



# Collective Defence through Flexibility and Intergovernmentalism: the Role of Article 42(7) of the Treaty on European Union

How is Article 42(7) TEU relevant today for EU Member States?

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## List of Abbreviations

CFSP	European Union Common Foreign and Security Policy
EDC	European Defence Community
EP	European Parliament
TCE	Treaty establishing a Constitution for Europe
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
NAT	North Atlantic Treaty
NATO	North Atlantic Treaty Organisation
OCT	European Union Overseas Countries and Territories
OMR	European Union Outermost Regions
UNC	United Nations Charter

# Abstract

Since the ratification of the Treaty of Lisbon in 2009, the TEU's Article 42(7) guarantees that Member States will receive assistance should they be attacked and request such aid. In the geopolitical context of today, this clause is more important than ever. However, it remains understudied compared to NATO's Article 5, its closest counterpart, and this work aims to build on existing literature to analyse how Article 42(7) TEU is useful today for Member States, specifically by taking into account flexibility and a Liberal Intergovernmental lens. This text will analyse the case of the only invocation to date of the clause, in the aftermath of the November 2015 Paris terrorist attacks. Furthermore, it will analyse the potential use of the clause in contemporary scenarios based on the precedent set after that invocation. This work will conclude that the largest benefit of the clause is its flexibility and intergovernmental character, which sets it apart from Article 5, and the EU's solidarity clause, Article 222 TFEU, making it a useful option for Member States in the case of a traditional or hybrid attack.

## Introduction

In today's world, coordination in security and defence policy is becoming increasingly important for EU Member States, in the context of Russia's invasion of Ukraine and an increasingly unpredictable United States under a second Donald Trump presidency. An important, existing example of European defence policy is Article 42(7) of the Treaty on European Union (TEU), whereby if an EU Member State is attacked and requests assistance, the others have an obligation to come to its aid. This clause,<sup>1</sup> however, remains relatively less studied, compared to its more famous counterpart, NATO's Article 5.

This work thus aims to answer the following question: How is Article 42(7) TEU relevant today for EU Member States? To this end, this work aims to analyse the legal and strategic relevance of Article 42(7) TEU for EU Member States through an intergovernmental lens.

Specifically, this work will aim to examine each of the three main elements of the clause, which set out when and how it can be used, as well as conditions that may limit Member States' responses; to analyse the context of the creation of the clause; to analyse the clause's use after the November 2015 Paris terrorist attacks, which set a precedent for any future use; and to assess whether the clause is a useful tool in today's security landscape.

To achieve these aims, this thesis is divided into three sections, the first two of which establish the use, conditions and context for the clause, while the third section analyses the clause before, during and after its only invocation in 2015.

## Theoretical Framework

This work will examine Article 42(7) TEU through the lens of Andrew Moravcsik's Liberal Intergovernmentalism theory, which first appeared in 1993, and within a decade became a leading theory of European integration (Kleine & Pollack, 2018). According to this theory, integration happens through three steps: national preference formation, whereby domestic

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<sup>1</sup> Several names exist for Article 42(7) TEU, including mutual assistance or mutual defence clause, however as these are unofficial, this work refers to Article 42(7) TEU throughout as 'this clause' or 'the clause'.

actors influence the position of the state; then interstate negotiation, where states bargain to best improve their conditions; and finally outcomes, such as a treaty, or delegation of competences to an institution (Moravcsik, 1993).

In the field of security and defence, integration has been hampered by protectionist national preferences, as defence is seen as a key piece of the sovereignty of a nation. The defining example of this in the early years of European integration was the failure of the treaty establishing the European Defence Community (EDC), which was not passed by the French National Assembly due to fears of loss of control (Gavin, 2009). This taboo has remained for the most part, though as this work will outline, Member States have loosened their national preferences in certain areas, leading to an EU that can act as an intergovernmental forum for security and defence issues, such as France's invocation of Article 42(7) TEU in 2015.

This work will also examine flexibility as the main benefit of this clause, defined through its adaptability for both invoking and aiding states which can adapt their requests and provision of aid depending on a wide range of situations.

This work will build on Nováky's (2017) work which argued that flexibility is the reason France chose Article 42(7) TEU, by also analysing the intergovernmental aspect, as well as considering flexibility in the context of contemporary applications for this clause.

The Liberal Intergovernmental lens and flexibility will be applied to the case of France's invocation of this clause in 2015, as well as to literature before and after 2015, examining different situations for the invocation of Article 42(7) TEU.

