) at 5-041 (translated from German with the use of AI), in European Parliament, ‘European Parliament and the European Constitution – Debates at the Convention – External Action and Defence’, (20 December 2002), available at <https://www.europarl.europa.eu/Europe2004/textes/verbatim_021220.htm>.

⁵²⁰ Barnier Report, (n 519), para. 36, 11.

⁵²¹ *Ibid.*, para. 34, 11. While non-aligned countries, particularly Finland and Sweden, feared that the clause would turn the EU into a military alliance, the Atlanticists, in particular the Netherlands, were concerned that it would weaken NATO. See, e.g. Hjelm-Wallén (Ch.E/G.-SE) at 5-027 (translated from Swedish with the use of AI), Kiljunen (Parl.-FI) at 5-080,

participate in the elaboration and implementation of the Union's decisions with defence implications by virtue of Article 6 of Protocol 5 annexed to the Treaty of Amsterdam.⁵²²

'Under those circumstances' the report continued '[...] [the] new Treaty could therefore establish a **closer type of cooperation on defence**, open to all Member States wishing to enter into such a commitment and fulfilling the requirements for such a commitment to be credible [...]' [bold in original].⁵²³ This concept of enhanced cooperation had been introduced by the Amsterdam Treaty and extended to CFSP by the 2001 Nice Treaty,⁵²⁴ although it expressly excluded 'matters having military or defence implications'.⁵²⁵ While the Working Group did not achieve consensus on the question of enhanced cooperation being applied to defence,⁵²⁶ the concept nevertheless made its way into draft Article 30(7) issued by the Convention Presidium of April 2003, which stated that '[u]nder this cooperation, if one of the Member States participating in such cooperation is the victim of *armed aggression* on its territory, the other participating States shall give it *aid and assistance by all the means in their power, military and other*, in accordance with Article 51 of the United Nations Charter.' [emphasis added].⁵²⁷ Therefore, a collective defence clause mirroring Article V MBT was seen 'as an option to be realised by interested Member States under enhanced cooperation [...]'.⁵²⁸

In the CT presented by the President of the Convention, Valéry Giscard d'Estaing, at the Thessaloniki European Council of June 2003, Article 30(7) became Article I-40(7) and a sentence was added at the request of Denmark stating that '[i]n the execution of closer cooperation on mutual

Lekberg (Parliament – Sweden) at 5-092 (translated from Swedish with the use of AI), and De Vries (Ch.E/G.-NL) at 5-042, in European Parliament, European Parliament and the European Constitution, (n 519).

⁵²² *Ibid.*, para. 35, 11; *Protocol on the position of Denmark* (n 514), Article 6.

⁵²³ Barnier Report, (n 519) paras. 62-63, 21-22. The concept envisaged the creation a 'Eurozone of Defence', enabling closer cooperation among Member States willing to undertake the most demanding missions (such as peacekeeping) and meeting the necessary conditions for their participation to be credible. Some working group members, however, stressed that the creation of a Defence Eurozone risked creating differentiation between those EU Member States that would be part of the Defence Union and those that would remain outside, *de facto* leading to a two-tier membership of the EU. See Piks (Parl.-LV) at 5-099, in European Parliament, European Parliament and the European Constitution, (n 519). See also Serracino-Inglott (Gouv.-MT) at 5-031, and Fayot (Parl.-LU) at 5-054.

⁵²⁴ *Treaty of Nice*, OJ [2001] C 80/8-9, 10.03.2001, Articles 27a-27e.

⁵²⁵ *Ibid.*, Article 27b. See also Marise Cremona, 'Enhanced Cooperation and the Common Foreign and Security and Defence Policies of the EU', EUI Working Paper LAW 2009/21, *European University Institute*, 2, available at <https://cadmus.eui.eu/bitstream/handle/1814/13002/LAW_2009_21.pdf?sequence=1&isAllowed=y>; Bruno De Witte, 'The Process of Ratification of the Constitutional Treaty and the Crisis Options: A Legal Perspective', EUI Working Paper LAW 2004/16, *European University Institute*, 11, available at <<https://cadmus.eui.eu/bitstream/id/1993/law04-16.pdf>>.

⁵²⁶ See European Parliament, European Parliament and the European Constitution (n 519).

⁵²⁷ European Convention, *Draft articles of the Constitutional Treaty on external action*, CONV 685/03, (23 April 2003), Article 30(7).

⁵²⁸ See, e.g. also Kauppi (EPP) at 5-061, in European Parliament, European Parliament and the European Constitution (n 519). See also Reichard, (n 104), 201; 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)>.

defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation.' [emphasis added].⁵²⁹

Following pressure by the British government,⁵³⁰ a new draft of Article I-40(7) CT was presented by the Italian Presidency of the Council at an IGC meeting in Naples in November 2003, which further clarified that '**[c]ommitments and cooperation in this area [of mutual defence] shall be consistent with commitments under NATO, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation**' [bold in original, translated from French].⁵³¹

While this text still made express reference to 'military and other' means of assistance, like both Article IV BT and V MBT before it, the text presented at the Brussels Conference a month later generically mentioned '*an obligation of aid and assistance by all the means in their power*' [emphasis added].⁵³² This 'watering down' resulted from a November 2003 compromise between France, Germany, and the UK to ensure that the mutual defence clause would not create the impression that the EU was turning into a military alliance rivalling NATO.⁵³³ Protests from neutral and non-aligned countries then led the Italian Presidency to also incorporate the so-called 'Irish formula' about avoiding prejudice to the specific character of the security and defence policy of certain Member States.⁵³⁴

No further modifications were made to it except for changes to its numbering – from Article I-40(7) to Article I-41(7) – until the CT was signed in Rome on 29 October 2004.⁵³⁵ Although ratified

⁵²⁹ Lithuania had also requested the addition during the debates that took place on 16 May 2003. See Martikonis (Gouv.-LT) at 5-088, in European Parliament, 'European Parliament and the European Constitution – Debates at the Convention – External action & defence', (16 May 2003), available at <https://www.europarl.europa.eu/Europe2004/textes/verbatim_030516.htm>. See also European Convention, *Draft Constitution, Volume I – Revised text of Part One*, CONV 724/03, (26 May 2003), Article I-40(7); Reichard, (n 104), 202; The draft was then submitted to the President of the European Council in Rome on 18 July 2003. See *Draft Treaty establishing a Constitution for Europe*, OJ [2003] C169/1, 18.07.2003, Article I-40(7).

⁵³⁰ UK Secretary of State for Foreign and Commonwealth Affairs, *A Constitutional Treaty for the EU- The British Approach to the European Union Intergovernmental Conference 2003*, cm. 5934, (September 2003), para. 95, 38. See also UK Parliament Hansard, House of Lords, *Convention on the Future of Europe*, HL Deb, (9 September 2003), vol. 652, cc.195.

⁵³¹ Conference of the Representatives of the Governments of the Member States, 'IGC 2003 – Naples Ministerial Conclave: Presidency proposal', CIG 52/03 Add 1, (25 November 2003), Article I-40(7).

⁵³² Conference of the Representatives of the Governments of the Member States, 'IGC 2003 – Defence', CIG 57/03, (2 December 2003), Article I-40(7).

⁵³³ Daniel Keohane, 'ESD and NATO', in Giovanni Grevi, Damien Helly and Daniel Keohane (eds.) *European Security and Defense Policy: The First 10 Years (1999-2009)* (Paris: European Union Institute for Security Studies, 2009), 131; Reichard, (n 104), 204.

⁵³⁴ Conference of the Representatives of the Governments of the Member States, 'Letter from Erkki TUOMIOJA, Minister of Foreign Affairs of Finland, Brian COWEN, Minister of Foreign Affairs of Ireland, Benita FERRERO-WALDNER, Minister of Foreign Affairs of Austria, Laila FREIVALDS, Minister of Foreign Affairs of Sweden', CIG 62/03 DELEG 30, (5 December 2003), 2, available at <<https://data.consilium.europa.eu/doc/document/CG%2062%202003%20INIT/EN/pdf>>.

⁵³⁵ Conference of the Representatives of the Governments of the Member States, *Treaty establishing a Constitution for Europe*, Brussels, (29 October 2004), Article I-41(7). See also Table 2, XI, for the final text.

by fifteen Member States, the draft CT was eventually rejected in national referenda in France and the Netherlands in May and June 2005, respectively. Therefore, the Treaty and the mutual defence clause envisaged in Article I-41(7) never entered into force.

1.4 The Negotiations Leading to Article 42(7) of The Lisbon Treaty

In response to the French and Dutch failed referenda, the European Council in June 2005 called for a period of reflection to review the CT, assess national debates, and determine how best to proceed with the ratification process.⁵³⁶ Ultimately, this period of reflection came to an end when the European Council of 21-23 June 2007 established a comprehensive mandate for a subsequent IGC under the Portuguese Presidency to draw up a ‘Reform Treaty’, based on the March 2007 Berlin Declaration signed for the fiftieth anniversary of the Treaties of Rome.⁵³⁷

The aim of this Treaty was not to replace all existing treaties with a single one, as the CT had attempted to do, but rather to amend the TEU and TEC by introducing the changes agreed in the context of the previous IGC of 2004.⁵³⁸ The new IGC officially began its work in July 2007 and concluded in October 2007. The new Treaty was signed on 13 December 2007, in Lisbon, which is why it is also referred to as the Lisbon Treaty (LT), and entered into force on 1 December 2009.

No changes were made to Article I-41(7) CT, which was first renumbered as Article 28A(7)⁵³⁹ and later became Article 42(7) TEU.⁵⁴⁰ As highlighted by Perot, however, no ‘operational preparations to concretely underpin this new formal commitment’ were made.⁵⁴¹ The next section will analyse this legal provision in detail.

2. Legal Analysis of Article 42(7) TEU

Article 42(7) TEU states:

‘If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

⁵³⁶ Council of the European Union, *Brussels European Council 15/16 June 2006, Presidency Conclusions*, 10633/1/06 REV1, CONCL 2, Brussels, (17 July 2006), 16-17, available at <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/90111.pdf>.

⁵³⁷ For the text of the 2007 Berlin Declaration, visit <<http://news.bbc.co.uk/2/hi/europe/6491487.stm>>.

⁵³⁸ European Commission, *Brussels European Council 21-22 June 2007, Presidency Conclusions, Draft IGC Mandate, Annex I, D/07/2*, (23 June 2007), available at <https://ec.europa.eu/commission/presscorner/detail/en/doc_07_2>.

⁵³⁹ *Treaty of Lisbon*, OJ [2007] C 306/34, 17.12.2007, Article 28(7) A.

⁵⁴⁰ See Table 1, X.

⁵⁴¹ 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), 8.

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.⁵⁴²

Several elements deserve further examination:

1. The use of the words ‘armed aggression’ rather than ‘armed attack’;
2. The fact that the aggression must have taken place on the territory of the aggressed;
3. The framework of response: bilateral (Member States) vs collective (EU);
4. The phrasing ‘obligation of aid and assistance by all the means in their power’;
5. The express reference to Article 51 UNC;
6. The ‘Irish formula’;
7. The ‘NATO formula’.

2.1 *Armed Aggression vs Armed Attack*

No definition of ‘armed aggression’ is provided in Article 42(7) or elsewhere in the TEU. However, an armed attack is generally understood to be a form of armed aggression, meaning that armed aggression is a broader category encompassing other forms of aggression beyond armed attacks.⁵⁴³ Although the two terms are often used interchangeably, some authors⁵⁴⁴ have argued that since Article 42(7) TEU refers to armed aggression while Article 5 NAT to armed attack, the former could potentially cover a broader spectrum of threats than the latter.⁵⁴⁵ For example, it could be activated for those hybrid acts that do not meet the threshold of armed attack under Article 5 NAT,⁵⁴⁶ such as recent incidents in the Baltic Sea.⁵⁴⁷ Therefore, at least in theory, EU Member States would be legally

⁵⁴² *Consolidated Version of the TEU*, (n 2), Article 42(7) .

⁵⁴³ See Chapter 1, section 2.1. See also Table 3, XII.

⁵⁴⁴ See, e.g. Anne Bakker *et al.* ‘The EU’s Mutual Assistance Clause.’ Spearheading European Defence: Employing the Lisbon Treaty for a Stronger CSDP’, Report, *Clingendael Institute*, (2016), 25, available at <<http://www.jstor.org/stable/resrep05543.8>>.

⁵⁴⁵ See, e.g. Jean-Christophe Martin, ‘La Clause de Défense Mutuelle’, in Elsa Bernard, Quentin Loïez et Stéphane Rodrigues (dir.) *L’Union européenne de la défense : commentaire article par article* (Bruylant, 2024), 408.

⁵⁴⁶ As Perot pointed out ‘when it comes to how to react to the most serious forms of hybrid threats, the general idea that emerged [...] was that of a division of labor between the EU and NATO, whereby the EU would be responsible for responding first through Article 222 TFEU and then Article 42.7 TEU, while NATO would be called upon to intervene in the event of further escalation, on the basis of its own collective defense clause’. See Perot 2024, (n 541), 11. See also Sari, (n 217), 452 and 455. Additionally, Sari has argued that, by covering terrorist attacks and man-made disasters, Article 222 TFEU gives EU Member States legal basis to assist one another in responding to acts of sabotage that fall below the threshold of an armed attack or armed aggression and, therefore, do not trigger Article 5 NAT or Article 42(7) TEU. *Ibid.*, 458 and 459.

⁵⁴⁷ For an overview of recent incidents in the Baltic Sea, see Reuters, ‘Recent suspected underwater sabotage incidents in the Baltic Sea’, (21 February 2025), available at <<https://www.reuters.com/world/europe/recent-suspected-underwater-sabotage-incidents-baltic-sea-2024-12-03/>>. See also 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>; Statsministeriet, ‘Joint Statement of the

bound to collective defence in cases when NATO Allies are not. This argument seems implausible for two orders of reasons.

First, it is not only Article 5 NAT that preferred the coinage armed attack to armed aggression but also Article 51 UNC, which both Article 5 NAT and 42(7) TEU make express reference to.⁵⁴⁸ As pointed out by Reichard, Article 103 UNC gives it legal primacy over other international treaties.⁵⁴⁹ Article 30(1) of the Vienna Convention on the Law of Treaties (VCLT) reflects the effects of this supremacy.⁵⁵⁰ In light of this, and pursuant to the duty of consistent interpretation of EU law with international law – which stems from Articles 3(5) and 21(1) TEU and has been recognised by the CJEU in cases such as Poulsen⁵⁵¹ and Air Transport Association of America⁵⁵² – it follows that Article 42(7) TEU should, insofar as possible, be interpreted in conformity with Article 51 UNC. Accordingly, the term ‘armed aggression’ in Article 42(7) TEU should be understood as synonymous with ‘armed attack’ under Article 51 UNC.⁵⁵³

In the absence of any reference to the motives behind the change in wording from armed attack to armed aggression in the documents that were issued by the European Convention and in the preparatory drafts later formalised by the IGC of the Representatives of the Governments of the Member States between December 2002 and April 2003, it is reasonable to assume, as some commentators have, that ‘the reference to “armed aggression” may simply be the result of a literal translation of the French “agression armée”.’⁵⁵⁴

Second, in 2016, NATO Allies recognised cyberspace as a domain of warfare, alongside land, sea, air and, more recently, space, and countering hybrid threats has been an area of strengthened EU-NATO cooperation ever since.⁵⁵⁵ Additionally, ‘[h]ybrid attacks have been explicitly identified by

Baltic Sea NATO Allies’, (14 January 2025), available at <<https://stm.dk/media/ndolltur/joint-statement-of-the-baltic-sea-nato-allies-summit.pdf>>.

⁵⁴⁸ See Chapter 1, section 2.1 and Table 3, XII.

⁵⁴⁹ Reichard, (n 104), 210.

⁵⁵⁰ 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: Oxford University Press, 2011), 764 and 780.

⁵⁵¹ Case C-286/90, *Poulsen and Diva Navigation*, [1992] ECR I-6019, paras. 9 and 10.

⁵⁵² 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.

⁵⁵³ Blake & Mangiameli, (n 432), 1225; Martin, (n 545), 408-409.

⁵⁵⁴ 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 Jolyon Howorth ‘The European Draft Constitutional Treaty and the Future of the European Defence Initiative: A Question of Flexibility’, 9/4 *European Affairs Review* (2004), 483-508; Elie Perot ‘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 545), 408; Sari, (n 217), 418.

⁵⁵⁵ European Parliament, *Joint Declaration by the President of the European Council, the President of the European Commission and the Secretary General of the North Atlantic Treaty Organization*, (8 July 2016), available at <https://www.europarl.europa.eu/cmsdata/121580/20160708_160708-joint-NATO-EU-declaration.pdf>. See also Statsministeriet, *Joint Statement of the Baltic Sea NATO Allies* (n 547).

both the EU Strategic Compass and the NATO Strategic Concept as qualifying for collective response'.⁵⁵⁶ Furthermore, at the beginning of this year, NATO announced the launch of *Baltic Sentry*, aimed at bolstering the Alliance's military presence in the Baltic Sea and deter further sabotage of critical undersea infrastructure by state and non-state actors alike.⁵⁵⁷ Therefore, it seems unreasonable to believe that an act of hybrid warfare would trigger an EU but not a NATO response.

As discussed in section 1.1, Article 42(7) traces back to Article IV BT, which, like Article 5 NAT, was originally designed for collective defence against conventional military attacks, not attacks by non-state actors. The article's activation in response to a non-state-sponsored terrorist attack, despite the existence of Article 222 TFEU specifically designed to address such incidents, seems to support the argument of an extensive interpretation of this norm.⁵⁵⁸

Furthermore, like NATO, the EU recognised cyberspace and space as operational domains in 2018⁵⁵⁹ and has since put forward a new Cybersecurity Strategy in 2020,⁵⁶⁰ a Military Vision and Strategy on Cyberspace as a Domain of Operations in 2021,⁵⁶¹ the Space Strategy for Security and Defence in 2023,⁵⁶² and the Space Act in 2025.⁵⁶³ As the strategic analysis will show, there is a strong focus in the Compass on regular exercises to further strengthen mutual assistance in case of armed

⁵⁵⁶ 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/>>. Already in 2016, the Joint Framework on countering hybrid threats stated that 'if multiple serious hybrid threats constitute armed aggression against an EU Member State, Article 42 (7) TEU could be invoked to provide an appropriate and timely response. A wide-ranging and serious manifestation of hybrid threats may also require increased cooperation and coordination with NATO.' 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>>.

⁵⁵⁷ NATO, 'Joint Press Conference by NATO Secretary General Mark Rutte with the President of Finland Alexander Stubb and the Prime Minister of Estonia Kristen Michal at the Baltic Sea NATO Allies Summit', *Speeches & transcripts*, (14 January 2025), available at <https://www.nato.int/cps/en/natohq/opinions_232116.htm>; SHAPE, 'Baltic Sentry to Enhance NATO's Presence in the Baltic Sea', *News Releases*, (14 January 2025), available at <<https://shape.nato.int/news-releases/baltic-sentry-to-enhance-natos-presence-in-the-baltic-sea>>.

⁵⁵⁸ Blake & Mangiameli, (n 432), 1225-1226; Martin, (n 545), 410-411. See also section 2.3.

⁵⁵⁹ Council of the European Union, *EU Cyber Defence Policy Framework (2018 update)*, 14413/18, (19 November 2018), available at <<https://data.consilium.europa.eu/doc/document/ST-14413-2018-INIT/en/pdf#:~:text=Cyberspace%20is%20the%20fifth%20domain,and%20resilient%20cyber%20operational%20capabilities>>.

⁵⁶⁰ European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Joint Communication to the European Parliament and the Council - The EU's Cybersecurity Strategy for the Digital Decade*, JOIN(2020) 18 final, (16 December 2020), available at <<https://digital-strategy.ec.europa.eu/en/library/eu-cybersecurity-strategy-digital-decade-0>>.

⁵⁶¹ European External Action Service, *European Union Military Vision and Strategy on Cyberspace as a Domain of Operations*, EEAS(2021) 706 REV4, (15 September 2021), available at <<https://www.statewatch.org/media/2879/eeas-military-vision-cyberspace-2021-706-rev4.pdf>>.

⁵⁶² 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), 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%20allies%20in%20space%20security%20and%20defence>>.

⁵⁶³ European Commission, Defence Industry and Space, *EU Space Act: Strengthening Safety, Resilience and Sustainability in Space*, (25 June 2025), available at <https://defence-industry-space.ec.europa.eu/eu-space-act_en>.

aggression, including in the cyber,⁵⁶⁴ hybrid,⁵⁶⁵ and space domains.⁵⁶⁶ Therefore, it seems safe to assume that, although the interpretation of Article 42(7) TEU has never been discussed or expanded in European Council decisions or conclusions, unlike that of Article 5 NAT in NATO Summit communiqués, Article 42(7) TEU should be considered applicable under the same circumstances as Article 5 NAT. Non-traditional attacks, such as terrorist attacks, cyberattacks, hybrid attacks and attacks to, from and within space are, therefore, also covered by the EU's Article 42(7), with potential overlaps between the two clauses.⁵⁶⁷

2.2 *Armed Aggression on a Member State's Territory*

While Article 5 NAT states that the armed attack against one or more NATO Allies must have been committed in 'Europe or North America', with Article 6 further clarifying the geographical reach of the attack that can trigger the mutual defence obligation, Article 42(7) TEU simply states that a Member State must be '*victim of armed aggression on its territory*'. This leads to two considerations.

First, only the aggressed Member State(s) can invoke Article 42(7) TEU. It was France, the victim of the terrorist attacks, that invoked Article 42(7) TEU in 2015. In contrast, in the case of Article 5 NAT, it was not the USA, the victim of the terrorist attack, but its Allies that offered to invoke it.⁵⁶⁸

Second, in light of the fact that no further clarification is provided in terms of geographical coverage, overseas territories outside of Europe should be intended as included in the scope of Article 42(7) TEU. For instance, should an attack occur on the land, in the waters or in the airspace of the French territory of *La Martinique*, in the Caribbean, France could potentially invoke Article 42(7) TEU as it did after the Paris attacks. It could not invoke Article 5 NAT though, since the island is located below the Tropic of Cancer.⁵⁶⁹

⁵⁶⁴ 2022 *Strategic Compass*, (420), 31, 35, 39.

⁵⁶⁵ *Ibid.*, 31, 39.

⁵⁶⁶ *Ibid.*, 34, 36. See also Table 3, XII.

⁵⁶⁷ Already in 2012, the European Parliament stated in its resolution 'on the EU's mutual defence and solidarity clauses: political and operational dimensions' that '[...] even non-armed attacks, for instance cyberattacks against critical infrastructure, that are launched with the aim of causing severe damage and disruption to a Member State and are identified as coming from an external entity could qualify for being covered by the clause'. 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>. As observed by Martin, following the Bataclan and Stade de France attacks, the European External Action Service (EEAS) further clarified that, to fall within the scope of Article 42(7) TEU and constitute armed aggression, '[t]he attack must originate from abroad and its scope covers attacks by state and non-state actors [translated from French]', as quoted in Martin, (n 558). See also Sari, (n 217), 422.

⁵⁶⁸ See Chapter 1, section 2.3 and Table 3, XII.

⁵⁶⁹ Pol Navarro I. Serradell, *A Comparative Study of Article 5 of the NATO and Article 42(7) Of the Treaty on The European Union: Its Scope and Limits* (Finabel, 2024), 12.

However, it has been argued that since EU primary law does not apply to all overseas territories, neither should Article 42(7) TEU.⁵⁷⁰ In fact, some scholars and practitioners⁵⁷¹ have analysed the distinction between the EU's outermost regions (ORs), which include for example *La Martinique*, and the EU's overseas countries and territories (OCTs).

The former are part of EU territory, subject to EU law, and enjoy all the rights and obligations of EU membership, though certain specific measures apply.⁵⁷² In contrast, the latter are associated with the EU but not considered part of it.⁵⁷³ While EU law does not extend to them, their foreign, security and defence policies often fall under the jurisdiction of the EU Member States they maintain special ties with. As EU law applies to ORs but not OCTs, it follows that Article 42(7) TEU could be invoked for ORs but not for OCTs.⁵⁷⁴ This classification has gained renewed attention following US President Donald Trump's refusal to rule out the use of military force to acquire Greenland, an OCT.⁵⁷⁵

However, it must be noted that the status of ORs and OCTs can be easily changed by the European Council without requiring any amendment to the TFEU. The French territory of Mayotte, for example, was originally an OCT until 2014 when it became an OR at the request of France.⁵⁷⁶ Were it to come under attack, France could, therefore, invoke Article 42(7) TEU. This also applies to the Spanish cities of Ceuta and Melilla in Morocco⁵⁷⁷, which, although located above the Tropic of Cancer, are not covered by Article 5 NAT.⁵⁷⁸

As Sari has pointed out, unlike Article 5 NAT, Article 42(7) TEU cannot be invoked if the armed forces of a Member State are attacked while deployed in the territory of another Member

⁵⁷⁰ Blake & Mangiameli, (n 432), 1226; Cirlig, *The EU's mutual assistance clause*, (n 528), 3. See also Table 3, XII.

⁵⁷¹ See, e.g., Deen, Zandee, and Stoetman, (n 554), 17; 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>>; Perot 2019, (n 554), 49.

⁵⁷² *Consolidated Version of the TFEU*, (n 482), Articles 349 and 355, available at <https://eur-lex.europa.eu/eli/treaty/tfeu_2016/2025-03-15/eng>. ORs are currently nine in total. For the full list, see <https://ec.europa.eu/regional_policy/policy/themes/outermost-regions_en>.

⁵⁷³ Although some researchers believe otherwise. See, e.g., Geursen, (n 571), 148; *Ibid.*, Articles 198-204. OCTs are currently thirteen. The full list can be found at <https://international-partnerships.ec.europa.eu/countries/overseas-countries-and-territories_en>.

⁵⁷⁴ Although Perot suggests that the fact that OCTs are not part of the EU does not preclude an armed aggression there from triggering the obligation of aid and assistance among EU Member States under Article 42(7) TEU, while Geursen argues that CFSP legislation should apply uniformly to all overseas territories, and that allowing a division in its application would undermine its coherence. See Perot 2019, (n 554), 49; Geursen, (n 571).

⁵⁷⁵ Federica Fazio, 'What happens if Trump invades Greenland?', Blog, *DCU Brexit Institute*, (13 January 2025), available at <<https://dcubrexitinstitute.eu/2025/01/what-happens-if-trump-invades-greenland/>>.

⁵⁷⁶ Frédéric Gouardères, 'Outermost regions (ORs)', Fact Sheet on the European Union, *European Parliament*, (March 2024), available at <[https://www.europarl.europa.eu/factsheets/en/sheet/100/outermost-regions-ors#:~:text=The%20European%20Union%20supports%20the,the%20Canary%20Islands%20\(Spain\)>](https://www.europarl.europa.eu/factsheets/en/sheet/100/outermost-regions-ors#:~:text=The%20European%20Union%20supports%20the,the%20Canary%20Islands%20(Spain)>)>.

⁵⁷⁷ For more information on EU territories, see <https://taxation-customs.ec.europa.eu/territorial-status-eu-countries-and-certain-territories_en>.

⁵⁷⁸ Serradell, (n 569), 12.

State.⁵⁷⁹ The clause's sole reference to Member State territories also appears to exclude its applicability to ships in international waters or military personnel deployed out of area. This means that if vessels flying an EU Member State's flag are attacked in international waters, or if soldiers participating in a CSDP mission or other external operation come under attack, Article 42(7) TEU does not apply.⁵⁸⁰ As such, the recent French proposal to send European troops – outside of NATO and without US support – to help secure a potential ceasefire between Russia and Ukraine would leave them vulnerable to aggression. This consideration is likely among the factors that prompted the President of the European Commission, Ursula von der Leyen, to negotiate with President Trump a multinational troop deployment with US backing as part of post-conflict security guarantees to Ukraine.⁵⁸¹

The same logic seems to extend to outer space. As pointed out by Fiott,⁵⁸² it is not clear whether Article 42(7) TEU applies to space-based assets and personnel. Under international law, sovereignty cannot be asserted in space. The 1967 Outer Space Treaty – to which all EU Member States⁵⁸³ are now parties – affirms that '[o]uter space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.'⁵⁸⁴ Therefore, Article 42(7) TEU could apply in the event of an attack originating from space and targeting the territory of a Member State, but not, for example, to attacks on EU astronauts aboard the International Space Station or on satellite systems such as Copernicus or Galileo, unless the attack coincides with their orbiting directly above a Member State's territory.

Nevertheless, the 2023 EU Space Strategy for Security and Defence, clearly states that '[a]ny Member State can invoke the mutual assistance clause enshrined in the EU Treaties (Article 42(7) of the Treaty on European Union), *should a space threat or incident amount to an armed attack on its territory.*' [emphasis added].⁵⁸⁵ This was followed by amendments to Council Decision (CFSP)

⁵⁷⁹ Sari, (n 217), 455. See also Table 3, XII.

⁵⁸⁰ Deen, Zandee, and Stoetman, (n 554), 18; Perot 2019, (n 554), 50; Sari, (n 217), 425. See also Table 3, XII.

⁵⁸¹ Henry Foy, 'Europe has 'pretty precise' plan to send troops to Ukraine, von der Leyen says', *Financial Times*, (31 August 2025), available at <<https://www.ft.com/content/8ade14ca-7aa1-4413-887b-59712037665c>>. See also Delegation of the European Union to Ukraine, 'Statement by President von der Leyen following the meeting of the Coalition of the Willing in Paris', (5 September 2025), available at <https://www.ecas.europa.eu/delegations/ukraine/statement-president-von-der-leyen-following-meeting-coalition-willing-paris_en>.

⁵⁸² 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)>.

⁵⁸³ Croatia acceded in March 2023, while Latvia in March 2025. 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>>.

⁵⁸⁴ *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.

⁵⁸⁵ European Commission, *2023 EU Space Strategy for Security and Defence*, (n 562), 9.

2021/698,⁵⁸⁶ to extend its scope to threats in the space domain that may affect the security of the EU and its Member States, and particularly those to the systems and services set up under the Union Secure Connectivity Programme.

More recently, the European Commission proposed the EU Space Act, aimed at strengthening protection of European space infrastructure by extending cybersecurity regulations to the space sector.⁵⁸⁷ These developments suggest a broader interpretation of Article 42(7) TEU, potentially encompassing attacks not only from, but also to, or even within space, provided that they are considered an armed attack on a Member State's territory.⁵⁸⁸

2.3 *Framework of Response: Bilateral (Member States) vs Collective (EU) Response*

While Article 42(7) TEU commits only the Member States to come to each other's assistance in case of armed aggression, another norm, Article 222 TFEU, requires both the Member States and the EU institutions to provide support in the event of terrorist attacks as well as man-made or natural disasters. It states:

‘1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

(a) — prevent the terrorist threat in the territory of the Member States;

— protect democratic institutions and the civilian population from any terrorist attack;

— assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;

(b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article 71; the two

⁵⁸⁶ See Council of the European Union, *Council Decision (CFSP) 2023/598 of 14 March 2023 amending Decision (CFSP) 2021/698 to include the Union Secure Connectivity Programme*, OJ [2023] L 79/165-166, 17.03.2023.

⁵⁸⁷ 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>.

⁵⁸⁸ See Martin, (n 545), 407-408.

committees shall, if necessary, submit joint opinions.

4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.⁵⁸⁹

Like the mutual defence clause, the solidarity clause was first introduced into the EU legal framework during the negotiations leading to the signing of the CT. The final report of Working Group VIII on Defence released in December 2002, roughly a year after the 9/11 terrorist attacks, stated that ‘[t]here was broad support for a new clause spelling out the principle of solidarity between Member States’ and that ‘such a clause [...] would apply to *threats from non-State entities*’ and would be triggered ‘*only at the request of the civilian authorities of the country concerned*’ [emphasis added].⁵⁹⁰

These recommendations translated into Article X of Part I, Title V.⁵⁹¹ In the comments, it was explained that its location in Part I of the CT had to do with the ‘*horizontal scope*’ of the clause, whose activation would involve ‘*both national military capabilities and the instruments of the Union*’.⁵⁹² It was also specified that the clause would be activated in case of a terrorist threat or attack ‘by non-State bodies’.⁵⁹³ The reasoning behind this was that ‘*[a]n attack by a third State, even if it took the form of a “terrorist” attack, would be an act of “aggression”*’ and, as such, be covered by draft Article 30(7), the mutual defence clause.⁵⁹⁴

A month later, a sentence was added to the article, which was renumbered as Article I-42, and read: ‘*The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the victim of terrorist attack or natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member State [...]*’ [emphasis added].⁵⁹⁵ The reference to natural and man-made disasters had been proposed by the Working Group on Defence, but was temporarily put aside by the Presidium, pending the preparation

⁵⁸⁹ *Consolidated Version of the TFEU*, (n 482), Article 222.

⁵⁹⁰ Barnier Report, (n 519), paras. 57-58, at 20. This is confirmed by the debates that took place on 20 December 2002. However, some members favoured a broader clause on solidarity and common security, covering both traditional and non-traditional threats, based on the Franco-German proposals tabled by then-French Foreign Minister, Dominique de Villepin, and German Foreign Minister, Joschka Fischer. See, European Convention, *Contribution by Dominique de Villepin and Joschka Fischer, members of the Convention, presenting joint Franco-German proposals for the European Convention in the field of European security and defence policy*, CONV 422/02, (22 November 2002), 2, available at <<https://data.consilium.europa.eu/doc/document/CV-422-2002-INIT/en/pdf>>. See also Barnier Report, (n 519), para. 60; Costa (Parl.-PT) at 5-060 (translated from Portuguese with the use of AI), Katiforis (Ch.E/G.-GR) at 5-083 (translated from Greek with the use of AI), De Villepin (Ch.E./G.-FR) at 5-065 and Fischer (Ch.E/G.-DE) at 5-107, in *European Parliament, European Parliament and the European Constitution* (n 519).

⁵⁹¹ For the full text of the article, see European Convention, *Draft articles of the Constitutional Treaty on external action*, (n 527), 22.

⁵⁹² *Ibid.*

⁵⁹³ *Ibid.*

⁵⁹⁴ *Ibid.*

⁵⁹⁵ European Convention, *Draft Constitution Volume I*, (n 529), 103.

of a draft providing a legal basis for disaster protection.⁵⁹⁶ It was reintroduced following amendments requested jointly by France, Germany, and the UK, as well as by Austria, Belgium, Finland, and Ireland. No changes were made to the version presented in Thessaloniki in June 2003, with the exception of the article concerning the implementation of the clause, which was identified as Article III-231.⁵⁹⁷

The draft presented by the Italian Presidency in November 2003 included a declaration stating that neither Article I-42 nor Article III-231⁵⁹⁸ would ‘affect the *right of another Member State to choose the **most appropriate means** to comply with its own solidarity obligation towards that Member State*’ [bold in original, emphasis added] which had been victim of a terrorist attack or natural or man-made disaster.⁵⁹⁹

Based on the abovementioned declaration, Denmark further declared that its ‘participation in actions or legal acts pursuant to Articles I-42 and III-231 w[ould] take place with respect of Part I and Part II of the Protocol on the position of Denmark’.⁶⁰⁰ Both declarations were reiterated in the version of the CT of December 2003, in which no significant changes were made to either Article I-42 or III-231.⁶⁰¹

The terrorist attacks perpetrated by Al-Qaeda on 11 March 2004 in Madrid – the first of this kind suffered by an EU Member State – led the Council to adopt a Declaration on Solidarity Against Terrorism. The declaration committed both EU Member States and those scheduled to join the EU on 1 May 2004, as part of the so-called ‘Big Bang’ enlargement, ‘to mobilise all the instruments at their disposal, including military resources’ to assist Spain.⁶⁰² The declaration, however, also reiterated that it would be up to the Member States and upcoming Member States ‘to choose the most appropriate means to comply with this solidarity commitment’.⁶⁰³ Adopted at a time when the CT had not even

⁵⁹⁶ Barnier Report (n 519), para. 59. See also Dehaene (Vice-President) at 4-009, in European Parliament, ‘European Parliament and the European Constitution – Debates at the Convention – Institutions, foreign & defence policy’, (24 April 2003), available at <https://www.europarl.europa.eu/Europe2004/textes/verbatim_030424.htm>.

⁵⁹⁷ The draft was formally submitted to the President of the European Council in Rome on 18 July 2003. See Conference of the Representatives of the Governments of the Member States, *Draft Treaty establishing a Constitution for Europe*, (n 529), Article 42.

⁵⁹⁸ A sentence was added in Article III-231.1 stating that ‘[t]he Council shall act in accordance with Article III-210, paragraph 1 where this decision has defence implications. The European Parliament shall be informed.’ [bold in original, translated from French]. See Conference of the Representatives, IGC 2003 – Naples Ministerial Conclave, (n 531), Article III-231(1).

⁵⁹⁹ *Ibid.*, *Declaration by the Conference on Articles I-42 and III-231 of the Constitution*.

⁶⁰⁰ *Ibid.*, *Declaration by the Conference in the relation to the Protocol on Denmark*.

⁶⁰¹ Conference of the Representatives, ‘IGC 2003 – Intergovernmental Conference (12–13 December 2003), ADDENDUM 1 to the Presidency proposal’, CIG 60/03 Add 1, (9 December 2003), Article III-231(1).

⁶⁰² European Council, *Declaration on Solidarity Against Terrorism*, (25 March 2004), Annex II, 18, available at <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/79637.pdf>.

⁶⁰³ *Ibid.*

been signed or ratified yet, the declaration was a mere political act. Therefore, the commitments it envisaged had non-legally binding effects.⁶⁰⁴

In the final version of the CT signed on 29 October 2004, Article I-42 became Article I-43, while Article III-231 was renumbered as Article III-329. The text of both articles remained unaltered, save for some minor linguistic adjustments.⁶⁰⁵ A declaration on Article I-43 and III-329, which mirrored the one included in the draft of November 2003, was annexed to the Treaty.⁶⁰⁶

When the CT project failed, the solidarity clause made its way first into the LT under Title VII as Article 188R, which merged Article I-43 and Article III-329.⁶⁰⁷ The clause was then eventually incorporated into the TFEU, where it was not subject to any further changes, nor has it been since. Declaration 37 on Article 222 TFEU reiterated what already stated in Declaration 9 on Article I-43 and III-329, which is that this legal provision was not ‘intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation.’⁶⁰⁸ This suggests that, akin to the mutual defence clause, the solidarity clause may be better understood as an *obligation of result* rather than means, notwithstanding the fact that, unlike the former, it makes express reference to military assistance.⁶⁰⁹ Both provisions require Member States to provide assistance, while leaving the choice of means to each member in the end.

While Article 42(7) TEU does not explicitly indicate the specific outcome toward which Member States’ assistance must be directed, its underlying purpose can be inferred from the Union’s constitutional objectives. In particular, Article 3(1) TEU affirms that ‘[t]he Union’s aim is to promote peace, its values and the well-being of its peoples’, which, as Govaere has emphasised, constitutes ‘the first (and foremost) express objective of the EU’.⁶¹⁰ In addition, Article 21(2)(c) in the General Provisions for the Union’s External Action provides that ‘[t]he Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: [...] (c) preserve peace, prevent conflicts and strengthen

⁶⁰⁴ European Council, *Declaration on Combating Terrorism*, (25 March 2004), 1-13, available at <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/79637.pdf>.

⁶⁰⁵ Conference of the Representatives of the Governments of the Member States, *Treaty establishing a Constitution for Europe*, (n 535), Articles I-43 and III-329.

⁶⁰⁶ Conference of the Representatives of the Governments of the Member States, *Declarations to be annexed to the Final Act of the Intergovernmental Conference and the Final Act, Declaration 9 on Articles I-43 and III-329*, CIG 87/04 ADD 2 REV 2, (25 October 2004), available at <http://www.proyectos.cchs.csic.es/euroconstitution/library/constitution_29.10.04/declarations_EN.pdf>.

⁶⁰⁷ *Treaty of Lisbon*, (n 539), Article 188R.

⁶⁰⁸ *Consolidated Version of the TFEU*, (n 482), 37. *Declaration on Article 222 of the Treaty on the Functioning of the European Union*.

⁶⁰⁹ As pointed out by Cirlig, however, ‘the Council Decision [2014/415/EU] does not represent a legal framework for action if military means are used for defence purposes’ since it specifically states that it has no defence implications. See Cirlig, *The EU’s mutual assistance clause*, (n 528), 7. For more information on Council Decision 2014/415/EU see footnote 615.

⁶¹⁰ Govaere 2025, (n 1), 13.

international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders'. These goals of promoting peace and guaranteeing the security of EU citizens and territory were reaffirmed in the 2016 EU Global Strategy⁶¹¹ and the 2022 Strategic Compass.⁶¹² In this respect, Article 222 TFEU may likewise be read in conjunction with Article 3(1) TEU, which articulates the Union's overarching constitutional objectives of promoting peace, EU values and the well-being of EU citizens, whereas Article 21(2)(c) TEU, being confined to the General Provisions on the Union's External Action, does not constitute an equivalent interpretative reference point for the solidarity clause, unless decisions with defence implications are adopted.

Given that the intent of the legislator was for the solidarity clause to cover terrorist attacks by non-state actors,⁶¹³ France should have invoked Article 222 TFEU, the solidarity clause, rather than Article 42(7) TEU, the mutual assistance clause, after the ISIS attacks that killed 131 people and injured 416 in Paris on 13 November 2015. However, the French government chose to invoke Article 42(7) TEU for three reasons: 1) Article 42(7) TEU involves only the Member States, with no formal role envisaged for the EU as such; 2) invoking it does not require a unanimous decision by the Council; and 3) there is no formal procedure to be followed to activate it.