## 1) Breakdown of Article 42(7) TEU

To analyse the clause, this work will first break down the elements of Article 42(7) TEU. The clause, reproduced in full below, contains the following three sub-clauses: the obligation of aid and assistance (sentence 1), the so-called 'Irish' sub-clause<sup>2</sup> (sentence 2) and the NATO sub-clause (sentence 3)(European Union, 2010a):

*If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter.*

*This shall not prejudice the specific character of the security and defence policy of certain Member States.*

*Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.*

### 1.1) Obligation of aid and assistance

The crux of this clause is the obligation of aid and assistance to a Member State which has been the victim of an armed aggression (sentence 1), which offers EU Member States legal certainty

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<sup>2</sup> This sub-clause is known as such because it is derived from the Treaty of Maastricht's Article J.4(4), which was included to protect the neutrality of certain Member States, which at the time only included Ireland (Fischer & Thym, 2013).

that Member States will support them should they be attacked. While the type of aid (military, intelligence, financial, etc.) is conditional, as detailed in section 1.2, the obligation of aid is automatic.

This clause has been frequently compared to Article 5 of the North Atlantic Treaty (NAT), which, by Article 42(7) TEU's own definition, should be the forum for collective defence for the majority of EU Member States. This clause, however, has characteristics in common, as well as others that differentiate it.

In common, both reference Article 51 of the UN Charter (UNC), the legal basis for individual and collective self defence, aligning their use with the principles of international law (Fazio, 2025). Furthermore, this alignment with international law extends to the threshold for which an armed aggression should be considered, which should be consistent with that for invocation of Article 5 NAT (North Atlantic Treaty, 1949), despite a difference in the term used ('aggression' in this clause, and 'attack' in the case of Article 5 NAT) (Fazio, 2025; Kaarakainen, 2023; Fischer & Thym, 2013). Today, this would include attacks on land, air, sea, space, and cyber & hybrid attacks (Fazio, 2025).

There are two main characteristics that differentiate the two. Firstly, Article 42(7) TEU can be invoked unilaterally, creating an automatic obligation for other EU Member States, while Article 5 NAT must be invoked unanimously after a meeting of the North Atlantic Council (Fazio, 2025). Secondly, the clause applies to EU Member States' territory, regardless of where it is located, while under Article 6 NAT, protection is limited to territory in Europe, North America, Turkey or North Atlantic Islands north of the Tropic of Cancer (Protocol to the North Atlantic Treaty, 1951). While debate exists on whether the EU's Overseas Countries and Territories (OCTs), which are not on the European continent, are covered by the clause (Neergaard, 2025), this work will argue that the flexibility of the clause may allow it to apply to OCTs in section 3.3.3.

In certain circumstances, EU Member States also have the option to invoke Article 222 TFEU, which provides for the Union mobilising all instruments at its disposal including military means, however this clause is limited to terrorist attacks, man-made and natural disasters (European Union, 2010b). While the former occurred in France in November 2015, France chose not to invoke Article 222 TFEU for the reasons discussed in section 3.2.2.

## 1.2) Irish and NATO sub-clauses

The Irish and NATO sub-clauses both create conditions on the obligation of aid and assistance (Fazio, 2025), however these should be interpreted as strictly as possible, while still being flexible to individual Member States' needs.

The Irish sub-clause (sentence 2), without mentioning them in the treaty, is interpreted as applying mainly to the neutral Member States, which may not join military alliances due to their constitutions or policy choice, namely Ireland, Austria and Malta. These Member States remain obliged to aid and assist an attacked Member State, though they can do so with consideration for their circumstances (Fischer & Thym, 2013). Irish law, for example, requires a United Nations mandate for any deployment of more than 12 soldiers (Defence (amendment) (No. 2) Act, 1960), thus, should this not be the case, the flexibility introduced by this sub-clause allows Ireland to assist a Member State in other ways. These Member States are also protected by this clause, and since these three Member States, along with Cyprus, are not part of NATO, it is their only collective defence clause.

This sub-clause has also been considered in the context of Germany's requirement for parliamentary approval before deployment of its armed forces, allowing it to be compatible with German law by not committing it to automatic aid (Fischer & Thym, 2013).

The NATO sub-clause (sentence 3), which applies to 23 Member States today, in theory creates a deference to NATO for common defence purposes. This deference, however, is limited as it remains up to Member States to choose how to apply consistency with 'commitments under the North Atlantic Treaty Organisation'. This was legally considered prior to France's invocation in 2015 as another 'layer' of collective defence, which did not invalidate Article 5 NAT (Fischer & Thym, 2013). Given that Article 42(7) TEU was invoked without Article 5 NAT, this confirmed that NATO collective defence did not have an automatic right to be invoked first (Fazio, 2025), as discussed in section 3.3.2.