Article 222 TFEU, on the other hand, explicitly refers to the role that the EU would play if invoked, which is to mobilise all available instruments, including the military resources provided by the Member States.⁶¹⁴ Additionally, paragraph 3 states that where its decisions have defence implications, the Council needs to act in accordance with Article 31(1) TEU, which requires decisions to be taken by unanimity, save for the possibility of constructive abstention.

The exact procedure for the implementation of Article 222 TFEU by the Union is set out in the Council Decision of 24 June 2014. The Decision not only further clarifies what is meant by terrorist attack,⁶¹⁵ but also poses a condition on the invocation of the clause: 'the affected Member State may invoke the solidarity clause *if, after having exploited the possibilities offered by existing means and tools at national and Union level, it considers that the crisis clearly overwhelms the*

⁶¹¹ See section 3.2 and specifically (n 731).

⁶¹² See section 3.3 and specifically (n 775).

⁶¹³ Deen, Zandee, and Stoetman, (n 554), 10-11; Dyson & Konstadinides, (n 493), 69.

⁶¹⁴ Deen, Zandee, and Stoetman, (n 613).

⁶¹⁵ 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. The Council Framework Decision 2002/475/JHA is no longer in force as it was replaced by Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism. For the full list of acts that constitute terrorist offences, see Article 3 Title II, *Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, OJ [2017] L 88/6, 31.03.2017. Article 2, Council Decision 2014/415/EU also defines a Member State's territory for these purposes to include not only its 'land area, internal waters, territorial sea, and airspace', but also 'infrastructure (such as off-shore oil and gas installations)', located in its territorial sea, exclusive economic zone, or continental shelf.

response capabilities available to it. [emphasis added].⁶¹⁶ By contrast, no formal procedure is foreseen for the implementation of Article 42(7) TEU, making this norm more flexible.

When former French Minister of Defence, Jean-Yves Le Drian, formally invoked Article 42(7) TEU at a meeting of the EU Foreign Affairs Council (FAC) on 17 November, the Ministers of Defence of the then-twenty-eight Member States expressed their ‘unanimous and full support to France and their readiness to provide all the necessary aid and assistance’.⁶¹⁷ However, the FAC meeting had already been scheduled,⁶¹⁸ and simply provided the opportunity for Le Drian to invoke the clause while his counterparts were already assembled. The clause’s invocation in a Council’s meeting was, therefore, ‘purely incidental’.⁶¹⁹ However, it can also be interpreted as an implementation of Article 32 TEU, which in a similar vein to Article 4 NAT, states that ‘Member States shall consult one another within the European Council and the Council on any matter of foreign and security policy of general interest, in order to determine a common approach.’⁶²⁰

Former High Representative for Foreign Affairs and Security Policy, Federica Mogherini, clarified that the assistance would consist in ‘offers of support through material assistance as well as through enhanced support in other theatres [of operations where France was engaged]’, and that ‘the article of the Treaty does not require any formal decision or Council conclusion to be taken’.⁶²¹ No decision was, in fact, adopted by the Council. The obligations imposed by Article 42(7) TEU, therefore, unlike those under Article 222 TFEU and Article 5 NAT, are *automatic* despite the shift in verb tense from ‘will’ in Article V BT to ‘shall’ in Article 42(7) LT.⁶²² Mogherini also clarified that ‘this doesn’t imply EU CSDP mission or operation’.⁶²³

⁶¹⁶ *Council Decision of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause*, (n 615), Article 4(1).

⁶¹⁷ Council of the European Union, *Outcome of the Council Meeting. 3426th 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>>.

⁶¹⁸ European Commission, *LIVE Foreign Affairs Council (Defence)- press conference HRVP Federica Mogherini*, (17 November 2015), at 9:10, available at <<https://audiovisual.ec.europa.eu/en/video/I-112324>>.

⁶¹⁹ 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>. See also Cirlig, *The EU’s mutual assistance clause*, (n 528), 5.

⁶²⁰ *Consolidated Version of the TEU*, (n 2), Article 32. See, e.g., Martin, (n 545), 417. As a matter of fact, in 2012 the European Parliament had expressed the view that ‘[...] the obligation to provide aid and assistance, expressing political solidarity among Member States, should ensure a rapid decision in Council in support of the Member State under attack; considers that consultations in line with the requirement of Article 32 TEU would serve this purpose, without prejudice to the right of each Member State to provide for its self-defence in the meantime’. See European Parliament 2012, (n 567), para. 17. See also Sari, (n 217), 436.

⁶²¹ European Commission, *Press Conference HRVP Federica Mogherini*, (n 618), at 3:24 and 4:01.

⁶²² Cirlig, (n 570). It must be noted that ‘shall’ is used in Article 5 NAT as well. See also Table 3, XII.

⁶²³ European Commission, *Press Conference HRVP Federica Mogherini*, (n 618), at 4:15. As highlighted by Cirlig ‘in principle, the EU cannot conduct self-defence operations within the framework of the CSDP (only its Member States), unless the Treaty is amended or the European Council decides unanimously on the establishment of common defence in accordance with Article 42(2) TEU’. See Cirlig, *The EU’s mutual assistance clause*, (n 528), 4.

At a joint press conference with Mr Le Drian on 17 November, Ms Mogherini added that, although the process would be Member State-driven and the aid and assistance provided bilaterally, ‘the European Union c[ould] facilitate this and coordinate this’ if useful and necessary.⁶²⁴ Therefore, although the article does not formally envision a role for EU institutions, the attacked Member State can, nevertheless, request the EU’s support, for instance when it comes to coordinating the overall aid and assistance, as France did.⁶²⁵

The invocation of Article 42(7) TEU was described as ‘a political act’, by Le Drian and Mogherini.⁶²⁶ Le Drian, however, avoided explaining why it was chosen over Article 5 NAT, simply supporting the President’s decision.⁶²⁷ *Politico* reported that the EU clause was preferred to avoid pressuring the US or provoking further instability in the Middle East.⁶²⁸ France’s relationship with NATO has always been rather complicated. The country had withdrawn from the NCS in 1966 and rejoined it in 2009, and is a strong advocate of European strategic autonomy. Additionally, France had suffered a terrorist attack only ten months earlier. On 7 January 2015, employees of the satirical magazine *Charlie Hebdo* were killed by members of Al-Qaeda in the Arabian Peninsula (AQAP) in Paris. Additional attacks followed on 8 and 9 January. At an informal European Council meeting on 12 February 2015, EU leaders then pledged to ‘reinforce action against terrorist threats’ by adopting

⁶²⁴ European Commission, Press Conference HRVP Federica Mogherini, (n 618), at 4:25.

⁶²⁵ Already in 2012, in its resolution on the ‘EU mutual defence and solidarity clauses: political and operational dimensions’ the European Parliament had invited the HR/VP ‘to propose practical arrangements and guidelines for ensuring an effective response in the event that a Member State invokes the mutual defence clause, as well as an analysis of the role of the EU institutions should that clause be invoked’. European Parliament 2012, (n 567), para. 17. Although these calls were reiterated in 2016, no procedural framework appears to have been established at the time of writing. An ‘operational protocol’ was adopted a few months later, but it addressed only the eventuality of hybrid attacks and referred exclusively to Article 222 TFEU, not Article 42(7), although the subsequent implementation report expressly mentioned both articles. Additionally, in 2012, the European Parliament had also expressed the view that ‘[...] where collective action is taken to defend a Member State under attack, it should be possible to make use of existing EU crisis management structures where appropriate, and in particular that the possibility of activating an EU Operational Headquarters should be envisaged; stresses that a fully-fledged permanent EU Operational Headquarters is needed [...]’. European Parliament 2012, (n 567), para. 18. See European Parliament, *Resolution on the mutual defence clause (Article 42(7) TEU)*, P8_TA(2016)0019, (21 January 2016), paras. 17-18, available at <https://www.europarl.europa.eu/doceo/document/TA-8-2016-0019_EN.pdf>. See also Council of the European Union, *Joint Staff Working Document EU operational protocol for countering hybrid threats ‘EU Playbook’*, 11034/16, (7 July 2016), available at <<https://www.statewatch.org/media/documents/news/2016/jul/eu-com-countering-hybrid-threats-playbook-swd-227-16.pdf>>; European Commission, *Joint Report to the European Parliament, the European Council and the Council on the implementation of the Joint Framework on countering hybrid threats from July 2017 to June 2018*, JOIN(2018) 14 final, (13 June 2018), available at <https://www.eeas.europa.eu/sites/default/files/joint_report_on_the_implementation_of_the_joint_framework_on_countering_hybrid_threats_from_july_2017_to_june_2018.pdf>. See also Cirlig, *The EU’s mutual assistance clause*, (n 528), 5; Martin, (n 545), 421; Perot 2024, (n 541), 7.

⁶²⁶ European Commission, Press conference HRVP Federica Mogherini, (n 618), at 08:00.

⁶²⁷ *Ibid.*

⁶²⁸ Jacopo Brigazzi, ‘EU agrees to French request for military help. Countries unanimously support move to provide aid and assistance in fight against ISIL’, *Politico*, (17 November 2015), available at <<https://www.politico.eu/article/eu-agrees-to-french-request-for-military-help/>>.

specific measures.⁶²⁹ Hence, as suggested by de Galbert, the French government's decision to activate Article 42(7) TEU rather than Article 5 NAT may have aimed to 'create additional momentum to reinforce several EU counterterrorist tools' and prevent further attacks.⁶³⁰

Other authors have suggested that invoking Article 5 NAT would have sparked opposition from Russia and Arab countries, and risked undermining emerging diplomatic and military cooperation to fight ISIS. In contrast, opting for Article 42(7) TEU was seen as less controversial, as the EU is generally regarded as a civilian rather than a military power.⁶³¹ Additionally, it has been noted that France's request for support was motivated not so much by the need to address the direct effects of the attacks on its territory, but by a broader vision of 'Europe's role in global affairs'.⁶³²

Following the activation of the mutual assistance clause, bilateral negotiations took place between Member States and the French government regarding the type of aid to be provided. Le Drian specifically requested that the assistance take the form of support for France's in external theatres of operations, particularly in Mali, the Sahel, Iraq, and Syria.⁶³³ As Mogherini had anticipated, the assistance differed based on the foreign and defence policies of each Member State.⁶³⁴ For instance, Ireland increased its personnel assigned to the EU Training Mission in Mali, which had been established in 2013 to support French operations against militant Islamist groups in Mali and the Sahel region through Operations Serval and Barkhane.⁶³⁵ The next section will show that the aid provided can, in fact, include both civil and military assistance.

2.4 *Obligation of Aid and Assistance by all the Means in their Power*

As pointed out by Mills, Article 42(7) TEU is a compromise norm between 'those seeking a mutual defence commitment [...], those seeking to protect their traditional neutral status [...and] those

⁶²⁹ European Council, *Informal meeting of the Heads of State or Government Brussels, 12 February 2015 - Statement by the members of the European Council*, (12 February 2015), available at <<https://www.consilium.europa.eu/en/press/press-releases/2015/02/12/european-council-statement-fight-against-terrorism/>>.

⁶³⁰ Simond de Galbert, 'After the Paris Attacks, France Turns to Europe in its Time of Need', Commentary, *Center for Strategic and International Studies (CSIS)*, (19 November 2015), available at <<https://www.csis.org/analysis/after-paris-attacks-france-turns-europe-its-time-need>>.

⁶³¹ Hillion & Blockmans, (n 619), 2.

⁶³² *Ibid.*, 4; Cirlig, (n 528), 8.

⁶³³ European Commission, Press conference HRVP Federica Mogherini, (n 618), at 08:32.

⁶³⁴ *Ibid.*, at 4:55.

⁶³⁵ House of the Oireachtas, 'EU Issues - Dáil Éireann Debate - Written answers by the Irish Minister for Foreign Affairs and Trade Charles Flanagan', (27 September 2016), available at <<https://www.oireachtas.ie/en/debates/question/2016-09-27/467/>>; For information on the other Member States, see, e.g. Cirlig, (n 528), 6. See also Suzana Elena Anghel and Carmen-Cristina Cirlig, 'Activation of Article 42(7) TEU France's request for assistance and Member States' responses', Briefing, *European Parliamentary Research Service*, (December 2015), 2, available at <<https://www.europarl.europa.eu/EPRS/EPRS-Briefing-573883-Activation-of-article-42-7-FINAL.pdf>>.

wanting to ensure that the article would not undermine NATO'.⁶³⁶ This is reflected, first of all, in the kind of aid and assistance that EU Member States are legally obliged to provide. The wording '*by all the means in their power*' suggests that the assistance offered can be either civil or military in kind, depending on the means that Member States have at their disposal and the nature and gravity of the armed aggression.⁶³⁷ As seen in sections 1.1. and 1.3, an explicit reference to military means appeared in Article IV BT and later Article V MBT, but was then abandoned in Article I-40(7) CT. Despite this, the fact that there is no expressed exclusion seems to imply that the type of aid and assistance that the Member States are compelled to provide could potentially also include military means.⁶³⁸

The article's placement in Section 2, under the Provisions on the Security and Defence Policy, strongly supports this interpretation.⁶³⁹ This argument is further reinforced by the inclusion of the Irish and NATO clauses that follow, as their presence would be unnecessary if military means were not contemplated. Moreover, unlike the phrasing 'as it deems necessary' in Article 5 NAT, which grants Allies discretion over the nature, timing, and scale of their response,⁶⁴⁰ the wording 'by all the means in their power' in Article 42(7) TEU appears to allow far less flexibility.⁶⁴¹ This has led some authors to argue that, unlike Article 5 NAT, Article 42(7) TEU 'entails an unconditional obligation of mutual assistance'[emphasis added].⁶⁴² Yet, the presence of the Irish and NATO clauses does pose conditions, as will be discussed in sections 2.6 and 2.7.⁶⁴³ Therefore, much like NATO Allies, EU Member States are free to choose the type and scope of the assistance to be provided.⁶⁴⁴

2.5 *The Express Reference to Article 51 UNC*

Like Article 5 NAT, Article 42(7) TEU makes express reference to Article 51 UNC. This reference was first introduced in Article IV BT and kept in Article V MBT and Article I-41(7) CT.⁶⁴⁵ Both Article 5 NAT and Article 42(7) TEU are, therefore, expression of the right of collective defence and

⁶³⁶ Claire Mills, 'France and Article 42(7) of the Treaty on the European Union', Briefing Paper 7390, *House of Commons*, (18 November 2015), 3, available at <<https://researchbriefings.files.parliament.uk/documents/CBP-7390/CBP-7390.pdf>>. See also Cirlig, *The EU's mutual assistance clause*, (n 528), 2.

⁶³⁷ Sari, (n 217), 434-435.

⁶³⁸ Cirlig, (n 528), 3; Martin, (n 545), 417-418; Perot 2019, (n 554), 53; Reichard, (n 104), 201. See also Table 3, XII.

⁶³⁹ Hillion and 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 Hillion & Blockmans, (n 619), 3; Martin, (n 545), 420. Mogherini, however, excluded it when France invoked the clause in 2015. See section 2.3.

⁶⁴⁰ See Chapter 1, section 2.3.

⁶⁴¹ Martin, (n 545), 418-419; Sari, (n 217), 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>

⁶⁴² Blake & Mangiameli, (n 432).

⁶⁴³ See Table 3, XII.

⁶⁴⁴ *Ibid.*

⁶⁴⁵ See Table 1, X.

the obligations they envisage must be consistent with Article 51 UNC.⁶⁴⁶ As discussed in the Introduction, this is because Article 51 UNC allows the members of the international community to act in both individual and collective self-defence in case of an armed attack directed against one of them, without previous authorisation by the UNSC. However, states must immediately report to the UNSC the measures they have taken in exercising their right to self-defence. It is for this reason that a French representative, Mr François Delattre, proceeded to inform the UNSC on 20 November 2015 following the invocation of Article 42.7 TEU,⁶⁴⁷ as Lord Robertson had done after the activation of Article 5 NAT in 2001.⁶⁴⁸

2.6 *The Irish Clause*

This clause first appeared in the Maastricht Treaty,⁶⁴⁹ primarily in response to Ireland's concerns about neutrality, and later made its way into the collective defence clause with the draft CT and later the LT.⁶⁵⁰ The provision is generally understood to refer to militarily non-aligned Member States and countries with long-standing traditions of neutrality⁶⁵¹ – currently Austria, Cyprus, Ireland and Malta – or special security and defence arrangements – like Denmark, which until 2022 had an opt-out from the CSDP.⁶⁵² The clause no longer applies to Finland and Sweden, which joined NATO in 2023 and 2024, respectively.

These ‘special status’ countries are not required to disregard their positions to comply with mutual defence obligations. According to Sari, only these Member States are entitled to decline to provide military assistance when the gravity of the situation would call for a military response.⁶⁵³ However, Article 42(7) TEU does not clearly state which countries are covered by this clause. This is something that cannot be determined without looking at the drafting history of the article.⁶⁵⁴

⁶⁴⁶ See Table 3, XII.

⁶⁴⁷ United Nations Security Council, ‘Threats to international peace and security caused by terrorist acts’, S/PV.7565, (20 November 2015), 2-3, available at <<https://docs.un.org/en/S/PV.7565>>.

⁶⁴⁸ See Chapter 2, section 2.1.

⁶⁴⁹ *Treaty of Maastricht*, (n 419), Article J.4(4).

⁶⁵⁰ *Protocol on the concerns of the Irish people on the Treaty of Lisbon*, OJ [2013] L 60/132, 2.03.2013, Article 3. See also Table 1, X.

⁶⁵¹ See Table 3, XIII. The fundamental difference between neutrality and non-alignment is that while neutrality has both legal and political dimensions, non-alignment is a political concept grounded in moral principles that emerged in the context of the Cold War. For more information on this topic, see, e.g. Thomas Fischer, Juhana Aunesluoma, and Aryo Makko, ‘Neutrality and Nonalignment in World Politics during the Cold War’, 18/4 *Journal of Cold War Studies* (Fall 2016), 6-10, available at <<https://www.jstor.org/stable/26925637>>.

⁶⁵² Council of the European Union, ‘EU defence cooperation: Council welcomes Denmark into PESCO and launches the 5th wave of new PESCO projects’, Press Release, (23 May 2023), available at <<https://www.consilium.europa.eu/en/press/press-releases/2023/05/23/eu-defence-cooperation-council-welcomes-denmark-into-pesco-and-launches-the-5th-wave-of-new-pesco-projects/>>.

⁶⁵³ Sari, (n 217), 435.

⁶⁵⁴ Martin, (n 545), 419; Reichard, (n 104), 211.

According to some scholars, the clause could potentially apply also to Member States like Germany, where parliamentary authorisation of the use of force is constitutionally required.⁶⁵⁵

As Martin suggested, if a Member State's parliament refuses to authorise the use of military force, such a legal obstacle would exclude the State's participation in military operations without it being considered in breach of the obligation to provide aid and assistance under Article 42(7) TEU.⁶⁵⁶

The EU's collective defence clause seemingly suggests that various degrees of commitment were envisioned for each Member State based on the unique nature of their respective security and defence policies. Yet, this would translate in an evident asymmetry in military obligations, undermining the core purpose of the mutual defence clause, which is to ensure an equal sense of security among all parties involved.⁶⁵⁷ The fact that Ireland⁶⁵⁸ – and initially Germany, which now also provides lethal assistance – have, through the EPF, provided non-lethal military support to Ukraine, which is not an EU Member State but a candidate country, in the context of Russia's war of aggression, suggests that this category of Member States would not be exonerated from the legal obligation to provide aid and assistance in the event of an invocation of Article 42(7) TEU; rather, they would be entitled to choose means of assistance which are not incompatible with their status or domestic law requirements.⁶⁵⁹ This contrasts with the argument that Member States are called 'to examine on a case-by-case basis whether their status requires non-participation' with the conclusion varying depending on the country.⁶⁶⁰

However, it should be noted that the CJEU has, in principle, no jurisdiction on CFSP and CSDP, and, therefore, on Article 42(7) TEU, but only on Article 222 TFEU.⁶⁶¹ Therefore, as with NATO, if any Member State, whether or not it falls within the aforementioned category, decides to

⁶⁵⁵ Cirlig, (n 528), 4; Martin, (n 654); Perot 2019, (n 554), 52. The UK as well, at the time. As reported by Mills 'The Government ha[d] stated its intention to seek the approval of the House before committing military forces to action against ISIS in Syria. However, France's invocation of a treaty obligation ha[d] raised questions among many observers as to whether a treaty obligation represents a critical national interest and, therefore, whether prior parliamentary approval would now need to be sought for expanding UK military operations against ISIS'. See Mills, (n 636), 4-5. See also Table, XIII.

⁶⁵⁶ Martin, (n 654).

⁶⁵⁷ Blake & Mangiameli, (n 432), 1228-1229; Reichard, (n 654).

⁶⁵⁸ For more information, see, e.g., Kenneth McDonagh, 'Ireland's Foreign Relations in 2022', 34/1 *Irish Studies in International Affairs* (2023), 247; Kenneth McDonagh, 'Ireland's Foreign Relations in 2023', 35/1 *Irish Studies in International Affairs* (2024), 263; Kenneth McDonagh, 'In Ukraine, the future of Europe and Ireland is at stake', Blog, *DCU Brexit Institute*, (30 April 2024), <<https://dcubrexitinstitute.eu/2024/04/in-ukraine-the-future-of-ireland-and-europe-is-at-stake/>>.

⁶⁵⁹ House of the Oireachtas, 'Ukraine War Dáil Éireann Debate', (8 May 2024), available at <<https://www.oireachtas.ie/en/debates/question/2024-05-08/74/>>; The Federal Government, 'The arms and military equipment Germany is sending to Ukraine', (19 August 2024), available at <<https://www.bundesregierung.de/breg-en/news/military-support-ukraine-2054992>>; Cirlig, The EU's mutual assistance clause, (n 655); Martin, (n 545), 416.

⁶⁶⁰ Blake & Mangiameli, (n 432), 1229. See also Dyson & Konstadinides, (n 493), 69.

⁶⁶¹ Cirlig, The EU's mutual assistance clause, (n 609), 7; Sari, (n 580).

provide little or no aid and assistance at all, there is no sanctioning mechanism to compel it to act otherwise.⁶⁶²

Unlike all other fields of the EU's external action, the rules governing the CFSP are not set out in the TFEU, but in Title V, Chapter 2 of the TEU, making it 'the only substantive external policy field based in the TEU'.⁶⁶³ Article 24(1) subparagraph 2 TEU of Section 1 on the Common Provisions expressly states that the CFSP is subject to 'specific rules and procedures' and that '[t]he Court of Justice of the European Union shall not have jurisdiction with respect to these provisions [...]'.⁶⁶⁴

Nevertheless, in the *KS* and *KD* judgment, the Court stated that it can review the legality of acts and omissions made within the framework of the CFSP that are not political or strategic in nature,⁶⁶⁵ and it is for the Court to determine whether such acts fall within this category.⁶⁶⁶ This is justified by the fact that the CFSP remains an integral part of the EU legal order and, as such, subject to Article 2 TEU, which includes respect for the rule of law⁶⁶⁷ and the protection of fundamental rights, and to Article 19 TEU, which requires that both EU and national action be subject to judicial oversight.⁶⁶⁸ In the words of Hillion and Wessel, 'the Court considers the CFSP as firmly embedded in the EU legal order, despite its procedural specificity mentioned in Article 24(1) TEU. Principles

⁶⁶² See Chapter 1, section 2.3.

⁶⁶³ Marise Cremona, 'The CFSP-CSDP in the Constitutional Architecture of the EU', in Steven Blockmans and Panos Koutrakos (eds.) *Research Handbook on the EU's Common Foreign and Security Policy* (Cheltenham and Northampton: Edward Elgar Publishing Limited, 2018), 5

⁶⁶⁴ See *supra* n 6. Two exceptions, however, are contemplated in Article 24(1) subparagraph 2 TEU and Article 275 TFEU. Under the former, the CJEU may monitor compliance with Article 40 TEU to ensure that the boundaries between the CFSP and other areas of EU law are respected, without encroachment by either sphere, in line with the principle of institutional balance. The latter allows the CJEU to review the legality of EU decisions providing for restrictive measures against natural or legal persons. Under this second exception, the Court may review the validity of such measures, not only in direct actions for annulment under Article 263 TEU, but also indirectly by a way of a preliminary reference. See, e.g., Trevor Hartley and Takis Tridimas, 'The Court of Justice of the European Union', in *The Foundations of European Union Law* (9th Edition, Oxford: Oxford University Press, 2025), 116-118; Christophe Hillion and Ramses A. Wessel, 'The Good, the Bad and the Ugly': three levels of judicial control over the CFSP', in Steven Blockmans and Panos Koutrakos (eds.) *Research Handbook on the EU's Common Foreign and Security Policy* (Edward Elgar Publishing Limited, 2018), 67-68; Panos Koutrakos, 'Judicial Review in the EU's Common Foreign and Security Policy', 67/1 *International and Comparative Law Quarterly* (2018), 6-8; *Rosneft* (Case C-72/15) EU:C:2017:236, para. 81.

⁶⁶⁵ Joined Cases C-29/22 P and C-44/22 P, *KS and KD v Council of the European Union and Others* EU:C:2024:725, para. 117. The Court further clarified that it has no jurisdiction when it comes to 'acts or omissions directly related to the conduct, definition or implementation of the CFSP, and especially the CSDP, that is to say, in particular the identification of the European Union's strategic interests and the definition of both the actions to be taken and the positions to be adopted by the European Union as well as of the general guidelines of the CFSP, within the meaning of Articles 24 to 26, 28, 29, 37, 38, 42 and 43 TEU' (para. 118). Similarly, it has no jurisdiction over 'the decision to remove the executive mandate of a CFSP mission, and in particular a CSDP mission', as it directly relates to political or strategic choices made within the framework of the CFSP, (para. 136). See also Court of Justice of the European Union, 'Common foreign and security policy (CFSP): the Court of Justice clarifies the scope of the jurisdiction of the Courts of the European Union', Press release no 134/24, (10 September 2024), available at <<https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-09/cp240134en.pdf#:~:text=On%20appeal%2C%20the%20Court%20of%20Justice%20explains,or%20strategic%20choices%20or%20to%20interpret%20them>>.

⁶⁶⁶ Hartley & Tridimas (n 664), 119.

⁶⁶⁷ See, e.g., *H. v Council* (Case C-455/14 P) EU:C:2016:569, para. 41; *Rosneft* (n 664), para. 72.

⁶⁶⁸ Hartley & Tridimas (n 664), 119.

and rules of general application would thus be guaranteed through judicial oversight even where applied to a CFSP situation. The latter circumstance does not entail judicial immunity.’⁶⁶⁹

The constitutional embedding of the CFSP thus underscores the legal and normative framework within which the obligations of Article 42(7) TEU must be understood. This framework takes on added significance when Article 42(7) is read in light of Article 3(1) TEU, which unequivocally identifies the promotion of peace, EU values and the well-being of EU citizens as the Union’s primary foundational aim.⁶⁷⁰ Article 42(7) may thus be understood not merely as an intergovernmental political commitment, but as a legally binding treaty mechanism intended to contribute to the attainment of that constitutional objective. This interpretation is further supported by Article 21(2)(c) TEU, under Title V, Chapter I of the General Provisions on the Union’s External Action, which requires the EU to preserve peace, prevent conflicts, and strengthen international security, as well as the EU’s latest security strategies.

However, while Article 42(7) TEU entails an obligation of support among Member States, it does not give rise to a justiciable duty to provide a specific form or level of assistance before the Court. Nevertheless, Article 42(7) establishes a legally relevant benchmark against which Member States’ conduct may be assessed in light of general principles of EU law, even in the absence of a comprehensive enforcement mechanism. While not directly enforceable before the Court, its obligations can still be evaluated against the Union’s constitutional principles, such as the duty of sincere cooperation in Article 4(3) TEU and the principle of solidarity in Article 2 TEU.

A ‘subcategory of a more general principle of loyalty’,⁶⁷¹ the duty of sincere cooperation imposes both positive and negative obligations on the Member States. Article 4(3) subparagraph 1 requires the Member States to ‘take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.’ – positive obligation; while subparagraph 2 requires them to ‘facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.’ – negative obligation.⁶⁷²

As for the principle of solidarity, it appears, not only in Article 2 TEU, but also in the Preamble of the EU Charter of Fundamental Rights, making it one of ‘the four universal values on which the

⁶⁶⁹ Hillion and Wessel (n 664), 68.

⁶⁷⁰ See Govaere 2025, (n 610).

⁶⁷¹ Marcus Klamert, *The principle of loyalty in EU law* (Oxford: Oxford University Press, 2014), 33.

⁶⁷² Peter Van Elsuwege, ‘The Duty of Sincere Cooperation and Its Implications for Autonomous Member State Action in the Field of External Relations’, in Marton Varju (ed.) *Between Compliance and Particularism* (Cham: Springer Nature, 2019), 283-284.

Union is founded'.⁶⁷³ The CJEU has given this principle substantive meaning, as evidenced in the OPAL judgement, in which the Court, although ruling in the context of energy policy, explicitly recognised that this principle 'is itself one of the fundamental principles of EU law',⁶⁷⁴ 'underpins the entire legal system of the European Union [...] and it is closely linked to the principle of sincere cooperation [...]'.⁶⁷⁵ In addition, Govaere has pointed out that 'respect for the constitutional values listed in Article 2 TEU [which include solidarity] is an ongoing 'obligation as to result' for the Member States and the EU, as the CJEU has made clear in the financial conditionality judgments.'⁶⁷⁶

Both principles reappear in Article 24(3) TEU⁶⁷⁷, which requires that Member States support the CFSP 'actively and unreservedly in a spirit of loyalty and mutual solidarity', 'comply with the Union's action in this area' and 'refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations'.⁶⁷⁸ The provision further calls on Member States to 'work together to enhance and develop their mutual political solidarity.'

Van Elsuwege, has highlighted, however, that the application of the duty of cooperation largely depends on the nature of the EU's competence in question. When the Union is exclusively competent, the Member States are under an obligation of result, whereas in areas of shared competence the duty of cooperation merely implies an obligation of means.⁶⁷⁹ As mentioned in the introduction to this thesis, Article 4(2) TEU provides that national security is the exclusive responsibility of the Member States, with Article 5(2) clarifying that any competences not conferred on the EU in the Treaties remain with the Member States.

Although this does not exclude the application of the duty of cooperation and solidarity among Member States in the event of an invocation of Article 42(7) TEU, the decision to commit civilian and/or military personnel to harm's way in the exercise of collective defence remains a prerogative at the core of a Member State's sovereign authority. The Court might exercise jurisdiction over acts of staff management, as illustrated by KS and KD and H. v Council, if aid and assistance were provided through a CSDP mission or operation. Yet, this possibility is, in principle, excluded in the

⁶⁷³ Sacha Garben, 'The Impact of the War in Ukraine on the (Slow) Redress of the 'Solidarity Deficit' in the EU in Policy', in Inge Govaere, Sacha Garben and Eleanor Spaventa (eds.) *The Impact of War (in Ukraine) on the EU* (Oxford and Dublin: Hart Publishing, 2025).

⁶⁷⁴ *OPAL* (Case C-848/19 P) EU:C:2021:598, para. 38.

⁶⁷⁵ *Ibid.*, para. 40. Garben, however, has highlighted that the Court made no reference to the fact that this principle is anchored in the EU Charter of Fundamental Rights, which recognises it as universal and indivisible from the other fundamental values of dignity, freedom and equality. See Garben (n 673), 58-61.

⁶⁷⁶ Govaere 2025, (n 1), 21. It must be noted, however, that the two cases in question – *Hungary v Parliament and Council* (Case C-156/21) EU:C:2022:97 and *Poland v Parliament and Council* (Case C-157/21) EU:C:2022:98 – concerned respect for the rule of law, not the principle of solidarity.

⁶⁷⁷ Van Elsuwege, (n 672), 286-287

⁶⁷⁸ *Consolidated Version of the TEU*, (n 2), Article 24(3).

⁶⁷⁹ Van Elsuwege, (n 672), 290.

context of self-defence under Article 42(7) TEU, as confirmed by Mogherini when France invoked the clause in 2015.⁶⁸⁰

Therefore, it can be concluded that, while Article 42(7) TEU does not create directly enforceable rights before the Court, it reflects the constitutional commitment of the EU Member States to mutual aid, establishing a normative framework in which the principles of sincere cooperation, solidarity and respect for fundamental EU norms may operate as indirect constraints on Member State behaviour.

2.7 *The NATO Clause*

The ‘NATO clause’ was not included in Article V MBT but was later incorporated into Article I-41(7) CT. Based on this clause, special caveats also apply to the twenty-three EU Member States that are members of NATO. This seems to imply that, for members of both organisations, mutual defence obligations arising from the NAT have legal primacy over those arising from the TEU.⁶⁸¹

This is consistent with Article 8 NAT,⁶⁸² as well as Article 30(2) VCLT.⁶⁸³ Therefore, the EU's mutual defence obligation would only apply as long as it did not conflict with the prevailing obligation under the NAT.⁶⁸⁴ For this reason, before its invocation in 2015, it was thought that the EU's mutual defence clause could only be triggered for attacks against non-NATO EU Member States.⁶⁸⁵ The French case has shown, however, that, in the event of an attack, members of both organisations can choose which of the two articles to invoke. It has also revealed that calling for one does not automatically trigger the other, though this does not preclude the possibility of simultaneously invoking both clauses if necessary.⁶⁸⁶ As highlighted by Fiott, ‘such a situation would raise chain of command, financing and transportation considerations.’⁶⁸⁷

⁶⁸⁰ See Cirlig, *The EU's mutual assistance clause*, (n 625); European Commission, Press Conference HRVP Federica Mogherini, (n 623). Hillion & Blockmans and Martin, however, are of a different opinion. See Hillion & Blockmans, (n 639); Martin, (n 639).

⁶⁸¹ Blake & Mangiameli, (n 432), 1217; Sari, (n 653).

⁶⁸² *North Atlantic Treaty* (n 91), Article 8.

⁶⁸³ *Vienna Convention on the Law of Treaties*, Vienna, (22 May 1969), 1155 UNTS 331, Article 30(2).

⁶⁸⁴ As Sari has pointed out, this, however, is not the case for Article 222 TFEU. He argues that if a terrorist attack or a man-made disaster rises to the level of an armed attack or aggression, the solidarity clause could apply in parallel with the EU and NATO's mutual defence clauses. In such cases, however, military assistance provided under Article 222 TFEU is not subject to the requirement that it be compatible with commitments undertaken within NATO. See Sari, (n 217), 439.

⁶⁸⁵ Reichard, (n 104), 221.

⁶⁸⁶ Sari, (n 217), 425 and 435. Bakker *et al.*, (n 544), 26; 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/>>.

⁶⁸⁷ Fiott 2022, (n 686), 3.

The article could also potentially be invoked by a non-NATO EU Member State against a non-EU NATO Ally, unlike Article V MBT.⁶⁸⁸ In hypothesis, if attacked, Cyprus could, for example, activate the EU's collective defence clause against Türkiye. In such a scenario, members of both organisations could be subject to competing requests for assistance as they have only one set forces. Therefore, NATO obligations would probably take precedence over European obligations.⁶⁸⁹ Still, whether this precedence would truly apply depends on the circumstances of the clause's invocation.⁶⁹⁰

Additionally, this primacy of NATO over EU commitments does not amount to a 'right of first refusal' in favour of NATO. Despite the fact that the 2003 Berlin Plus arrangements did include a right of first refusal for NATO, even for peacekeeping operations, the launch of Operation Artemis in the Democratic Republic of Congo in June 2003 made it clear that this was not the case.⁶⁹¹ The 1999 Helsinki European Council Conclusions had stated that the EU would act only in instances 'where NATO as a whole is not engaged',⁶⁹² but as pointed out by Blake and Mangiameli 'this principle is a matter of policy and not of law and in no way means that the EU may only act when NATO has refused to implement a special operation'.⁶⁹³ The two organisations have, in fact, conducted parallel operations in the same geographical areas, such as in Kosovo, Afghanistan and the Horn of Africa.

Finally, Reichard noted that, were a non-NATO EU Member State to be attacked, it could benefit from NATO's mutual security guarantee 'through the back door'.⁶⁹⁴ Indeed, were Ireland to be attacked, for example, it is hard to imagine that the UK and the USA would refrain from intervening or impose missile restrictions, as has been the case with Ukraine; or at least it was hard to image before Trump returned to the White House.

3. *Strategic Analysis*

'Mutual assistance clauses serve a dual purpose. They commit their signatories to stand up to a common threat and are thereby meant to deter potential aggressors. Their dual purpose places them at the crossroads between war and peace and the intersection between law and strategy'.⁶⁹⁵ With this dual role in mind, this section analyses the 2003 European Security Strategy (ESS), the 2016 EU

⁶⁸⁸ The 2003 Berlin Plus framework agreement consists of classified letter exchanges between then-EU High representative, Javier Solana, and then-NATO Secretary General, Lord Robertson. In one such letter, Solana allegedly stated that the ESDP and, therefore, also mutual defence clause, would never be used against a NATO Ally. However, as Reichard noted, the Berlin Plus arrangements are non-binding. Reichard, (n 104), 222.

⁶⁸⁹ Perot 2019, (n 554).

⁶⁹⁰ Fazio, What happens if Trump invades Greenland?, (n 575).

⁶⁹¹ Keohane, (n 533),131; Reichard, (n 104), 130.

⁶⁹² European Council, *Helsinki European Council 10 and 11 December 1999- Presidency Conclusions - Annex I to Annex IV, Presidency Progress Report to the Helsinki European Council on Strengthening the Common European Policy on Security and Defence*, (11 December 1999), Introduction, available at <https://www.europarl.europa.eu/summits/hel2_en.htm>.

⁶⁹³ Blake & Mangiameli, (n 681).

⁶⁹⁴ Reichard, (n 691).

⁶⁹⁵ Sari, (n 217), 406.

Global Strategy (EUGS) and 2022 Strategic Compass, along with related implementation strategies and progress reports. The 2016, 2018 and 2023 EU-NATO Joint Declarations will also be briefly discussed.

Although the mutual defence clause was not yet part of the EU's legal framework at the time of the 2003 ESS, including it in this discussion is essential. The ESS provides the baseline for the Union's strategic culture and outlook on security and defence. It articulated a primarily crisis management and prevention-oriented approach, rooted in the view of the EU as a 'soft power' actor best equipped to address instability beyond its borders through diplomacy, multilateralism, and development tools. Tracing the ESS against the 2016 EUGS and the 2022 Strategic Compass makes visible the gradual evolution in the EU's narrative – from an exclusive focus on prevention and crisis management to a more ambivalent engagement with defence, which has been layered onto, rather than replacing, earlier approaches.

The strategic analysis reveals, in fact, that the EU's strategic focus remains tilted toward unconventional threats – such as terrorism, cyber, hybrid, and space-based – rather than traditional military threats, which Article 42(7) TEU, like Article 5 NAT, was originally designed to address. The fact that this strategic focus has remained largely unchanged, even in the face of Russia's war of aggression against Ukraine, suggests that the primacy of NATO's mutual defence obligations over those of the EU is grounded not only in legal hierarchy but also in the EU's limited capacity and mandate in the area of collective defence. While recent EU initiatives reflect growing ambition, they have yet to signal a fundamental shift toward territorial defence.

3.1 *The 2003 European Security Strategy – A Secure Europe in A Better World*

Drafted by EU's first High Representative and former NATO Secretary General, Javier Solana, and adopted by the European Council on 12 December 2003, the ESS represents the EU's first attempt at reaching a shared threat assessment and define clear goals for furthering its security interests. Obviously, there was no reference to the mutual assistance clause in the Strategy since it had not been introduced into the EU legal framework yet. A strong emphasis was posed, instead, on crisis prevention and management in the Balkans⁶⁹⁶ and West Africa.

The word 'defence' appeared only seven times in the Strategy, while the word 'terrorism' twelve.⁶⁹⁷ As Solana explained in the Strategy, the 'traditional concept of self-defence – up to and including the Cold War – was based on the threat of invasion. With the new threats, the first line of

⁶⁹⁶ For more information on this topic, see, e.g. Eva Gross *et al.*, *Evaluating the EU's Crisis Missions in the Balkans* (Brussels, Centre for European Policy Studies, 2007); Gëzim Visoka and John Doyle, 'Neo-Functional Peace: The European Union Way of Resolving Conflicts', 54/4 *Journal of Common Market Studies* (2016), 862-877.