## 2) Historical Context

Moravcsik's theory of Liberal Intergovernmentalism is traditionally applied to EU treaties and the Intergovernmental Conferences that precede them, therefore as a starting point, applying it to the decisions that led to the formulation of this clause can give an insight into the intended legal effect. Article 42(7) TEU has its origins in the Intergovernmental Conference of 2004, which preceded the unratified Treaty establishing a Constitution for Europe (TCE) (Fischer & Thym, 2013).

The reason for the push for its inclusion was to be able to integrate into the EU the Western European Union military alliance, which had had a mutual defence clause since 1948. This process had already begun with the transfer of the 'Petersberg' tasks to the EU with the Treaty of Amsterdam (Bernard, 2024). In 2002, a joint Franco-German proposition called for a flexible EU security and defence policy, including optional participation in a mutual defence clause (European Convention, 2002). This was seen as unacceptable by the UK, as it would 'challenge NATO' (Rynning, 2003, p. 493).

This was changed after the Iraq war began in March 2003, as it signalled a need for stronger EU positioning in Common Security and Defence Policy. Thus, during the 2004 Intergovernmental Conference, the clause was drafted such that it would apply to all Member States, with a compromise reached for 'Atlanticist' and neutral Member States, leading to the NATO and Irish sub-clauses respectively (Fischer & Thym, 2013). This is the earliest example of Liberal Intergovernmental negotiation for this clause, as neutral Member States acquiesced to being involved in a legal obligation to provide help in case of attack, but with the caveat that it would not infringe on their domestic interest of neutrality. Likewise, then 'Atlanticist' Member States like the UK avoided changing their relationship with NATO and the US, while still allowing for integration in this traditionally sensitive domain.

The early mention of flexibility for security and defence policy would not manifest itself exactly as proposed in the 2002 text, which foresaw enhanced cooperation in this field, but as this work will argue, it remained an important aspect for Article 42(7) TEU.

The clause finally appeared in the TCE as Article I-41(7) TCE, with the exact same wording as in the eventual Lisbon Treaty, and came into force with the latter's ratification in December 2009 (European Union, 2004; European Union, 2010a).

### 3) Analysis

In this section, this work will apply the theory of Liberal Intergovernmentalism and concept of flexibility by tracing the evolution of scholarship before, concerning, and after France's 2015 invocation of Article 42(7) TEU. It will also examine this case through this lens.

#### 3.1) Pre-2015

The scholarship before 2015 on this clause has been characterised as mostly legalistic (Nováky, 2017), as without an implementing decision, before the invocation of this clause, one could only speculate how it would be put into action. An example of this is Fischer & Thym's (2013) detailed commentary on Article 42.

Other texts however, offer an early insight into conditions for the clause's use, notably on the effect on neutrality, and on the degree to which the EU can be considered a military alliance.

Trevor Salmon's (2006) analysis on the latter topic included the assertion that those Member States joining in 1995 and 2004 'did so with the understanding that they were joining a de facto or tacit alliance', without (yet) having a written mutual defence clause, though with an informal guarantee 'to the same end'. If taken for granted, this 'guarantee' would represent the extreme of flexibility, inherent to its unwritten nature, though it does logically follow that EU Member States could be expected to assist another attacked Member State, much in the same way that most EU Member States have been keen to assist Ukraine, which is not an EU Member State. This aid, however, before the clause's ratification, would not have been automatic, nor assumed to be military (again as seen in Ukraine). This means that the ratification removed certain flexibility (or discretion) for states to decide when to use military means.

This concern is raised directly in the context of neutrality. Christiansson (2010) conceptualises this through a 'two-dimensional game' for Sweden to maintain its position internationally, while maintaining a domestic image as a non-aligned country, which is achieved by 'stretching the meaning of solidarity and sovereignty'. His explanation for this is that Sweden wanted to be part of continuing security integration, even if there was a possibility of avoiding it as Denmark did<sup>3</sup> until 2022 (European Union, 2023), while still not needing to engage with NATO, which at the time would have been clearly against the public's interest. This reflects the bargaining involved in ratification, as the clause returned the flexibility lost by offering the Irish sub-clause, especially compared to NATO commitments. This is further reinforced by the Swedish Social Democrats' description of Sweden's 'Declaration of Solidarity'. This resolution unilaterally confirmed Sweden's willingness to act in case of attack on the EU (Försvarsutskottet, 2009), with Sweden's then-largest party describing this action as not necessarily military in nature and as 'a choice not an obligation' (Christiansson, 2010, p. 34). In fact, in the aftermath of France's invocation of the clause, a Social Democrat Prime Minister, Stefan Löfven, committed Sweden to military aid in Mali, military training in Iraq, and closer cooperation on intelligence sharing (Anghel & Cirlig, 2016).