⁶⁹⁷ See Table 6, XVI.

defence w[ould] often be abroad [...] This implies that we should be ready to act before a crisis occurs. *Conflict prevention and threat prevention* cannot start too early.’ [emphasis added].⁶⁹⁸ Since these threats were not purely military, addressing them required a combination of instruments, including but not limited to political, economic, intelligence, police, judicial, and humanitarian means.⁶⁹⁹

The 2003 ESS highlighted the importance of setting up a defence agency – the European Defence Agency (EDA) would be instituted a year and a half later – and called for the development of a stronger European diplomatic service⁷⁰⁰ – the European External Action Service (EEAS) did not yet exist at the time; it would be introduced four years later by the LT and then established by Council Decision 2010/427/EU of 26 July 2010.⁷⁰¹

Adopted nine months after the signing of the Berlin Plus Agreements and the launch of Operation Iraqi Freedom, the Strategy outlined the importance of the transatlantic relationship, of which ‘NATO is an important expression [...]’⁷⁰² The Strategy noted that ‘[t]he EU-NATO permanent arrangements, in particular Berlin Plus, enhance the operational capability of the EU and provide the framework for the strategic partnership between the two organisations in crisis management’.⁷⁰³

The 2003 ESS made no mention of the Helsinki Headline Goal set at the 1999 Helsinki European Council,⁷⁰⁴ which aimed to develop a European Rapid Reaction Force (ERRF) of up to fifteen brigades (around 4,000 each, totalling up to 60,000 troops), ready to deploy within sixty days and sustain operations for at least one year, that was to become operational by 2003. However, it pointed out that more resources for defence and a more effective use of these resources would be needed to achieve more flexible and mobile forces for crisis management operations.⁷⁰⁵

In June 2004, Member States then agreed on a new Headline Goal for 2010,⁷⁰⁶ which scaled down the force from fifteen brigades to four battalion-sized (1,500 troops each, totalling 6,000 troops)

⁶⁹⁸ Council of the European Union, *European Security Strategy: A Secure Europe in A Better World*, (December 2003), 34, available at <<https://www.consilium.europa.eu/en/documents-publications/publications/european-security-strategy-secure-europe-better-world/>>. See also Table 6, XVI.

⁶⁹⁹ *Ibid.* See also Table 6, XVI.

⁷⁰⁰ *Ibid.*, 40. See also Table 6, XVI.

⁷⁰¹ Council of the European Union, *Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service*, (2010/427/EU), *OJ* [2010] L 201/1, 3.08.2010, available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010D0427>>.

⁷⁰² European Security Strategy, (n 698), 37. As argued by Sus, the ESS ‘was intended, not as a strategy, but merely as a remedy to overcome the differences between the Member States over the support for USA attack on Iraq.’ See Monika Sus, ‘Institutional innovation of EU’s foreign and security policy: Big leap for EU’s strategic actorness or much ADO about nothing?’ 56 *International Politics* (2019), 418.

⁷⁰³ 2003 ESS, (n 698), 41. See also Table 6, XVI.

⁷⁰⁴ European Parliament, *Helsinki European Council 10 and 11 December 1999- Presidency Conclusions*, (n 692), Military Capabilities for the Petersberg Tasks.

⁷⁰⁵ See Table 6, XVI.

⁷⁰⁶ European Parliament, *Headline Goal 2010, approved by General Affairs and External Relations Council on 17 May 2004, endorsed by the European Council of 17 and 18 June*, (18 June 2004), available at

rapid response units – the so-called EU Battlegroups – designed to deploy within ten days of an EU decision and sustain operations for thirty days, extendable to 120 days if resupplied.

The 2008 Report on the Implementation of the ESS claimed that the Battlegroups, which had reached full operational capacity the year before its adoption,⁷⁰⁷ had enhanced the EU's capacity to rapidly react.⁷⁰⁸ At the same time, the Report also emphasised the need to strengthen cooperation with NATO.⁷⁰⁹ It acknowledged that '[t]he EU and NATO ha[d] worked well together on the ground in the Balkans and in Afghanistan',⁷¹⁰ following the outbreak of conflict there, but stressed the need for them to 'deepen their strategic partnership for better co-operation in crisis management.'⁷¹¹ Although the EU and NATO have found informal ways to cooperate,⁷¹² since Cyprus joined the EU in 2004, formal cooperation between the two institutions has stalled due to the unresolved dispute between Türkiye and Cyprus over the latter's sovereignty. The two countries have been using their respective leverage, Türkiye within NATO and Cyprus within the EU, to prevent formal meetings between the two institutions' political decision-making bodies at ambassador level, namely NATO's NAC and the EU's Political and Security Committee (PSC).⁷¹³ Twenty-one years on, the Cyprus-Türkiye issue remains the most significant obstacle to EU-NATO cooperation.

The 2008 Implementation Report also noted that, although the adoption of the EU Counter-Terrorism Strategy in 2005 and the appointment of a Counter-Terrorism Coordinator, following the terrorist attacks in London and Madrid, were important steps forward, more action would be required at the EU level to address this growing threat. Key areas for further work included improving coordination for handling major terrorist attacks, tackling terrorist financing, and addressing radicalisation and recruitment by combating extremist ideologies and discrimination.⁷¹⁴ Additionally, the Report called for the development of an effective and comprehensive EU policy on information

<https://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/sede110705headlinegoal2010_/sede110705headli negoal2010_en.pdf>.

⁷⁰⁷ It is important to note that EU Battlegroups would, however, never be deployed largely due to political and financial hurdles related to achieving unanimity and the limitations of the Athena mechanism. See, e.g., Federica Fazio and Nicholas Adams, 'How to ensure Afghanistan isn't the graveyard of European defense', *Atlantic Council*, (1 October 2021), available at <<https://www.atlanticcouncil.org/blogs/new-atlanticist/how-to-ensure-afghanistan-isnt-the-graveyard-of-european-defense/>>; Yf Reykers, 'EU battlegroups: high costs, no benefits', 38/3 *Contemporary Security Policy* (2017), 457–470. More information on this topic is provided in the next section.

⁷⁰⁸ 2003 ESS, (n 698), 22.

⁷⁰⁹ Council of the European Union, *Report on the Implementation of the European Security Strategy - Providing Security in a Changing World*, S407/08, (11 December 2008), 2, available at <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/104630.pdf>.

⁷¹⁰ *Ibid.*, 11

⁷¹¹ *Ibid.*, 2.

⁷¹² See, e.g., Carmen Gebhard and Simon J. Smith 'The two faces of EU-NATO cooperation: counter-piracy operations off the Somali coast', 50/1 *Cooperation and conflict* (2015), 107–127; Nina Graeger 'European security as practice: EU–NATO communities of practice in the making?', 25/4 *European Security* (2016), 478–501.

⁷¹³ See, e.g., Simon J. Smith and Carmen Gebhard, 'EU–NATO relations: running on the fumes of informed deconfliction', 26(3) *European Security* (2017), 305.

⁷¹⁴ 2008 Implementation Report, (n 709), 4.

sharing, with due regard for personal data protection.⁷¹⁵ It also underscored the importance of strengthening the counterterrorism partnership with the USA, particularly in the aforementioned areas.⁷¹⁶

Seven years after the 9/11 terrorist attacks and the launch of ISAF, Afghanistan remained a matter of ‘particular concern’.⁷¹⁷ The Report acknowledged that EU Member States were significantly contributing to the NATO-led mission and that the EU as a whole was involved in governance and development at all levels.⁷¹⁸ Alongside Afghanistan, Iran and its nuclear programme were identified as a ‘growing source of concern’ and ‘a threat to EU security’ for the first time.⁷¹⁹ Unlike the ESS, the Report highlighted the growing importance of cyber security and energy security, as well as climate change,⁷²⁰ which had been identified by the HR/VP as a ‘threat multiplier’ a few months earlier.⁷²¹

Finally, significant attention was given to the role of the EU enlargement process as ‘a powerful driver for stability, peace and reform.’⁷²² In particular, the Report noted that association agreements were being negotiated with both Ukraine and Moldova, and highlighted the EU’s leadership in the international response to Russia’s aggression against Georgia, which included the establishment of a civilian Monitoring Mission (EUMM Georgia) to oversee the Administrative Boundary Lines with the breakaway regions of Abkhazia and South Ossetia.⁷²³

3.2 *The 2016 Global Strategy for the European Union’s Foreign and Security Policy - Shared Vision, Common Action: A Stronger Europe*

Twelve years after the ESS was launched, then-HR/VP, Federica Mogherini presented ‘The EU in a Changing Global Environment – a more connected, contested and complex world’,⁷²⁴ to assess the new security landscape. She was subsequently tasked by the European Council with drafting a new, broader strategy by June 2016.

⁷¹⁵ *Ibid.*

⁷¹⁶ *Ibid.*

⁷¹⁷ *Ibid.*, 7.

⁷¹⁸ *Ibid.*

⁷¹⁹ *Ibid.*

⁷²⁰ *Ibid.*, 5-6.

⁷²¹ Council of the European Union, *Climate Change and International Security - Paper from the High Representative and the European Commission to the European Council*, S113/08, (14 March 2008), 2, available at <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/99387.pdf>.

⁷²² *2008 Implementation Report*, (n 709), 6.

⁷²³ *Ibid.* For more information on EUMM Georgia, see <<https://www.eumm.eu>>.

⁷²⁴ Council of the European Union, *The EU in a Changing Global Environment - a more connected, contested and complex world*, 8956/15, (18 May 2015), available at <<https://www.statewatch.org/media/documents/news/2015/may/eu-eeas-connected-world-8956-15.pdf>>.

As the title suggests, the EUGS covered not only security and defence but all aspects of the EU external action.⁷²⁵ Its goal was to initiate a new phase of European integration via common action, rather than merely developing a single strategic vision like the previous ESS.⁷²⁶

The EUGS was adopted at a time when Europe was grappling with both internal and external challenges, including Britain's decision to leave the EU (known as Brexit), ISIS-driven terrorism,⁷²⁷ rising migration, and Russia's revanchism, which had culminated in the illegal annexation of the Crimean Peninsula in March 2014, following its recognition of Abkhazia and South Ossetia's independence in August 2008.

As a consequence of this new strategic landscape, the word 'defence' was mentioned fifty-seven times in the EUGS – fifty more than in the ESS – with 'strategic autonomy' featuring for the first time in a European strategy document.⁷²⁸ The concept had been first mentioned in the European Council Conclusions on CSDP of December 2013 in relation to defence industry,⁷²⁹ fifteen years after the 1998 Franco-British Saint Malo declaration had called for the Union to develop 'the capacity for autonomous action, backed up by credible military forces [...] supported by a strong and competitive European defence industry and technology'.⁷³⁰

'The European Union *will promote peace and guarantee the security of its citizens and territory.*' [emphasis added], the Strategy claimed,⁷³¹ seemingly suggesting that the EU was preparing to take on a more active role in collective defence.⁷³² To this end, the EUGS called for a sectoral strategy, the Implementation Plan on Security and Defence (IPSD),⁷³³ which aimed to transform the EU into a more autonomous security and defence actor, particularly in the wake of Donald Trump's

⁷²⁵ See Table 6, XVI.

⁷²⁶ See Nathalie Tocci, 'The making of the EU Global Strategy', 37/3 *Contemporary Security Policy* (2016), 462.

⁷²⁷ Nash Jenkins, 'A Timeline of Recent Terrorist Attacks in Europe', *Time*, (20 December 2016), available at <<https://time.com/4607481/europe-terrorism-timeline-berlin-paris-nice-brussels/>>.

⁷²⁸ See Table 6, XVI. The concept had been first mentioned in the European Council Conclusions on CSDP of December 2013 in relation to defence industry, fifteen years after the 1998 Franco-British Saint Malo declaration had called for the Union to develop 'the capacity for autonomous action, backed up by credible military forces [...] supported by a strong and competitive European defence industry and technology'. See UK Parliament, House of Commons, Select Committee on Defence Minutes of Evidence, *British-French Summit, St Malo, 3-4 December 1998 - Declaration on European Defence, Publications & records*, (13 April 1999), available at <<https://publications.parliament.uk/pa/cm199899/cmselect/cmdfence/39/39w17.htm>>.

⁷²⁹ European Council, *European Council 19/20 December 2013, Part I paragraphs 1-22 of the European Council conclusions (already adopted)*, (19 December 2013), para. 16, 8 available at <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/140214.pdf>.

⁷³⁰ *1998 St. Malo Declaration*, (n 728).

⁷³¹ *2016 EUGS*, (n 420) para.1, 7.

⁷³² See Table 6, XVI.

⁷³³ Council of the European Union, *Council conclusions on implementing the EU Global Strategy in the area of Security and Defence*, 14149/16, (14 November 2016), available at <<https://www.consilium.europa.eu/media/22459/eugs-conclusions-st14149en16.pdf>>. See also Council of the EU, *Implementation Plan on Security and Defence*, 14392/16, (14 November 2016), available at <<https://www.consilium.europa.eu/media/22460/eugs-implementation-plan-st14392en16.pdf>>. See also Table 6, XVI.

first election victory as US President on 8 November 2016.⁷³⁴ This was followed by the adoption of the European Defence Action Plan (EDAP),⁷³⁵ comprising measures, such as the European Defence Fund (EDF), discussed later in this section, which were designed to help EU Member States boost defence research and invest more efficiently in joint defence capabilities, in application of former European Commission President, Jean-Claude Juncker's State of the Union address.⁷³⁶

The 2016 Strategy also made express reference to the mutual assistance clause, which had been invoked for the first time only seven months earlier, in the aftermath of the Paris attacks, for all the reasons and with the implications discussed in detail in the previous sections. 'Mutual assistance' is mentioned no less than six times in the document. Among the key priorities of the EU's external action, it is stated that '*Member States must translate their commitments to mutual assistance and solidarity enshrined in the Treaties into action. The EU will step up its contribution to Europe's collective security, working closely with its partners, beginning with NATO.*' [emphasis added].⁷³⁷ 'While NATO exists to defend its members – most of which are European – from external attack', the Strategy stated, '*Europeans must be better equipped, trained and organised to contribute decisively to such collective efforts, as well as to act autonomously if and when necessary [...]* A more credible European defence is essential also for the sake of a healthy transatlantic partnership with the United States.' [emphasis added].⁷³⁸

Specifically, the Strategy called for deepening the partnership with NATO 'through coordinated defence capability development, parallel and synchronised exercises, and mutually reinforcing actions to build the capacities of our partners, *counter hybrid and cyber threats*, and promote maritime security'. [emphasis added].⁷³⁹

A month after the Strategy was published, the EU and NATO adopted their first joint declaration, with the purpose of strengthening cooperation in seven concrete areas: 1) countering hybrid threats, 2) operational cooperation, especially in the maritime domain, 3) cyber security and defence, 4) developing defence capabilities, 5) assisting with the capacity building of partner nations,

⁷³⁴ As pointed out by Sus, 'the unique interinstitutional position of the HR gave Mogherini the advantage in combining the various ideas floating in the policy stream and framing them all as linked to the EUGS's implementation, and thereby achieving wide-ranging policy change.' See Monika Sus, 'Supranational entrepreneurs: the High Representative and the EU global strategy, 97/3 *International Affairs* (2021), 840.

⁷³⁵ European Commission, 'European Defence Action Plan: Towards a European Defence Fund', Press Release, (30 November 2016), available at <https://ec.europa.eu/commission/presscorner/detail/en/ip_16_4088>. See also Table 6, XVI.

⁷³⁶ European Commission, *State of the Union 2016 by Jean-Claude Juncker*, (14 September 2016), 19 and 30, available at <<https://ec.europa.eu/commission/presscorner/api/files/attachment/93600/SOTEU%20brochure%20EN.pdf>>.

⁷³⁷ 2016 EUGS, (n 420), 9. See also Table 6, XVI.

⁷³⁸ *Ibid.*, 20.

⁷³⁹ *Ibid.*, 37.

6) facilitating a stronger defence industry and greater defence research and industrial cooperation, as well as 7) coordinating exercises.⁷⁴⁰

On 6 December 2016, the Council⁷⁴¹ and the NAC⁷⁴², in a parallel process, endorsed a set of forty-two proposals in the abovementioned seven areas. The following year, thirty-two additional proposals were approved expanding cooperation into these as well as new areas, such as counterterrorism, women, peace and security, and military mobility.⁷⁴³ Then in 2018, the EU and NATO issued a second joint declaration to enhance cooperation in these abovementioned areas, adding one more area: resilience to chemical, biological, radiological and nuclear-related (CBRN) risks.⁷⁴⁴

Terrorism already played an important role in Europe at the time when the ESS was adopted, but in 2016 the number of attacks in Europe had grown exponentially compared to 2003. The number of times the word appeared in the EUGS reflected this trend (twenty-nine times – thirty-three if also including the word ‘terrorist’ – against twelve – seventeen if including also the words ‘terrorist’ and ‘terrorists’ – in the ESS).⁷⁴⁵ Like the ESS, the EUGS reiterated that terrorist groups, not only threatened the stability of the Middle East and North Africa (MENA), but also of Europe.⁷⁴⁶ The strategy stated that ‘[i]ncreased investment in and *solidarity* on counter-terrorism are key’ and that ‘the EU [would] support the swift recovery of Members States in the event of attacks through enhanced efforts on security of supply, the protection of critical infrastructure, and strengthening the voluntary framework for *cyber crisis management*.’ [emphasis added].⁷⁴⁷ However, as highlighted in section 2.3, the solidarity clause codified in Article 222 TFEU was not invoked following the Bataclan and Stade de France attacks; the mutual defence clause was.

⁷⁴⁰ 2016 Joint Declaration, (n 555). See also Table 6, XVI.

⁷⁴¹ Council of the European Union, *Council Conclusions on the Implementation of the Joint Declaration by the President of the European Council, the President of the European Commission and the Secretary General of the North Atlantic Treaty Organization*, 15283/16, (6 December 2016), available at <https://www.europarl.europa.eu/cmsdata/121581/ST_15283_2016_INIT_EN.pdf>.

⁷⁴² NATO, *Statement on the implementation of the Joint Declaration signed by the President of the European Council, the President of the European Commission, and the Secretary General of the North Atlantic Treaty Organization*, Press Release (2016) 178, (6 December 2016), available at <https://www.nato.int/cps/en/natohq/official_texts_138829.htm>.

⁷⁴³ Council of the European Union, *Council conclusions on the Implementation of the Joint Declaration by the President of the European Council, the President of the European Commission and the Secretary General of the North Atlantic Treaty Organization*, 14802/17, (5 December 2017), available at <<https://www.consilium.europa.eu/media/31947/st14802en17.pdf>>; NATO, *Common set of new proposals on the implementation of the Joint Declaration signed by the President of the European Council, the President of the European Commission and the Secretary General of the North Atlantic Treaty Organization*, Press Release (2017) 174, (5 December 2017), available at <https://www.nato.int/cps/fr/natohq/official_texts_149522.htm?selectedLocale=en>.

⁷⁴⁴ Council of the European Union, *Joint Declaration on EU-NATO Cooperation by the President of the European Council, the President of the European Commission, and the Secretary General of the North Atlantic Treaty Organization*, (10 July 2018), 8, available at <https://www.consilium.europa.eu/media/36096/nato_eu_final_eng.pdf>. See also Table 6, XVI.

⁷⁴⁵ See Table 6, XVI.

⁷⁴⁶ 2016 EUGS, (n 420), 7, 9, 13, 17, 18, 19, 21.

⁷⁴⁷ *Ibid.*, 21.

The 2016 EUGS was followed by three implementation strategies in 2017, 2018 and 2019. The First Implementation Strategy pointed out that the EU had achieved more in the ten months that had followed the launch of the EUGS than in the ten years that had preceded it.⁷⁴⁸ In the first half of 2017, the EU had established a Military Planning and Conduct Capability (MPCC) within the EU Military Staff (EUMS) for the operational planning and conduct of its non-executive military missions⁷⁴⁹ – at the time the EU Training Missions (EUTM) in the Central African Republic, Mali, and Somalia. The Strategy noted that the Coordinated Annual Review on Defence (CARD) – designed to synchronise Member States’ defence planning – had been agreed by the Council, with a first full trial run scheduled for autumn 2017. The Strategy also reported that the Council had resolved to examine the activation of Permanent Structured Cooperation (PESCO), a concept introduced by the 2007 LT,⁷⁵⁰ which, according to the Strategy, had ‘the potential to make the definitive leap forward in European security and defence’.⁷⁵¹ In addition, it highlighted the establishment of the EDF, aimed at incentivising Member States to adopt a more collaborative approach by supporting coordination and enhancement of national defence research spending.

Together CARD, PESCO and the EDF, were presented as mutually reinforcing instruments, with the EDA identified as playing a key supporting role in these initiatives.⁷⁵² To improve the deployability of the Battlegroups, the Council decided to also review the Athena mechanism, in order to better align it with new operational requirements under the EU’s new security and defence initiatives.⁷⁵³

The 2017 Implementation Strategy also highlighted progress made on EU-NATO cooperation, describing it as a ‘qualitative leap forward’.⁷⁵⁴ Beyond the forty-two proposals agreed in Warsaw, the Strategy referred to the establishment of *a new European Centre for Countering Hybrid Threats* in Helsinki and emphasised joint efforts undertaken by the two organisations in areas such as situational awareness and strategic communications, and ensuring coherence between the NATO Defence Planning Process (NDPP) and the EU Capability Development Plan (CDP).⁷⁵⁵

⁷⁴⁸ European External Action Service, *From Shared Vision to Common Action: Implementing the EU Global Strategy Year 1*, (10 January 2017), 5, available at <https://www.eeas.europa.eu/sites/default/files/eugs-report-full_brochure_year_1.pdf>.

⁷⁴⁹ *Ibid.*, 21. See also Table 6, XVI.

⁷⁵⁰ *Consolidated Version of the TEU*, (n 2), Article 42(6).

⁷⁵¹ *2017 Implementation Strategy*, (n 748), 22, 23.

⁷⁵² *Ibid.*, 23. See also Table 6, XVI.

⁷⁵³ *Ibid.*, 22. Article 41(2) TEU prohibits the financing of EU military operations through the EU budget, but Article 41(3) allows the Council to establish special mechanisms to manage the financing of the common costs of military operations. Established by *Council Decision 2004/197/CFSP*, OJ [2004] L 63/1, 28.02.2004, the Athena mechanism was one such mechanism.

⁷⁵⁴ *2017 Implementation Strategy*, (n 748), 24.

⁷⁵⁵ *Ibid.*

The bulk of these EU initiatives became operational between 2017 and 2018. As noted in the Second and Third Implementation Strategies,⁷⁵⁶ PESCO was launched in December 2017 to provide a binding framework for willing and capable Member States (initially twenty-five) to deepen defence cooperation, joint investments and operational readiness.⁷⁵⁷ The first batch of seventeen projects was agreed in March 2018, followed by another seventeen in November 2018, for a total of thirty-four.⁷⁵⁸ Among them, military mobility particularly stood out, supported both by a PESCO project and an Action Plan launched by the HR/VP in March 2018 – benefitting not only the EU but also partners, most notably NATO.⁷⁵⁹

Also highlighted in the Second Implementation Strategy, in June 2018, the European Parliament and the Council reached agreement on the Regulation proposed by the Commission to establish the European Defence Industrial Development Programme (EDIDP), aimed at supporting the competitiveness and innovative capacity of the EU defence industry by co-financing collaborative capability development.⁷⁶⁰ In the same spirit, the Commission also proposed a more ambitious EDF worth €13 billion to finance joint research projects and co-fund capability development.⁷⁶¹ That same month, the HR/VP unveiled the EPF, an off-budget fund worth €5.7 billion, designed to replace and widen the scope of the Athena mechanism as well as the African Peace Facility (APF), the latter of which was created to support local and global responses to peace and security challenges in the African continent.⁷⁶²

In parallel, the EDA revised the capability development priorities of the CDP to reflect the new EU level of ambition expressed in the EUGS.⁷⁶³ As the Third Implementation Strategy pointed out, 2018 also saw the conclusion of CARD’s first full trial run, paving the way for its first full cycle in autumn 2019.⁷⁶⁴ As underlined in the 2019 Implementation Strategy, the MPCC was expected to reach full operational capacity the following year, but additional steps to strengthen and operationalise civil-military synergies and allow for an extension of its role would be required to support the EU’s

⁷⁵⁶ European External Action Service, *Implementing the EU Global Strategy Year 2*, (25 June 2018), available at <https://www.eeas.europa.eu/sites/default/files/eugs_annual_report_year_2.pdf>; European External Action Service, *The European Union’s Global Strategy Three Years On, Looking Forward*, (13 June 2019), available at <https://www.eeas.europa.eu/sites/default/files/eu_global_strategy_2019.pdf>.

⁷⁵⁷ *2018 Implementation Strategy*, (n 756), 6; *2019 Implementation Strategy*, (n 756), 10. For more information on PESCO, see, e.g., Daniel Fiott, Antonio Missiroli, and Thierry Tardy, ‘Permanent Structure Cooperation: What’s in a name?’ *European Union Institute for Security Studies* (13 November 2017), available at <<https://www.iss.europa.eu/content/permanent-structured-cooperation-what’s-name>>.

⁷⁵⁸ *2019 Implementation Strategy*, (n 756), 35.

⁷⁵⁹ *2018 Implementation Strategy*, (n 756), 6-7.

⁷⁶⁰ *Ibid.* See also Table 6, XVI.

⁷⁶¹ *Ibid.*

⁷⁶² *2018 Implementation Strategy*, (n 756), 7. See also Table 6, XVI.

⁷⁶³ European Defence Agency, *2018 CDP REVISION -The EU Capability Development Priorities*, (12 December 2018), available at <<https://eda.europa.eu/docs/default-source/eda-publications/eda-brochure-cdp#:~:text=The%202018%20CDP%20revision%20reflects,adaptation%20of%20national%20defense%20planning>>.

⁷⁶⁴ *2019 Implementation Strategy*, (n 756), 11.

integrated approach.⁷⁶⁵ The Strategy also noted that in November 2018, EU Member States had agreed on a Civilian CSDP Compact, to be implemented by the summer of 2023, with the aim of making civilian missions more capable, effective, flexible and responsive.⁷⁶⁶

The two Implementation Strategies also underlined that the EU-NATO partnership had deepened significantly within the framework of the two joint declarations of 2016 and 2018, especially in the areas of military mobility, counterterrorism, cyber and maritime security.⁷⁶⁷ Cooperation between EUNAVFOR Med Operation Sophia and NATO's Operation Sea Guardian to counter terrorism at sea was cited as a concrete example.⁷⁶⁸

Despite this wave of new security and defence initiatives, however, none of the abovementioned documents referred to the mutual defence or the solidarity clauses. The Council Conclusions of June 2019 called on 'Member States to discuss the lessons identified following the first activation of Article 42.7 TEU'⁷⁶⁹ and reminded them of the importance of mutual assistance and solidarity. Yet, at the time of writing, there is no indication that such discussions have taken place.

3.3 *The 2022 Strategic Compass for Security and Defence - For a European Union that Protects its Citizens, Values and Interests and Contributes to International Peace and Security*

The product of a two-year reflection process conducted by former HR/VP Joseph Borrell in tandem with the European Commission and EU Member States,⁷⁷⁰ the Strategic Compass was adopted by the Foreign Affairs and Defence Ministers of the now twenty-seven EU Member States on 21 March 2022, roughly a month after the war in Ukraine started, and endorsed by the EU Heads of State and Government a few days later. Unlike previous EU security strategies, the Strategic Compass is characterised by a common threat analysis and a bottom-up approach.⁷⁷¹

In the words of Borrell, the Compass is meant to 'guide the necessary development of the EU security and defence agenda' to allow the Union to: 1) 'Act' more quickly and decisively whenever a crisis erupts; 2) 'Secure' its citizens against fast-changing threats; 3) 'Invest' in needed capabilities and technologies; and 4) 'Partner' with others to achieve common goals.⁷⁷² These four strands – Act, Secure, Invest and Partner – include over seventy concrete actions to be undertaken, the majority of

⁷⁶⁵ *Ibid.*, 12.

⁷⁶⁶ *Ibid.*, 14.

⁷⁶⁷ *2018 Implementation Strategy*, (n 756), 8; *2019 Implementation Strategy*, (n 756), 11.

⁷⁶⁸ *Ibid.*

⁷⁶⁹ Council of the European Union, *Council Conclusions on Security and Defence in the context of the EU Global Strategy*, 10048/19, (17 June 2019), available at <<https://www.consilium.europa.eu/media/39786/st10048-en19.pdf>>.

⁷⁷⁰ Council of the European Union, *Council Conclusions on Security and Defence*, 8910/20, (17 June 2020), available at <<https://www.consilium.europa.eu/media/44521/st08910-en20.pdf>>. See also, Monika Sus, 'Exploring the dynamics of policy change in EU security and defence: policy entrepreneurs behind the Strategic Compass', *47/4 West European Politics* (2023) 948, 951, 952, 953, 954 and 956.

⁷⁷¹ *2022 Strategic Compass*, Foreword, (n 420), 7.

⁷⁷² *Ibid.*, 5, 6.

which by 2025, to measure progress. The Compass is, therefore, not only a security and defence strategy but, as the name itself would suggest, a compass for action.⁷⁷³

The word ‘defence’ is mentioned no fewer than 234 times in the strategy – including, for the first time ever, in the title – over four times more than in the EUGS, reflecting the heightened emphasis on defence (in principle) as a consequence of war on the EU’s doorstep.⁷⁷⁴ Additionally, the Concept’s subtitle specifically mentions the goal of protecting EU citizens, values and interests, and of contributing to international peace and security, a goal emphasised several times throughout the Compass.⁷⁷⁵ ‘Strategic autonomy’, on the other hand, appears only once in the document, likely due to ongoing debates surrounding its precise meaning and implications.⁷⁷⁶ The concept has, in fact, been subject to various interpretations within EU policy discussions, with its definition evolving to reflect the EU’s ambition to act independently in defence and foreign policy, while maintaining cooperative relationships with Allies.

Following French President Emmanuel Macron’s address at Sorbonne University, where he emphasised the need for Europe to develop ‘autonomous operating capabilities’ in defence, complementing NATO’s,⁷⁷⁷ Atlanticist members of the bloc, such as Poland and the Baltic states,⁷⁷⁸ began to increasingly perceive it as a French-driven concept that could lead to potential US abandonment. This concern might explain why, in 2019, Mogherini attempted to reframe ‘strategic autonomy’ as ‘cooperative autonomy’, to reassure these EU Member States that it would not result in a decoupling from either the USA or NATO.⁷⁷⁹ The concept and its operationalisation have gained

⁷⁷³ See Table 6, XVII.

⁷⁷⁴ *Ibid.*

⁷⁷⁵ 2022 *Strategic Compass*, (n 420), 14, 53, 55, 58, and 62.

⁷⁷⁶ See Table 6, XVII.

⁷⁷⁷ Elysée, ‘President Macron gives speech on new initiative for Europe - Speech on new initiative for Europe’, (26 September 2017), available at <<https://www.elysee.fr/en/emmanuel-macron/2017/09/26/president-macron-gives-speech-on-new-initiative-for-europe>>.

⁷⁷⁸ A 2016 study by the French Institute for International and Strategic Affairs (IRIS) found that Poland and the Baltic states were among those less enthusiastic about the idea of European strategic autonomy, preferring a renewed transatlantic relationship and a stronger NATO. See Felix Arteaga *et al.*, ‘Appropriate Level of European Strategic Autonomy’, Report, Armament Industry European Research Group (ARES), *French Institute for International and Strategic Affairs (IRIS)*, (November 2016), available at <<https://www.iris-france.org/en/83042-appropriate-level-of-european-strategic-autonomy-2/>>. Similarly, a 2019 article from the European Council on Foreign Relations (ECFR) noted that some Member States, including Poland and the Baltic states, viewed strategic autonomy as a French concept and were uncertain about its implications for the transatlantic relationship. See Ulrike Franke and Tara Varma, ‘Independence play: Europe’s pursuit of strategic autonomy’, *European Council on Foreign Relations*, (18 July 2019), available at <https://ecfr.eu/special/independence_play_europes_pursuit_of_strategic_autonomy/>. See also Eva Michaels and Monika Sus, ‘(Not) Coming of age? Unpacking the European Union’s quest for strategic autonomy in security and defence’, 33/3 *European Security* (2024), 392, 394 and 395; Ben Tonra, ‘Defence and Foreign Policy’, in Federico Fabbrini (ed.) *The Law & Politics of Brexit: Volume III: The Framework of New EU-UK Relations* (Oxford: Oxford University Press, 2021), 195.

⁷⁷⁹ European External Action Service, ‘Speech by High Representative/Vice-President Federica Mogherini at the annual conference of the European Union Institute for Security Studies’, (4 October 2019), available at <https://www.eeas.europa.eu/eeas/speech-high-representativevice-president-federica-mogherini-annual-conference-european-union_en>.

renewed attention since the start of Russia's war in Ukraine and Donald Trump's recent re-election to the US Presidency.

'Mutual assistance' is referred twelve times in the Compass – twice as much as in the previous strategy.⁷⁸⁰ In order to be able to act more rapidly and assertively, EU Member States have agreed in the Compass to develop an RDC of up to 5,000 troops by the end of 2025.⁷⁸¹ The RDC is intended to replace the never-deployed EU Battlegroups and conduct regular live exercises for the first time, to increase defence interoperability and readiness.

'We will continue to invest in our mutual assistance under Article 42(7) of the Treaty on European Union as well as solidarity under Article 222 of the Treaty on the Functioning of the European Union, in particular through frequent exercises' [emphasis added], the Compass states.⁷⁸² However, as with the previous strategy, the focus seems to remain on non-traditional threats. As Fiott pointed out,⁷⁸³ these regular exercises seem to be mostly aimed at responding to non-traditional attacks such as cyber attacks⁷⁸⁴, hybrid attacks⁷⁸⁵ or space-based attacks.⁷⁸⁶ Indeed, as Blockmans, Crosson and Paikin also noted, there is a strong focus on hybrid threats and tactics (the term hybrid appears forty-six times) in the Compass, which 'seems out of sync with the fact that Russia is waging a highly conventional war against Ukraine [...]'.⁷⁸⁷ A strong emphasis is placed on the development of the *EU Hybrid Toolbox*, the *Cyber Resilience Act*, and further development of the *Cyber Diplomacy Toolbox*, the Foreign Information Manipulation and Interference (FIMI) Toolbox and the adoption of the *EU Space Strategy for Security and Defence*.

There is no mention in the Compass of how the EU intends to prepare for the eventuality of a traditional attack amid Russia's aggression of Ukraine.⁷⁸⁸ The Compass merely states that the EUMS could play a role in 'the coordination of logistical support and assistance to Member States and third countries in a crisis, as well as the implementation of EU instruments such as the European Peace Facility or, upon Member States' request, the mutual assistance clause, in line with the Treaty on European Union.'⁷⁸⁹

⁷⁸⁰ See Table 6, XVII.

⁷⁸¹ *Ibid.*

⁷⁸² *2022 Strategic Compass*, (n 420), 28. France played a leading role in pushing for this. See, e.g. Sus 2023, (n 770), 954.

⁷⁸³ Fiott 2022, (n 686).

⁷⁸⁴ *2022 Strategic Compass*, (n 420), 35, 39.

⁷⁸⁵ *Ibid.*, 34, 39.

⁷⁸⁶ *Ibid.*, 34, 36. See also Table 6, XVII.

⁷⁸⁷ 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>. See also Table 6, XVII.

⁷⁸⁸ Perot 2024, (n 541), 15.

⁷⁸⁹ *2022 Strategic Compass*, (n 420), 38. See also Table 6, XVII.

This is because most EU Member States are also members of NATO and consider its mutual defence guarantee, enshrined in Article 5 NAT, the cornerstone of their security.⁷⁹⁰ However, following the outcome of the 2024 US Presidential election, which saw Donald Trump elected for a second non-consecutive term, this reliance faces new strategic uncertainty.⁷⁹¹ With the potential to unlock €800 billion for defence, the ReArm Europe Plan/Readiness 2030 – unveiled by the European Commission two months after Donald Trump’s return to the White House – is a clear attempt to develop autonomous defence capabilities and reduce dependency from the US. The recent agreement between France and the UK to deepen bilateral cooperation on nuclear deterrence⁷⁹² can also be seen as a direct response to growing uncertainty surrounding the US nuclear umbrella, despite the reassurances offered by Trump at the NATO Hague Summit.⁷⁹³

As in the previous strategies, considerable attention is given to the EU-NATO relationship. The Executive Summary states that ‘[a] stronger and more capable EU in the field of security and defence will contribute positively to global and transatlantic security and is complementary to *NATO*, which *remains the foundation of collective defence for its members*’ [emphasis added]. The partnership with NATO is the first topic addressed in the ‘Partner’ section. ‘The EU’s strategic partnership with NATO is essential for our Euro-Atlantic security’, the *Compass* affirms.⁷⁹⁴ The document claims that cooperation with NATO will be further strengthened in the areas covered by the 2016 and 2018 Joint Declarations. Military mobility, in particular, is considered as the flagship of EU-NATO cooperation, and its further development and integration into future exercises is considered essential.⁷⁹⁵ The *Compass* also stresses the need to enhance EU-NATO political dialogue through more frequent and inclusive joint EU-NATO high-level meetings and regular PSC-NAC joint meetings, as well as exchanges of classified and non-classified information to allow for shared

⁷⁹⁰ See Chapter 2. According to Perot, cooperation with NATO has led the EU to focus exclusively on issues at the lower end of the collective defence spectrum, such as hybrid threats. See Perot 2024, (n 554).

⁷⁹¹ See Chapter 2, section 2.3. See also Emma Ashford and MacKenna Rawlins ‘American Roulette: Scenarios for US Retrenchment and the Future of European Defense’, Policy Paper, *Stimson Center*, (8 July 2024), available at <<https://www.stimson.org/2024/american-roulette-scenarios-for-us-retrenchment-and-the-future-of-european-defense/>>; Kenneth McDonagh, ‘Another Trump administration, what next for Ireland and Europe?’, Blog, *DCU Brexit Institute*, (6 November 2024), available at <<https://dcubrexitinstitute.eu/2024/11/another-trump-administration-what-next-for-ireland-and-europe/>>.

⁷⁹² UK Prime Minister’s Office and The Rt Hon Sir Keir Starmer KCB KC MP, *Northwood Declaration: 10 July 2025 (UK-France joint nuclear statement)*, Press Release, (10 July 2025), available at <<https://www.gov.uk/government/news/northwood-declaration-10-july-2025-uk-france-joint-nuclear-statement>>.

⁷⁹³ Fazio, A Dissenting Opinion on The Hague Summit, (n 415).

⁷⁹⁴ *2022 Strategic Compass*, (n 420), 53. See also Table 6, XVII.

⁷⁹⁵ See, e.g. Mihai S. Chihaia ‘Advancing military mobility in Europe: An uphill battle’, Policy Brief, *European Policy Centre*, (11 April 2023), available at <<https://epc.eu/publication/Advancing-military-mobility-in-Europe-An-uphill-battle-4feafc/>>; Mihai S. Chihaia ‘Military mobility 2.0 revisited: Lessons learnt’, Policy Brief, *European Policy Centre*, (11 November 2024), available at <<https://www.epc.eu/publication/Military-mobility-20-revisited-Lessons-learnt-5f5640/#:~:text=The%20Russian%20invasion%20of%20Ukraine,EU%20and%20NATO%20member%20states>>. See also Calle Håkansson, ‘The strengthened role of the European Union in defence: the case of the Military Mobility project’, *23/3 Defence Studies* (2023), 436–456.

situational awareness. However, this remains problematic until the EU and NATO decide to address the elephant in the room that is the Cyprus-Türkiye debacle.

The real game changer, according to the Compass, however, will be ‘joint and inclusive exercises’, which will allow the two organisations to build trust, increase interoperability and deepen cooperation.⁷⁹⁶ In 2022, under the Plan for Implementation of Parallel and Coordinated Exercises (PACE) 2022-2023, NATO staff joined the planning and conduct phases of the EU Integrated Resolve (IR) 22 exercise, focusing on the management of hybrid crises with internal and external dimensions.⁷⁹⁷ The following March, staff from the European Commission, the General Secretariat of the European Council, the Council, and the EEAS participated in the planning and conduct of NATO’s crisis management exercise (CMX) 2023, also focusing on a hybrid crisis scenario.⁷⁹⁸

Terrorism, on the other hand, is mentioned 24 times in the Strategic Compass, slightly less than in the EUGS (twenty-four vs twenty-nine times). The Compass acknowledges that ‘[t]errorism threatens the stability of many countries and continues to challenge national security systems worldwide’.⁷⁹⁹ However, the section dedicated to countering terrorism is considerably shorter compared to other sections – especially those focusing on cyber, hybrid and space threats – and to the space it occupied in the previous strategy; less than ten lines are devoted to outlining how the EU intends to strengthen its response to this threat.⁸⁰⁰ This is possibly a consequence of Russia’s war in Ukraine and the renewed emphasis placed on the dangers posed by state actors⁸⁰¹ – even though no response to these dangers is envisaged – but is certainly also influenced by the decrease in terrorist attacks in Europe in 2021 compared to previous years.⁸⁰²

Finally, the Strategic Compass stresses the need to invest more and better in defence capabilities and cutting-edge technologies, especially through initiatives such as PESCO and the EDF.

The Strategic Compass was followed by two Progress Reports in 2023 and 2024. The third one is yet to be adopted as of 30 September 2025.

The 2023 Progress Report described the Compass as ‘a quantum leap forward’ in terms of the EU’s security and defence ambitions.⁸⁰³ ‘By implementing it, we are advancing towards a common

⁷⁹⁶ 2022 *Strategic Compass*, (n 420), 54.

⁷⁹⁷ For more information, visit <https://www.eeas.europa.eu/eeas/eu-integrated-resolve-2022-eu-ir22-parallel-and-coordinated-exercisespace_en>.

⁷⁹⁸ For more information, visit <https://www.nato.int/cps/en/natohq/news_212527.htm>.

⁷⁹⁹ 2022 *Strategic Compass*, (n 420), 14.

⁸⁰⁰ See Table 6, XVII.

⁸⁰¹ Blockmans, Crosson and Paikin, (n 787), 5.

⁸⁰² Europol, *European Union Terrorism Situation and Trend Report (TE-SAT) 2022*, (13 July 2022), 7, available at <https://www.europol.europa.eu/cms/sites/default/files/documents/Tesat_Report_2022_0.pdf>.