Overall, this section has argued that while the ratification of this clause removed certain flexibility for Member States, the Irish sub-clause allows them to rebuild this flexibility into their

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<sup>3</sup> Denmark had an opt-out from the EU's Common Foreign and Security Policy (including this clause) between 1993 and 2022 (European Union, 2023).

commitments, even if the sub-clause need not be resorted to as shown by Sweden’s choice of military assistance in 2015.

### 3.2) 2015 invocation

This section will first evaluate the legal conditions surrounding France’s invocation, including compatibility with international law, explore why France chose this clause, and finally the results, both legal and precedent wise for this clause.

#### 3.2.1) Triggering event

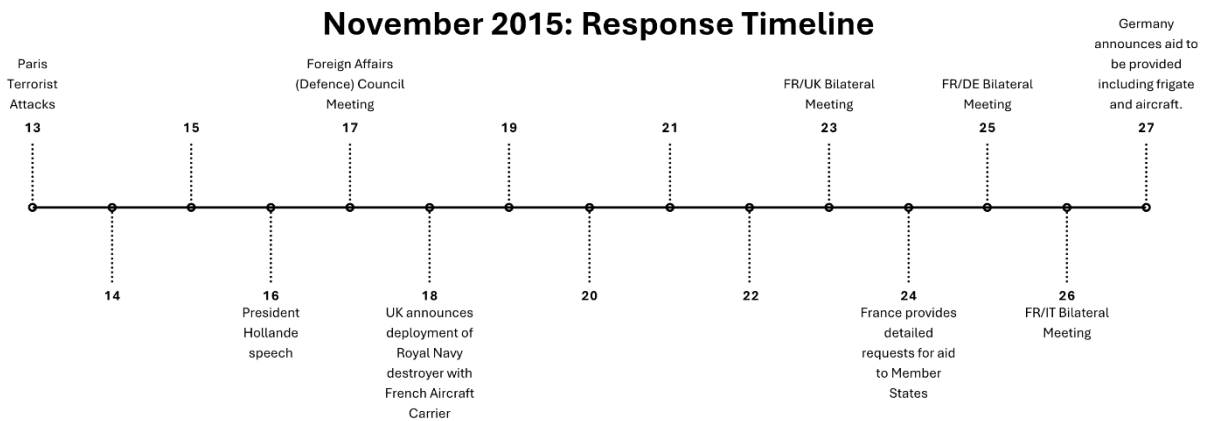


Figure 1: Timeline of Events after the November 2015 Paris attacks.

Own work, based on Anghel & Cirlig, 2016 & Nováky, 2017.

On 13 November 2015, a series of coordinated terrorist attacks in Paris left 130 people dead and 493 injured (Assemblée nationale, 2016). It remains one of the deadliest terrorist attacks in EU/EC history. In his appearance before the French National Assembly on 16 November 2015, then President François Hollande declared France at war, and that he had instructed his Defence Minister to call for solidarity from his European counterparts under Article 42(7) TEU (Assemblée nationale, 2015). This was unexpected (Nováky, 2017), but Member States, without exception, expressed their solidarity during the Foreign Affairs (Defence) Council the next day (Council of the European Union, 2015), and then High Representative Federica Mogherini confirmed that no formal Council conclusion was required to invoke the clause, and that aid would be conducted bilaterally, with the assistance of the EU if requested (Nováky, 2017). It is noteworthy that the invocation of the clause was confirmed at the Defence format of the Foreign Affairs Council<sup>4</sup>, as it highlights France’s expectation of a military response.

While Article 5 NAT had previously been invoked after a terrorist attack, the international legal consensus on Article 51 UNC was that the right to self defence it guarantees should apply with respect to state actors (Kaarakainen, 2022). Nonetheless, the actions of EU Member States in the aftermath, like NATO member countries in 2001, may have helped define self defence in light of terror attacks as customary international law, through *opinio juris* (Cimiotta, 2016), as well as consistent application in 2001 and 2015. Their actions were further legitimised by UN Security Council Resolution 2249 (2015) which calls upon states to ‘redouble and coordinate their efforts to prevent and suppress terrorist acts committed specifically by ISIL’ and to ‘to eradicate the safe haven they have established over significant parts of Iraq and Syria’. While this was criticised by

<sup>4</sup> This is attended by Member States’ ministers of Defence rather than Foreign Affairs ministers.