⁸⁰³ European External Action Service, *Annual Progress Report on the Implementation of the Strategic Compass for Security and Defence*, Introduction, (20 March 2023), 6, available at <https://www.eeas.europa.eu/sites/default/files/documents/2023/StrategicCompass_1stYear_Report.pdf>.

strategic culture, strengthening our unity and solidarity and, above all, enhancing our capacity and willingness to act together, protect our interests, and defend our values.’⁸⁰⁴ Borrell wrote.

The First Progress Report highlighted the role played by the EPF, described as ‘a game changer’, as it has enabled the EU to provide Ukraine with both non-lethal and lethal assistance⁸⁰⁵ – something Rasi has described as the EU’s ‘first exercise of collective self-defence’.⁸⁰⁶

As highlighted by the 2024 Progress Report, Moldova, as well as other partners in the Western Balkans and the MENA region, have also received security and defence support through the EPF. For this reason, its overall financial ceiling was increased twice in 2023 and once in 2024, going from €5.6 billion to €17 billion.⁸⁰⁷ Regarding PESCO, the Second Progress Report stressed that it remains ‘a crucial framework for defence cooperation’ and highlighted Denmark’s addition in May 2023, which has brought the number of participating members to twenty-six – all EU Member States except Malta.⁸⁰⁸

Nevertheless, as the previous Progress Report had noted, ‘PESCO is not used to its full potential’.⁸⁰⁹ Already in 2019, some scholars had argued that PESCO projects seemed unlikely to make a significant impact in addressing Europe’s capability shortfalls and reduce dependency on the US.⁸¹⁰ After a first strategic review in 2020, very few projects concerned capability development, as the majority focused on equipment. Of the currently seventy-five ongoing projects – of which less than half has reached the execution phase at present – only three appear directly relevant to the challenges presented by Russia’s war in Ukraine, addressing military mobility, countering unmanned aerial systems, and protection of maritime critical infrastructure. As Biscop and Cózar Murillo emphasised, if PESCO’s focus does not shift to projects which are linked to Member States’ national defence priorities, this treaty-based instrument, although unlikely to disappear, is at risk of becoming

⁸⁰⁴ *Ibid.*

⁸⁰⁵ *Ibid.*, 8. See also Table 6, XVII.

⁸⁰⁶ Aurora Rasi, ‘Providing Weapons to Ukraine: The First Exercise of Collective Self-defence by the European Union?’, 9/1 *European Papers* (2024), 397-422.

⁸⁰⁷ *2023 Progress Report*, (n 803), 8; European External Action Service, *Annual Progress Report on the Implementation of the Strategic Compass for Security and Defence*, (18 March 2024), 11 and 12, available at <https://www.eeas.europa.eu/eeas/2024-progress-report-implementation-strategic-compass-security-and-defense_en>.

See also <<https://www.consilium.europa.eu/en/policies/european-peace-facility/#0>>.

⁸⁰⁸ *2024 Progress Report*, (n 807), 22.

⁸⁰⁹ *2023 Progress Report*, (n 803), 16.

⁸¹⁰ Alice Billon-Galland and Yvonne-Stefania Efstathiou ‘Are PESCO projects fit for purpose?’, European Defence Policy Brief, *European Leadership Network and International Institute for Strategic Studies*, (February 2019), available at <<https://www.europeanleadershipnetwork.org/wp-content/uploads/2019/02/Final-PESCO-policy-brief-ELN-IISS-20-Feb-2019-ilovepdf-compressed.pdf>>; Steven Blockmans and Dylan Macchiarini Crosson ‘Differentiated integration within PESCO – clusters and convergence in EU defence’, Research Report 2019/04, *Centre for European Policy Analysis*, (December 2019), available at <https://cdn.ceps.eu/wp-content/uploads/2019/12/RR2019_04_Differentiated-integration-within-PESCO.pdf>.

increasingly irrelevant.⁸¹¹ This concern was seemingly acknowledged by the Council in its Conclusions of November 2024 on PESCO's second strategic review, which had been launched in 2023. The Council agreed, in fact, on 'adjusting PESCO' starting from 2026, to streamline the underlying commitments and structure them around key areas such as defence spending and investment, capability development, armament and industrial cooperation, and operational dimension, while also indicating clear and measurable goals.⁸¹²

As for the EDF, the 2023 and 2024 Progress Reports state that it remains 'key to strengthen our defence capabilities'⁸¹³ and its attractiveness 'is steadily increasing'⁸¹⁴, respectively. Indeed, since its launch in 2021, the EDF has funded hundreds of collaborative projects. However, despite the €1.5 billion budgetary increase proposed by the Commission in 2023 and implemented in the mid-term revision of the Multiannual Financial Framework (MFF),⁸¹⁵ the EDF's current total budget of €9.4 billions, although representing an improvement over the previous €7.9 billion, still falls €3.6 billion short of what originally proposed by the European Commission in 2018,⁸¹⁶ underscoring its continued inadequacy.

What is more, the abovementioned budgetary increase is *de facto* going to be diverted from the EDF to the recently proposed European Defence Industry Programme (EDIP) in application of EDIS, the EU's first-ever defence industrial strategy put forward by the European Commission in April 2024.⁸¹⁷ With an initial budget of €1.5 billion for 2025-2027, the EDIP, which was adopted by the European Parliament's Committee on Industry, Research and Energy (ITRE) and Committee on Security and Defence (SEDE) on 24 April 2025⁸¹⁸ and is, as of 30 September 2025, awaiting approval

⁸¹¹ Sven Biscop and Beatriz Cózar Murillo, 'PESCO: The Last Chance', Egmont Policy Brief 341, *Egmont Institute*, (18 April 2024), available at <https://www.egmontinstitute.be/app/uploads/2024/04/SBiscop_BCozarMurillo-Policy_Brief_341.pdf?type=pdf>.

⁸¹² Council of the European Union, *Council Conclusions on the PESCO Strategic Review*, (18 November 2024), 14375/24, available at <<https://data.consilium.europa.eu/doc/document/ST-14375-2024-INIT/en/pdf>>.

⁸¹³ *2023 Progress Report*, (n 803).

⁸¹⁴ *2024 Progress Report*, (n 807).

⁸¹⁵ European Commission, *Communication for the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions- Mid-term revision of the Multiannual Financial Framework 2021-2027*, COM(2023) 336 final, (20 June 2023), available at <https://commission.europa.eu/system/files/2023-06/COM_2023_336_1_EN_ACT_part1_v4.pdf>. See also Council of the European Union, 'EU long-term budget for 2021-2027: Council concludes the mid-term revision', Press Release, (28 February 2024), available at <<https://www.consilium.europa.eu/en/press/press-releases/2024/02/28/eu-long-term-budget-for-2021-2027-council-concludes-the-mid-term-revision/>>.

⁸¹⁶ European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing the European Defence Fund*, COM/2018/476 final - 2018/0254(COD), (13 June 2018), available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52018PC0476>>.

⁸¹⁷ Ester Sabatino, 'EU's grand defence industrial plans risks fizzling for lack of money and unclear procedures', Military Balance Blog, *International Institute for Strategic Studies (IISS)*, (18 March 2024), available at <<https://www.iiiss.org/online-analysis/military-balance/2024/03/eus-grand-defense-industrial-plans-risks-fizzling-for-lack-of-money-and-unclear-procedures/>>.

⁸¹⁸ European Parliament, 'MEPs push for a more ambitious European defence industry programme', Press Release, (24 April 2025), available at <<https://www.europarl.europa.eu/news/en/press-room/20250422IPR28106/meps-push-for-a-more-ambitious-european-defence-industry-programme>>.

from the Council,⁸¹⁹ seeks to bridge the gap between short-term initiatives adopted in the context of the war, like ASAP and EDIRPA, set to expire in 2025, and long-term needs to achieve defence industrial readiness. However, it is extremely unlikely that €1.5 billion will suffice in the event of US disengagement from Europe and from Ukraine. In this respect, ongoing conversations on third-country participation are a positive development.⁸²⁰

With regards to the RDC, the Progress Reports claim that work to adapt the Battlegroups and operationalise the RDC is ongoing: three operational scenarios have been finalised on rescue and evacuation, the initial phase of stabilisation, and military support to humanitarian assistance and disaster relief.⁸²¹ The first-ever EU Live Military Exercise (LIVEX 23) took place in October 2023 in Rota, Spain, and involved nineteen Member States.⁸²² A second one (LIVEX 24) was conducted between November and December 2024 in Bergen, Germany, and featured fifteen.⁸²³ The exercise was preceded by a command post exercise (MILEX 24) held in Brussels in April-May 2024. This exercise saw the involvement of planners from the MPCC and Eurocorps in Strasbourg for the Crisis Response Planning Phase of the RDC.⁸²⁴ The MPCC has been progressively expanding to become the preferred EU command and control structure, and conduct, not only all non-executive military missions, but also some executive operations as well as live exercises.⁸²⁵ These exercises are crucial to enhancing readiness and interoperability.

Although designed for crisis management operations outside the EU, like its NATO counterpart, the NRF, replaced by the Allied Response Force (ARF) in July 2024, the RDC could also potentially be employed for territorial defence. However, it is important to note that, at its launch, the

⁸¹⁹ Council of the European Union, ‘European Defence Industry Programme: Council ready to start negotiations with the European Parliament’, Press Release, (23 June 2025), available at <<https://www.consilium.europa.eu/en/press/press-releases/2025/06/23/european-defence-industry-programme-council-ready-to-start-negotiations-with-the-european-parliament/>>.

⁸²⁰ Henry Foy and Paola Tamma, ‘France drops buy-EU demand for Brussels defence fund’, *Financial Times*, (25 November 2024), available at <<https://www.ft.com/content/f556667f-c2c2-4111-8dda-bc5b6ed9ce10>>; Jan Strupczewski and Karl Badohal, ‘EU ministers positive on defence fund to ease debt concerns’, *Reuters*, (12 April 2025), available at <<https://www.reuters.com/world/europe/eu-considers-defence-fund-ease-debt-concerns-military-gear-2025-04-12/>>. For an in-depth analysis, see Federico Santopinto ‘The Involvement of Third-Country Entities in EU Defence Industrial Policies and the “European Design Authority” Concept’, 114 Policy Paper, Armament Industry European Research Group (ARES), *French Institute for International and Strategic Affairs (IRIS)*, (June 2025), available at <https://www.iris-france.org/wp-content/uploads/2025/06/ARES_2025_06_114_Design_Authority_PolicyPaper.pdf>.

⁸²¹ *2023 Progress Report*, (n 803), 8, 9; *2024 Progress Report*, (807), 12.

⁸²² For more information, visit <https://www.eeas.europa.eu/eeas/end-ex—successful-conclusion-eu’s-first-live-military-exercise-livex_en#:~:text=With%20the%20implementation%20of%20the,in%20preparing%20for%20crisis%2Dresponse>.

⁸²³ For more information, visit <https://www.eeas.europa.eu/eeas/kick-eu-crisis-management-military-live-exercise-2024-milex-24-eu-rdc-livex_en#:~:text=The%20German%2Dled%20Exercise%20EUROPEAN,the%20fictional%20country%20of%20Segli>.

⁸²⁴ For more information, visit <https://www.eeas.europa.eu/eeas/milex-24-eu-conduct-live-military-exercise-germany_en>.

⁸²⁵ *2023 Progress Report*, (n 803), 9; *2024 Progress Report*, (n 807). See also Table 6, XVII.

NRF was nearly twice as large, with 9,500 troops;⁸²⁶ the brigade-size force envisioned by the RDC may prove insufficient to respond to a crisis, let alone an armed aggression, and represents a further decrease in the EU's level of ambition compared to the 6,000 troops envisaged by the Battlegroups. Therefore, much like its predecessors, the RDC might 'remain a paper tiger and lack concrete use'.⁸²⁷

In relation to the mutual defence clause specifically, the 2023 Progress Report stated that '[t]o further strengthen our mutual assistance in case of an armed aggression, we have conducted exercises on Article 42(7) TEU in scenarios involving *cyber, hybrid and space-related threats*, and will continue to do so on a regular basis' [emphasis added].⁸²⁸ This claim was reiterated in the 2024 Progress Report, which added that the EU 'will continue to organise and conduct regular exercises with regard to Article 42(7)' [emphasis added].⁸²⁹ In fact, the bulk of the 'Secure' sections in both Reports focuses on *countering hybrid, cyber and space threats*.

This appears to confirm the earlier point: despite a shared recognition of the threat posed by the Russian Federation, the EU has yet to implement a credible military deterrent against it, despite repeated calls by the European Parliament to operationalise Article 42(7) TEU⁸³⁰ and clarify its relationship with Article 5 NAT.⁸³¹ The only progress made in preparation to conflict seems to be that related to the implementation of the Action Plan on Military Mobility 2.0, adopted in November 2022, with the Commission providing financial support for €807 million to the thirty-eight projects of the Connecting Europe Facility.⁸³² However, a report by the European Court of Auditors from February

⁸²⁶ Guillaume Lasconjarias, 'The NRF: from a Key Driver of Transformation to a Laboratory of the Connected Forces Initiatives', Research Paper No. 88, *NATO Defence College*, (January 2023), 4, available at <https://www.files.ethz.ch/isn/157613/rp_88.pdf>.

⁸²⁷ Blockmans, Crosson and Paikin, (n 787), 3.

⁸²⁸ *2023 Progress Report*, (n 803).

⁸²⁹ *2024 Progress Report*, (n 807).

⁸³⁰ 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>.

⁸³¹ 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>; 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>.

⁸³² European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Joint Communication to the European Parliament and to the Council – Action plan on military mobility 2.0*, JOIN(2022) 48 final, (10 November 2022), available at <https://defense-industry-space.ec.europa.eu/document/download/c3d3067c-6d9a-4f95-9a69-4dd99c340188_en?filename=Action%20plan%20on%20military%20mobility%202.0.pdf>. See also European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Joint Communication to the European Parliament and the Council on the Action Plan on Military Mobility*, JOIN(2018) 5 final, (28 March 2018), available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018JJC0005>>; European Commission, European Climate, Infrastructure and Environment Executive Agency, 'Military mobility: the EU supports strategic investments on dual-use transport infrastructure with €807 million', *News*, (24 January 2024), available at <https://cinea.ec.europa.eu/news-events/news/military-mobility-eu-supports-strategic-investments-dual-use-transport-infrastructure-eu807-million-2024-01-24_en#>.

2025 has revealed that the action plan has yielded mixed results, with Member States' armed forces still unable to move swiftly across the EU.⁸³³

As for counterterrorism, the 2024 Report mentioned that the EU's co-chairmanship of the Global Counterterrorism Forum is allowing the bloc to shape policies, practices and norms to prevent and counter terrorism and violent extremism.⁸³⁴ Additionally, the EU conducted a first round of dialogues with the UK on cyber and counterterrorism in December 2023 and February 2024, and is increasingly expanding its network of Counter Terrorism/Security experts in EU Delegations abroad.⁸³⁵

Finally, the two reports highlighted progress made in strengthening the partnership with NATO and the US. With regards to NATO, a Task Force on the resilience of critical infrastructures was established in June 2023 within the framework of the EU-NATO Structured Dialogue on Resilience in response to the sabotage of the Nord Stream pipelines, and a first structured dialogue on Space took place in December 2023.⁸³⁶ Additionally, in January 2023, the two organisations had also agreed on a third joint declaration. The declaration notes progress made in the areas of the 2016 and 2018 declarations, condemns Russia's unlawful invasion of Ukraine, and announces that the EU and NATO will take their partnership 'to the next level' in order to address growing strategic competition, resilience issues, protection of critical infrastructures, emerging and disruptive technologies, space, the security implications of climate change, as well as FIMI.⁸³⁷ However, there is still no mention in the declaration of how the EU and NATO's mutual defence clauses relate to each other.

The 2023 Progress Report used language identical to that of the 2023 Joint Declaration, adding that the EU's 2022 Strategic Compass and NATO's 2022 Strategic Concept 'provide a solid basis to further expand the partnership'.⁸³⁸ Progress made in the implementation of the current seventy-four

⁸³³ See European Court of Auditors, 'EU military mobility - Full speed not reached due to design weaknesses and obstacles en route', Special Report 04/25, (5 February 2025), available at <https://www.eca.europa.eu/ECAPublications/SR-2025-04/SR-2025-04_EN.pdf>.

⁸³⁴ *2023 Progress Report*, (n 803), 13; *2024 Progress Report*, (n 807), 17.

⁸³⁵ *2023 Progress Report*, (n 803), 21; *2024 Progress Report*, (n 807), 18, 26.

⁸³⁶ *2023 Progress Report*, (n 803), 19; *2024 Progress Report*, (n 807), 24.

⁸³⁷ NATO, *Joint Declaration on EU-NATO Cooperation by the President of the European Council, the President of the European Commission, and the Secretary General of the North Atlantic Treaty Organization*, (10 January 2023), available at <https://www.nato.int/cps/en/natohq/official_texts_210549.htm>. See also Table 6, XVII.

⁸³⁸ *2023 Progress Report*, (n 803), 18, 19.

proposals has been reviewed ten times (in June⁸³⁹ and November 2017,⁸⁴⁰ in June 2018,⁸⁴¹ 2019,⁸⁴² 2020,⁸⁴³ 2021,⁸⁴⁴ 2022,⁸⁴⁵ 2023,⁸⁴⁶ 2024,⁸⁴⁷ and 2025⁸⁴⁸) so far. The latest progress report, issued in June 2025, stressed the importance of developing an even more robust, coherent and complementary EU-NATO partnership.⁸⁴⁹

It is important to note that beyond PACE, the European Commission also participated in NATO's exercises such as STEADFAST DUEL 2024 and – together with the EUMS – STEADFAST DETERRENCE and STEADFAST DAGGER 2024.⁸⁵⁰ However, the EU did not participate in STEADFAST DEFENDER 2024. This latter exercise was aimed at testing NATO's new defence plans and ability to rapidly deploy forces from North America and other parts of the Alliance to reinforce the defence of continental Europe. The exercise involved 90,000 troops from all thirty-two NATO Allies, making it NATO's largest Article 5 exercise since the Cold War.⁸⁵¹ This reflects the fact that the EU's focus – and that of its cooperation with NATO – remains primarily geared toward crisis

⁸³⁹ NATO, *Progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016*, (14 June 2017), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2017_06/20170619_170614-Joint-progress-report-EU-NATO-EN.pdf>.

⁸⁴⁰ NATO, *Second progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016*, (29 November 2017), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2017_11/171129-2nd-Joint-progress-report-EU-NATO-eng.pdf>.

⁸⁴¹ NATO, *Third progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017*, (8 June 2018), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2018_06/20180608_180608-3rd-Joint-progress-report-EU-NATO-eng.pdf>.

⁸⁴² NATO, *Fourth progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017*, (17 June 2019), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2019_06/190617-4th-Joint-progress-report-EU-NATO-eng.pdf>.

⁸⁴³ NATO, *Fifth progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017*, (16 June 2020), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/2020/6/pdf/200615-progress-report-nr5-EU-NATO-eng.pdf>.

⁸⁴⁴ NATO, *Sixth progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017*, (3 June 2021), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/2021/6/pdf/210603-progress-report-nr6-EU-NATO-eng.pdf>.

⁸⁴⁵ NATO, *Seventh progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017*, (20 June 2022), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/220620-progress-report-nr7-EU-NATO-eng.pdf>.

⁸⁴⁶ NATO, *Eighth progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017*, (16 June 2023), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/2023/6/pdf/230616-progress-report-nr8-EU-NATO.pdf>.

⁸⁴⁷ NATO, *Ninth progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017*, (13 June 2024), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/2024/6/pdf/240613-progress-report-nr9-EU-NATO.pdf>.

⁸⁴⁸ NATO, *Tenth progress report on the implementation of the common set of proposals endorsed by EU and NATO Councils on 6 December 2016 and 5 December 2017*, (10 June 2025), available at <https://www.nato.int/nato_static_fl2014/assets/pdf/2025/6/pdf/250605-progress-report-nr10-EU-NATO.pdf>.

⁸⁴⁹ *Ibid.*, 1.

⁸⁵⁰ *Ibid.*, 11.

⁸⁵¹ For more information on STEADFAST DEFENDER 2024, visit <<https://www.nato.int/cps/en/natohq/222847.htm>>.

management, prevention, and defence against non-traditional threats, rather than conventional territorial defence.

Nevertheless, the EU had conducted a first joint naval exercise with the US in the Indo-Pacific in March 2023 and an Administrative Arrangement allowing for formal cooperation and information exchange was signed by the EDA and the US State Department the following month.⁸⁵² Alongside NATO Allies, the EU also participated in regular military exchanges in the framework of the US-led Ramstein group, facilitating coordination and cooperation in support of Ukraine.⁸⁵³ However, the EU had limited leverage when the US Congress delayed the delivery of \$60.8 (€53.7) billion worth of aid to Ukraine for several months, just as it did when that the second Trump administration paused all military aid to Ukraine last March.⁸⁵⁴ Coordination with the recently-established NATO Security Assistance and Training for Ukraine (NSATU) is also likely to be affected.