Cimiotta (2016) for not explicitly referencing Article 51 UNC, he recognises that this allowed EU Member States to rely on a 'collage' legal framework, leading to flexibility in its application in three regards: not having to adhere to strict application of self defence norms such as immediacy, proportionality and temporary nature; not hindered by a Security Council supervised operation; and ability to extend over time and adapt strategic goals (Cimiotta, 2016).

### 3.2.2) Why France chose this clause

This section will outline the reasons for France's choice of Article 42(7) TEU in the aftermath of the attack. It will compare the flexibility through five factors compared to other available options, namely Article 222 TFEU and Article 5 NAT.

#### 3.2.2.1) *Invocation*

As mentioned in section 1.1, the obligation resulting from the invocation of Article 42(7) TEU is automatic once a Member State decides to invoke it. As a result, it allows an attacked Member State to rapidly coordinate a response with other Member States, such as support from the two largest Member States, the UK and Germany, which arrived less than a month after the attack (Tardy, 2015).

France may have been deterred from invoking Article 5 NAT, as when it was invoked it required 'hours' of negotiation to align member countries on the decision (Bensahel, 2003). This was, albeit, in the context of international law norms at the time not allowing for self defence under Article 51 UNC against non-state actors, however, had it been unilateral, it could have led to Member States having more immediate political solidarity with one another. Furthermore, the invocation of Article 5 NAT was, in that case, driven by NATO's Secretary General, which meant the US was either hesitant or not willing to use NATO structures, such as during military action in Afghanistan. The contributions there were made bilaterally (Bensahel, 2003).

Despite both articles being theoretically aligned on the definition of an attack, Article 42(7) TEU offers more flexibility and less need for political negotiation to the invoking Member State, which implies stronger trust between EU Member States.

#### 3.2.2.2) *Institutional Involvement*

The choice to invoke Article 42(7) TEU allowed France to conduct its request for aid bilaterally, despite using an EU clause. This choice was made with two factors in mind: first, it allowed France flexibility to dictate the aid it required from each Member State; and second, it did not signal an advancement in EU competences, which was not required as France could manage its defence needs. Importantly, the French Government was offered coordination by EU institutions, but did not take up this offer (Nováky, 2017). Article 222 TFEU and its implementing decision, on the other hand, create clear competences for the Commission and the High Representative to identify and propose aid to the victim Member State (European Union, 2014).

Whether invocation of Article 5 NAT leads to institutional involvement is unclear. As mentioned previously, the only invocation of Article 5 NAT was driven by NATO's Secretary General (Bensahel, 2003), himself an institutional actor, however, debate exists on whether NATO has institutional autonomy, despite the Secretary General's position in influencing Member States, as their decisions are made by consensus (Nauta, 2017). Furthermore, the support provided after this invocation was also bilateral.

### 3.2.2.3) Implementing Framework

Another element of flexibility that this clause offered to France is the lack of an implementing framework. While the European Parliament (EP) has called for the development of a similar decision as that which applies to Article 222 TFEU, this has not yet happened to date. The reason given by the EP is to ensure an effective response to an attack (European Union, 2015). This has, however been disputed by Nováky (2017) as it would ‘render it less useful than it currently is’ as its lack of procedure strengthens its flexibility. NATO’s experience after 9/11 also contributes to this view, as the US ‘received so many offers of military support that policymakers struggled in September and October 2001 to determine the best ways to use them’ (Bensahel, 2003, p. 9). France’s choice to individually contact Member States requesting their support on a timeline they controlled reduced institutional burden in a rapidly evolving environment.

### 3.2.2.4) Extraterritorial Assistance

A key factor in France’s decision to invoke this clause was the burden it was facing because of its overseas deployments. As detailed in the previous two subsections, France was able to request specific aid bilaterally, and thus asked Member States to shore up their commitments to, for example, EU military missions and operations, such that France could redirect its capabilities to Syria and Iraq (Nováky, 2017). This made it politically easier for Member States to aid France as their troops could be deployed to comparatively less dangerous places, while France gained the ability to redistribute its forces.