Conclusion

This chapter has examined the EU's mutual assistance clause, in its current formulation, as well as its genesis, to understand how credible it is and the type of legal responsibilities it imposes on the members of the Union. Today, the mutual defence clause, enshrined in Article 42(7) TEU and introduced almost two decades ago in Lisbon, provides a legal framework for EU Member States to engage in collective defence similar to NATO Allies, by committing them to an *obligation of result* rather than means.

As pointed out in section 2, a European mutual defence clause was originally established in Article IV BT and then reiterated and refined in later treaties, namely the EDCT, the MBT, the CT and the LT. Article 2(3) EDCT and Article V MBT retained the original wording '*all the military and other aid and assistance in their power*', which encompassed both civil and military aid. The explicit reference to military support was, however, abandoned when the clause made its way into the EU treaty framework through the Draft CT and then, when this was rejected, the LT.

The legal analysis has shown, however, that the more ambiguous phrasing '*all the means in their power*' employed by Article 42(7) TEU still permits both civil and military assistance to be provided to EU members under aggression. Therefore, much like NATO Allies, in case of attack EU Member States are left free to choose the means of assistance. Yet, unlike NATO's, these obligations are *automatic*, as they require no formal Council decision or conclusions to be implemented. At the

⁸⁵² 2023 Progress Report, (n 803), 19-20; 2024 Progress Report, (n 807), 24, 26.

⁸⁵³ 2023 Progress Report, (n 803), 20; 2024 Progress Report, (n 807), 26.

⁸⁵⁴ Kevin Liptak, Samantha Waldenberg, and Oren Liebermann, 'Trump pauses military aid to Ukraine after Oval Office argument with Zelensky, White House official says', *CNN*, (3 March 2025), available at <<https://edition.cnn.com/2025/03/03/politics/trump-administration-ukraine-aid/index.html>>.

same time, however, the presence of the Irish and NATO clauses renders these obligations *conditional*, as the means of assistance to be provided must align with the foreign and security policies of both neutral/non-aligned countries, on the one hand, and NATO countries, on the other, collectively encompassing the totality of EU Member States.

Section 2.6 has explained that neutral and non-aligned members, as well as those requiring parliamentary authorisation of the use of force, are not exempted from providing assistance under Article 42(7) TEU. For the remaining twenty-three EU Member States, which are also NATO Allies, mutual defence obligations under Article 42(7) TEU apply, provided they do not conflict with Article 5 NAT. Importantly, however, the legal primacy of Article 5 does not grant NATO a ‘right of first refusal’, as illustrated by France’s invocation of the EU’s mutual defence clause despite its NATO membership. Moreover, triggering the EU’s Article 42(7) does not automatically activate NATO’s Article 5, although the simultaneous invocation of both clauses by shared members is not precluded.

Finally, the section has pointed out that, unlike Article V MBT, Article 42(7) TEU could potentially be triggered by a non-NATO EU Member State against a non-EU NATO Ally. Additionally, in the event of an attack, neutral/non-aligned countries could indirectly benefit from NATO’s mutual security guarantee through their partnerships with NATO-aligned EU Member States. Similar to NATO though, no sanctioning mechanism exists to compel EU Member States to act in case of inaction or inadequate action, as the CFSP and CSDP largely fall outside the jurisdiction of the CJEU. This does not negate the clause’s constitutional relevance within the EU legal order, but it does underscore the existing gap in available judicial remedies.

The strategic analysis, on the other hand, has focused on the growing importance that the EU has been placing on defence, and particularly the mutual defence clause, and related initiatives in this area, including in cooperation with NATO. Although NATO remains the cornerstone of European defence, there are clear indications that, since 2016 and even more so since 2022, the EU has been actively seeking to retool its CSDP instruments in response to the changing and more complex threat environment, to play a more active role in defence.

Brexit and the uncertainty surrounding the first Trump Presidency generated momentum for defence initiatives such as PESCO, CARD and the EDF, which were spearheaded by the 2016 EUGS. At the same time, the EUGS also called for deeper cooperation with NATO, an objective that has been advanced through subsequent EU-NATO Joint Declarations, which have been discussed alongside the EU security strategies. Additionally, the Strategy also made express reference to the mutual defence clause, invoked for the first – and so far only – time ten years ago.

Russia’s actions in Ukraine have brought war back to the EU’s doorstep, adding new urgency to the need to intensify defence cooperation both within the EU and with NATO. The 2022 Strategic

Compass has undoubtedly marked an important shift in the EU's approach to security and defence, by providing a common threat analysis, incorporating important ongoing initiatives such as PESCO, the EDF and the EPF, and proposing new ones like the RDC. An examination of Council conclusions and decisions could provide further insight into the EU's recent increased emphasis on the collective defence clause.

However, much like the 2016 EUGS, despite the emphasis on the mutual defence clause and a stronger EU-NATO partnership, there seems to be a disproportionate focus by the EU on unconventional threats, such as potential cyber and hybrid attacks, without addressing how to prepare for traditional, large-scale military attacks. This has to do with 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 EU territory. As Sari put it, 'while the member states have conferred certain limited powers on the EU to support their national defence efforts, they have not transferred upon it any authority regarding the exercise of the inherent right of individual and collective self-defence.'⁸⁵⁵ In principle both Article 5 NAT and Article 42(7) TEU cover traditional and non-traditional attacks. However, territorial defence continues to be generally viewed as the responsibility of individual Member States as well as of NATO.⁸⁵⁶

Therefore, despite the change in wording from '*all the military and other aid and assistance in their power*' to '*by all the means in their power*', throughout its evolution from Article IV BT to Article 42(7) TEU, what has consistently set the European mutual defence clause apart from NATO's is the absence of a real military capability behind it.⁸⁵⁷

The start of the second Trump Presidency, with its uncertain commitment to defend not just Ukraine but NATO Allies as well, has intensified debates on European strategic autonomy and ways to reduce reliance on the USA and ensure fairer burden sharing in NATO. The ReArm Europe Plan/Readiness 2030 and its Security Action for Europe (SAFE) fund⁸⁵⁸ represent a clear move in this

⁸⁵⁵ Sari, (n 217), 433.

⁸⁵⁶ This is confirmed, among other things, by Russian President Valdimir Putin's repeated claims that he opposes Ukraine joining NATO, but not the EU. 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/>>.

⁸⁵⁷ Sari, (n 579).

⁸⁵⁸ As the first pillar of the ReArm Europe Plan/Readiness 2030, this instrument aims to mobilise up to €150 billion in investments, reinforcing the EU's ability to act collectively in the security and defence domain. As of 10 September 2025, nineteen EU Member States have already expressed an interest, and more are expected to do so ahead of the formal deadline for application of 30 November 2025. See European Commission, Defence Industry and Space 'SAFE | Security Action for Europe', (30 July 2025), available at <https://defence-industry-space.ec.europa.eu/eu-defence-industry/safe-security-action-europe_en>. See also Charles Cohen, 'Commission allocates two-thirds of EU's €150 billion SAFE defence loans to five countries', *Euractiv*, (10 September 2025), available at <<https://www.euractiv.com/news/commission-allocates-two-thirds-of-eus-e150-billion-safe-defence-loans-to-five-countries/>>.

direction, as do the new White Paper for European Defence⁸⁵⁹ and the recently proposed 2028-2034 MFF – worth nearly €2 trillion, the largest in the EU’s history – of which €131 billion is earmarked for security, defence and space through the European Competitiveness Fund.⁸⁶⁰ However, ‘[t]o think that the EU could easily and quickly assemble a truly European army or make this shift rapidly is anyhow largely illusory.’⁸⁶¹ Building a competitive and autonomous European defence industry will not happen overnight. The EU remains highly dependent on American technology, including the F-35 fighter jets produced by Lockheed Martin – of which it has no equivalent alternative at the moment – as well as Patriot missile defence systems and other critical enablers. This dependence was further cemented in the recent EU-US Framework Agreement, under which the EU agreed ‘to substantially increase procurement of military and defence equipment from the United States.’⁸⁶²

Therefore, despite the EU’s response to the war in Ukraine and its post-2022 initiatives, the Union’s ability to credibly threaten the use of force in the exercise of the right of collective defence remains a distant prospect, contingent, on the one hand, on the development of a strong European defence industrial base, and, on the other, on that of a genuine common defence under Article 42(2) TEU, or, potentially, agreement on an intergovernmental or supranational arrangement outside of the current Treaties, to be incorporated into the EU legal framework at a later stage.

⁸⁵⁹ European Commission, *White Paper for European Defence – Readiness 2030*, (12 March 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>.

⁸⁶⁰ European Commission, ‘The 2028-2034 EU budget for a stronger Europe’, (16 July 2025), available at <https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/eu-budget-2028-2034_en>. See also Kenneth McDonagh, ‘The EU Joint White Paper for Defence Readiness 2030 and Ireland’s Response?’, Blog, *Dublin City University*, (2 May 2025), available at <<https://www.dcu.ie/blog/2151/eu-joint-white-paper-defence-readiness-2030-and-irelands-response>>.

⁸⁶¹ Govaere 2025, (n 1), 23.

⁸⁶² Framework Agreement, (n 421), para. 7. See also The White House, ‘Fact Sheet: The United States and European Union Reach Massive Trade Deal’, (28 July 2025), available at <<https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-united-states-and-european-union-reach-massive-trade-deal/>>.

Conclusion

This PhD thesis has analysed NATO's and the EU's collective defence clauses in light of Russia's ongoing aggression of Ukraine and the heightened risk of Russian attacks against members of either organisation. Its purpose has been to capture how Article 5 NAT and 42(7) TEU overlap and interact, in order to understand what the invocation of one or both clauses simultaneously would entail today. NATO has been entrusted with the security of Europe since its founding in 1949; however, the return of Donald J. Trump on the international scene has raised doubts about the US commitment to the Alliance and the mutual security guarantee. To address these doubts, this thesis has analysed both mechanisms of collective defence through a law-in-context approach, prioritising historical, legal and strategic considerations. In so doing it, it has engaged with key debates, such as the distinction between armed attack and armed aggression, between obligation of means and obligation of results, and the assessment of the EU's evolving security and defence role relative to NATO's. These debates span multiple disciplines, including international law, EU law, and political science.

The historical analysis has showed that, during the negotiations, the original formulation of Article 5 NAT by the US State Department was toned down by the US Senate Foreign Relations Committee to enable ratification. It was thought that the original phrasing '*such military or other action [...] as may be necessary*' could have given the impression that the President would, in case of an attack, commit to declare war without Congressional authorisation, which is constitutionally required in the US. It is interesting to note that, while at the time the legislative branch feared that the executive might bypass it and automatically engage in military intervention in defence of Europe, today that very same branch finds itself reminding the President of the importance of European security for US national security and actively seeking to prevent a potential withdrawal from the NAT. The analysis has also examined how the Alliance progressively developed and reformed its integrated military command structure to effectively implement Article 5.

As for Article 42(7) of the Lisbon Treaty, the historical analysis has pointed out that the EU's mutual assistance clause finds its roots in Article IV of the Brussels Treaty (BT). The formulation of Article IV BT was more stringent compared to that of Article 5 NAT, as it stated that the parties would have been required to provide '*all the military and other aid and assistance in their power*'. However, the article was largely a paper tiger as its signatories lacked the capacity to assist one another meaningfully in the context of post-World War Two recovery. Instead, they required and

received economic and security assistance from the USA – the first through the Marshall plan and the second through the NAT. This is further illustrated by the fact that Western Union Defence Organisation (WUDO), the organisation created to oversee the implementation of Article IV BT, was absorbed by NATO after the NAT was signed on 4 April 1949.

The same language from Article IV BT was subsequently incorporated without changes into Article V of the Modified Brussels Treaty (MBT), when the supranational European Defence Community (EDC) project failed. The Western European Union (WEU) was then created to replace WUDO, but it still lacked an integrated military command structure and relied on NATO for the implementation of Article V MBT. It is important to highlight that the phrasing ‘*all the military and other aid and assistance in their power*’ had been retained in Article 2(3) of the European Defence Community Treaty (EDCT) as well, although the article replaced ‘armed attack’ with ‘armed aggression’ and made no express reference to Article 51 UNC.

Before the WEU was dismantled in 2011, its functions were transferred to the EU, and the clause eventually found its way into the draft Constitutional Treaty (CT). The analysis has revealed that it is then that the clause was significantly tempered: the explicit reference to military means was removed, and the Irish and NATO clauses added. The clause was ultimately incorporated into the Lisbon Treaty, when ratification of the draft CT failed in France and the Netherlands.

The legal analysis has examined NATO’s Article 5 and the EU’s Article 42(7) in their current formulations. The analysis of Article 5 NAT has shown that it entails an obligation of result, which is conditional and non-automatic. The objective towards which the required assistance must be directed is clearly and explicitly stated in the clause, namely ‘to restore and maintain the security of the North Atlantic area’. However, the provision as a whole is deliberately vague. This is a double-edged sword.

On the one end, its lack of reference to a specific enemy and the absence of a definition of armed attack has allowed the Alliance to survive the end of the Cold War and adapt to the evolving threat environment by broadening the interpretation of armed attack to encompass also non-conventional attacks by both state and non-state actors alike, including terrorist, cyber, hybrid and space attacks. On the other end, however, the amendments introduced by the US Senate during the drafting process means that Allies are not legally obliged to provide military assistance, as such assistance is conditional on their own assessment of necessity. Moreover, both the invocation and operationalisation of Article 5 NAT require unanimous agreement in the North Atlantic Council (NAC).

The above has been confirmed by the empirical analysis. The examination of NATO’s response to the 9/11 terrorist attacks has demonstrated that, not only the means of assistance, but, in fact, also its scope and timing are left to the discretion of individual Allies, and that any collective

measure to operationalise Article 5 NAT, following its consensual invocation in the NAC, must likewise be unanimously agreed. This was made clear by NATO Legal Adviser at the time of the attacks, Baldwin De Vits, in a still-classified memorandum. De Vidts further noted that while the Allies would need to provide assistance that is commensurate with their judgement and resources, such assistance should also be ‘appropriate to the scale of the attack’. Yet the absence of a court with jurisdiction over these matters, or of any sanctioning mechanism within the Alliance in case of inadequate or even lack of action, makes this obligation difficult to enforce.

In this light, President Trump’s recent claims that he would be willing to intervene in defence of Poland and the Baltic States, following the recent violations of Polish and Estonian airspace, are indeed a welcome development. However, the type, scale and timing of such an intervention remain at his discretion and may not necessarily satisfy Europeans; it may even not materialise at all, without any legal repercussions for the United States government. Additionally, whether he would be willing to extend such assistance to a European Ally failing to meet the 5% of GDP defence spending target also remains uncertain. Therefore, the legal analysis has shown that while Article 5 NAT constitutes an obligation of result, no legal consequences would follow should the result ultimately not be achieved.

The legal analysis of Article 42(7) TEU has highlighted that the EU’s mutual defence clause entails an obligation of result, which is both conditional and automatic. The formulation of Article 42(7) TEU is, in principle, even more stringent than that of Article 5 NAT. Article 42(7) TEU applies in the event of an ‘armed aggression’, which includes a broader category of acts and potentially also a lower threshold of the use of force than an ‘armed attack’. Additionally, in such cases, EU Member States are obliged to provide assistance ‘by all the means in their power’.

The analysis has demonstrated, however, that this stringency is largely theoretical. In practice, armed attack and armed aggression are treated as synonyms, as both mutual defence clauses explicitly refer to Article 51 UNC. Article 103 UNC establishes the legal primacy of the UN Charter over other international treaties, with Article 30(1) VCLT giving effect to this supremacy. Furthermore, EU Member States are not bound to mutual defence in cases when NATO Allies are not, as both NATO and the EU recognise land, sea, air, cyber, and space as domains of warfare, cooperating against threats in these domains as explicitly stated in EU-NATO Joint Declarations. Finally, the expression ‘by all the means in their power’ is effectively equivalent to ‘as they deem necessary’, once the Irish and NATO clauses are taken into account.

Nonetheless, although Article 42(7) TEU remains silent as to the precise end toward which assistance must be directed, its purpose becomes apparent when the provision is situated within the broader EU constitutional framework. Read alongside Article 3(1) TEU and Article 21(2)(c) TEU,

the mutual defence clause is clearly oriented toward the preservation of peace and the safeguarding of international security, as confirmed in the 2016 EU Global Strategy and the 2022 Strategic Compass. In substantive terms, this objective closely mirrors the function of Article 5 NAT, namely the restoration and maintenance of security within the North Atlantic area. However, while the overarching objectives of peace and security frame the purpose of the assistance, the legally binding ‘result’ in both cases is the provision of aid itself.

Moreover, the somewhat softer and more ambiguous wording in Article 42(7) TEU – ‘*by all the means in their power*’ – compared with the earlier phrasing in Article IV BT – ‘*all the military and other aid and assistance in their power*’ – still allows EU Member States to provide military assistance in the event of aggression. However, this obligation is conditional, as the means of assistance must align with the foreign and security policies of neutral and non-aligned countries, as well as NATO members, effectively making it conditional for all EU Member States. At the same time, the obligation is automatic, as no formal Council decision or conclusions are required either to invoke or implement the mutual assistance clause.

The EU Member States’ response following the Paris attacks of 13 November 2015 has confirmed this assessment. Their expression of unanimous support in the context of a Foreign Affairs Council (FAC) meeting was coincidental; even if read as an application of the obligation to consult under Article 32 TEU, no formal decision or conclusions were adopted, as then-HR/VP Federica Mogherini confirmed that the Treaty does not require it. Mogherini also emphasised the intergovernmental nature of the clause, noting, that although the EU has no formal role – unlike under Article 222 TFEU, which, similarly to Article 5 NAT, envisages a conditional and non-automatic obligation of result – may play a coordinating role. This was later confirmed in the 2022 Strategic Compass, which specifies that such coordination would be carried out by the EUMS. Additionally, all EU Member States, provided assistance to France, while respecting the Irish and NATO clauses, confirming that the obligation is conditional. However, as with NATO, no sanctioning mechanism exists to compel any EU Member State to act in case of inaction or inadequate action, as the CJEU has, in principle, no jurisdiction over CFSP and CSDP matters. While the Court has interpreted this exclusion narrowly, the introduction of such mechanisms for the EU’s collective defence clause would require treaty amendments and could trigger withdrawal risks under Article 50 TEU, a possibility similarly contemplated in NATO under Article 13 NAT.

Both NATO’s and the EU’s mutual defence clauses were originally adopted to ensure collective defence against traditional military attacks. Over time however, their interpretation has expanded to encompass other forms of non-traditional attacks, including cyber, hybrid and space attacks. This evolution has resulted in considerable overlap between the two.

The strategic analysis, however, has shown that in practice, NATO is reorienting itself towards conventional territorial defence, while adopting a NFM designed to enhance its capacity to deter and respond to both conventional and non-conventional threats. The Alliance's renewed focus on its core mission is evident from the increasingly assertive tone and more direct language employed in recent Summit declarations, as well as in the operational initiatives of the likes of *Baltic Sentry* and *Eastern Sentry*. NATO has, indeed, made significant progress in rebuilding its deterrence and defence posture, and Allies have substantially increased their defence spending over the last decade. Yet, the credibility of the mutual security guarantee ultimately depends not only on military preparedness and interoperability, but also on the unity and political resolve of the Allies to uphold the indivisibility of their security.

As for the EU, although it has actively sought to adapt and strengthen its CSDP instruments, it remains evident – from the 2022 Strategic Compass and related annual progress reports – that the Union continues to focus primarily on non-conventional threats, particularly cyber and hybrid attacks, while neglecting preparations for traditional, large-scale military aggression. This is all the more striking given that Ukraine has been granted candidate country status, as it reflects the enduring view that territorial defence remains the responsibility of individual Member States and NATO. Despite meaningful initiatives to reinforce the European defence industrial base in response to the war in Ukraine and, more recently, to the re-election of President Donald Trump in the USA, the EU's capacity to credibly threaten or project the use of force remains constrained. These limitations stem, not only from structural shortcomings inherent to the Union's still-incomplete integration process, but also from a persistent lack of political will among certain Member States to advance towards a genuine common defence.

In light of the above, the author sees three possible courses of action, presented in order of feasibility from most to least:

- 1) The strengthening of the European pillar of NATO. This could be achieved through continued investment in the European defence industry and the adoption of an intergovernmental arrangement with a view to its subsequent incorporation into the Union's institutional architecture, in a manner analogous to the evolution of the Schengen Agreement. The 2018 European Intervention Initiative (EI2) offers a practical example.
- 2) The establishment of a clear-cut division of labour between NATO and the EU. NATO would focus on collective defence, while the EU handles crisis management. This arrangement could be formalised in a new EU-NATO Joint Declaration, which would also clarify the relationship between the two organisations' respective mutual defence clauses.

- 3) The completion of the European integration process in defence through the revival of the supranational EDC project.

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