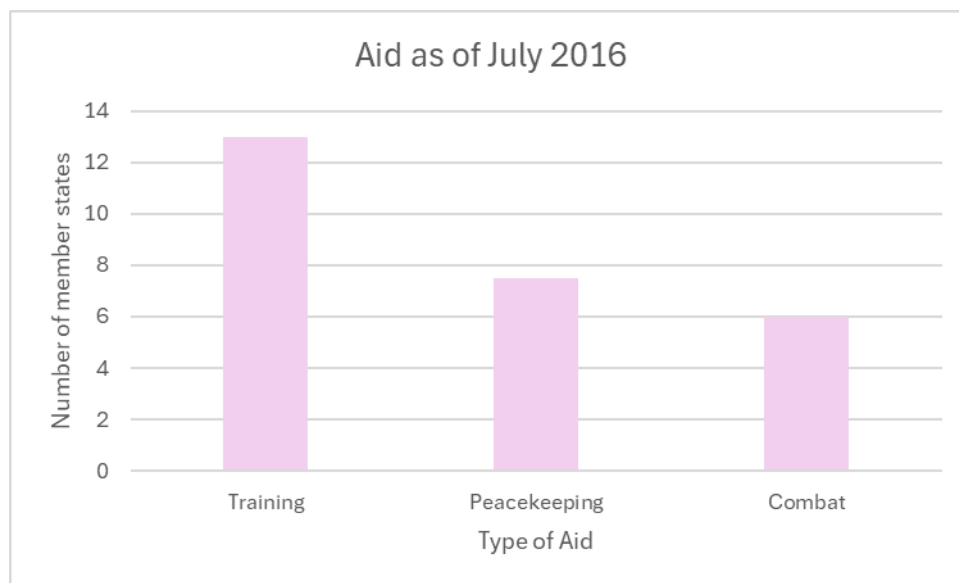


Figure 2: Type of military aid provided by Member States by July 2016.

Own work, based on Anghel & Cirlig, 2016.

While Article 222 TFEU does allow deployment of military capabilities, it limits these to the territory of the attacked Member State (European Union, 2010b), which would not have been sufficient or useful in this case.

### 3.2.2.5) Foreign Policy Compatibility

The final benefit of using this clause was its compatibility with French foreign and diplomatic policy at the time. This was for two reasons. Firstly, it signalled trust in the EU’s until-then dormant Article 42(7) TEU, with France being heavily in favour of autonomous European military capabilities, and thus activating this clause was seen as a political decision influencing the

trajectory of European defence integration. This is widely cited as the primary reason for invoking Article 42(7) TEU, including by then French Defence Minister Jean-Yves Le Drian, who stated it was “a political act first of all” (Pérot, 2018, p.611; Barigazzi, 2015). While it did not fully push Europe towards autonomy, in today’s context of reduced trust in NATO (Myshrall, 2025), it remains a valuable precedent for European action in defence (Nováky, 2017).

Secondly, it did not jeopardise Russia’s involvement in the fight against ISIS, which was seen as a valuable partner in this case, especially in the context of the UN Security Council, whose resolutions Russia could have vetoed should France have chosen Article 5 NAT to respond, as it was more hesitant or downright hostile towards NATO compared to the EU (Nováky, 2017).

### 3.2.2.6) Overall Comparison

Flexibility through:	Article 222 TFEU (European Union, 2010b)	Article 42(7) TEU (European Union, 2010a)	Article 5 NAT (North Atlantic Treaty, 1949)
Invocation	Unilateral	Unilateral	Unanimous
Institutional Involvement	Yes	Not Necessarily	Unclear
Implementing Framework	Yes	No	No
Extraterritorial Assistance	No	Yes	Yes
Foreign Policy Compatibility	Yes	Yes	No

Figure 3: Relative flexibility of Article 42(7) TEU in select areas compared to Article 5 NAT and Article 222 TFEU.

Own work.

Overall, Article 42(7) TEU offered more flexibility in these domains than both Article 222 TFEU and Article 5 NAT, which is why France chose to invoke this clause rather than the other available options.

### 3.2.3) Result

This section will analyse the result of France’s invocation. It will argue that France invoked this clause to pursue domestic interests through bargaining, and importantly, did not delegate responsibilities to EU institutions, the final step in the integration process outlined by Liberal Intergovernmentalism. It did not do so due to a lack of necessity, as the ‘war’ declared by Hollande did not overcome France’s domestic capabilities. Finally, it will examine the precedent set.

The aftermath of the attacks led to a securitised environment, through the description of “France at war”. This allowed national preference formation and configuration of state preferences to advance at an exceptional rate, as scrutiny was less present due to urgency and emotion. France’s preferences were thus as follows (Assemblée nationale, 2015):

- i. France needed to retaliate and remove ISIS’ safe haven.
- ii. France needed to ensure security within its own territory.

iii. Support was required from EU partners because the war was “being waged against all of Europe”.

The interstate negotiation consisted of the bilateral discussions with Member States to secure aid, either directly in its fight with ISIS, or to relieve French forces elsewhere, as detailed in section 3.2.2.4.

Finally, the outcome was a qualified success in mobilising political and military support for France, especially through the contributions from the larger Member States. This despite a differing sense of urgency in some Member States as the attack too was limited.

Certain authors have criticised the invocation as a step back in the integration process, due to France not accepting the offer of the High Representative to coordinate military responses (Cimiotta, 2016; Pérot, 2018). By continuing the analysis through the Liberal Intergovernmental lens, Moravcsik described the role of institutions as a trade off of sovereignty for lowering of transaction costs and increasing efficiency. In this case, involving institutions would not have provided France with sufficient benefits, partly because of its efficiency in seeking assistance bilaterally, but also because the threat was not great enough to justify such an increase in EU competence in such a sensitive area. The integration process at the time thus remained at the status quo, underlining that defence is considered a competence reserved for Member States.

Furthermore, the precedent that was set, that is, an invocation leading to bilateral negotiations between Member States, is importantly, not set in stone. The flexibility referred to throughout this work supports the conclusion that in the case of a greater threat, or in the case of a smaller Member State, the precedent provides the foundation for other possible uses of the clause or for integration in this field.

### 3.3) Post-2015

This section will analyse how scholarship on Article 42(7) TEU has examined different scenarios for European defence post-2015. It will build on the precedent set in 2015 and examine them especially in terms of the ability for Article 42(7) TEU to be adapted to different situations.

#### 3.3.1) NATO

Much of the scholarship post-2015 on this clause has focused on the overlap between the EU and NATO in terms of mutual defence. Fazio’s (2025) strategic analysis highlights the fact that the EU has remained focused on non-traditional threats while territorial defence remains ‘the responsibility of NATO’. This is a symptom of the long-standing hesitance by EU Member States to integrate in security and defence domains. She suggests that because of this, ‘NATO is likely to continue to serve as the primary framework for traditional collective defence in Europe’. This remains true to this day, and it can also be viewed from a pragmatic stance of non-duplication, as Member States are also unwilling to create new security and defence structures while NATO remains functional. Furthermore, NATO includes the United States, which is a powerful ally that possesses unmatched strategic capabilities. The EU cannot match the defence potential and assurances provided by NATO.

Nonetheless, the precedent set in 2015 does not preclude the invocation of both mutual defence clauses (as noted by Cimiotta, 2016), and it is likely to be the case for any large scale attack in the foreseeable future, such that those Member States that can would seek to achieve the greatest possible assistance, which was not necessary in 2015, as France was not facing an invasion or a state on state attack.

The focus on non-traditional threats complementing NATO's traditional collective defence is also pragmatic because while Article 42(7) TEU remains the primary collective defence clause for four Member States, none are near the EU's eastern border since Finland's accession to NATO in 2023. They are thus more likely to be subject to a non-traditional, yet significant attack, such as a major cyber or hybrid attack, which could lead to the invocation of this clause. Ireland's exclusive economic zone, for example, contains a large number of undersea cables, which connect the US to Europe. Should these be disrupted, it could significantly undermine the security of several countries, and owing to Ireland's underwhelming naval power (Bandura & Bryja, 2025), it could be forced to use this clause to protect its territory.

### 3.3.2) Ukraine

Since the full-scale invasion of Ukraine in February 2022, and especially since its granting of candidate status later that year, questions have been raised on how Article 42(7) TEU could apply to Ukraine should it successfully join the Union. Mickonytė (2024) highlighted this problem in the context of Ukraine's eastern regions, which are under occupation, and posited that differentiated integration of parts of Ukraine could undermine the principle of equality of Member States under Article 4(2) TEU. However, we can cite the case of Cyprus' accession as a comparative example which has stood in a predictable manner over the last 20 years, whereby EU law does not apply in areas not under the control of the Republic of Cyprus (European Union, 2003).

If adaptations do not take place, it is difficult to imagine reaching a consensus on the application of this clause to the entirety of Ukraine, given that for an EU treaty of accession to enter force, it must be ratified by every single Member State (European Union, 2010a). By extension this requires a domestic interest in every Member State, as parliaments may be hesitant to legally commit to a possible defence of Ukraine, given the unpopularity and politicisation among their populaces. This could be seen during the recent election in Hungary, where the issue of Ukraine was highly emotional and politicised (Thorpe, 2026).

A more flexible solution could be found, such as the application of this clause to parts of Ukraine, or even not applying to the whole of Ukraine. As mentioned previously, a precedent exists in Denmark's opt-out from the EU's Common Foreign and Security Policy (CFSP) until 2022, whereby this clause did not apply to Denmark. While Ukraine is eager to secure security guarantees, it may have to gain them elsewhere, such as through the Coalition of the Willing, as insisting on the blanket application of this clause may negatively impact the accession negotiations.

### 3.3.3) Greenland and OCTs

A more recent topic relates to the application of Article 42(7) TEU to EU Overseas Countries and Territories (OCTs) such as Greenland. Under EU law, there is a distinction between Outermost Regions (OMRs) and OCTs whereby the former are considered a part of the EU and where EU law applies, and the latter are not (Balas, 2024). In the case of OMRs, there is little debate that Article 42(7) TEU applies, however in the case of OCTs, it is more contentious.

Certain scholars have argued that this clause does not offer a strict definition of territory, and thus depends on how a Member State defines their territory, while others assert that it should apply as OCTs are integral parts of Member States (Neergaard, 2025). The EU's defence commissioner Andrius Kubilius has stated that Article 42(7) TEU would apply (Barigazzi & Vinocur, 2026).

If we apply the Liberal Intergovernmental process to an invocation where an OCT has been attacked, the Member State's domestic preference will be to seek aid through whichever forum it has available, and thus invoke the clause which it may trigger unilaterally. The interstate negotiation will be more contentious than the 2015 case, but the majority of Member States will likely support the attacked Member State for political reasons (Nováky, 2017). As the clause is under the CFSP part of the TEU (Title V), the Court of Justice of the European Union has very limited jurisdiction over the invocation or interpretation. Thus the outcome will be a response from those who are immediately willing to aid the attacked Member State, and a slower, more cautious response from other Member States.

While it could be argued that this would lead to unfair burden sharing, it would nonetheless benefit the attacked Member State, thus demonstrating the flexible utility of the clause.

### 3.3.4) Common defence

Article 42(7) TEU is the last of the seven clauses of Article 42 TEU, which collectively set the legal background for the EU's Common Security and Defence Policy (Bernard, 2024). While this work has remained focused on this last clause, it is important to recall that the rest of the article also remains a solid legal basis for defence integration, when Member States decide to implement it. Examples of this include Permanent Structured Cooperation (Article 42(6) TEU) which has been in use since 2017, or the European Defence Agency (Article 42(3) TEU), which was established in 2004.

An important clause which has not yet been fully implemented is Article 42(2) TEU, which sets the stage for an EU common defence (similar in style to NATO or the failed EDC) when Member States unanimously decide it is necessary or advantageous. Because of the unanimity rule, for this to occur, according to Liberal Intergovernmental theory, there must be a domestic interest in doing so in every single Member State, which so far has not been the case. When and if Article 42(2) TEU is implemented, Article 42(7) TEU will reach its full operational potential, while aiming to retain elements of flexibility detailed in this work, such as unilateral invocation. As this text has shown, however, this potential evolution is not necessary for Article 42(7) TEU to be a useful tool for Member States, because it is already distinct from its alternatives, and already benefits from a useful precedent.

## Conclusions

This work has shown that Article 42(7) TEU remains relevant today for EU Member States through its flexible and intergovernmental characteristics by comprehensively analysing the legal and strategic relevance through a variety of situations and contexts. To do so it has applied Liberal Intergovernmental theory, and conducted a comparative examination of the flexibility of this clause when measured against its potential alternatives. This analysis has shown that Article 42(7) TEU is a useful option for all EU Member States, both those that are neutral or non-aligned, as well as those that form part of NATO. Fundamentally, this is due to the flexibility that other clauses such as Article 5 NAT and Article 222 TFEU do not necessarily have.

The response to France's invocation in 2015, while not perfect, demonstrated the clause's utility and versatility, and helped set a precedent for its future use. Importantly, this flexible and intergovernmental tool within the EU's framework can also be adapted depending on the need of

the invoking Member State, with a more involved role for the Union's institutions up to the Member State's discretion.

Furthermore, this work has examined Article 42(7) TEU against the backdrop of NATO, highlighting the possibility of invoking both this clause and Article 5 NAT; in the context of Ukraine's EU membership bid; and in a hypothetical application of this clause to the EU's Overseas Countries and Territories, in each case highlighting the flexibility of the clause. These relevant scenarios help define Article 42(7) TEU as more than an empty promise, but as a real obligation for EU Member States.

As an EU Member State coming under attack is not as unlikely today as it was when this clause was drafted and incorporated into the TEU twenty years ago, such as through a hybrid attack on infrastructure, or even an invasion of a part of a Member State, this commitment is more important than ever and it is unsurprising and logical that Member States are keen to deepen collaboration in security and defence. While ultimately, this clause depends on solidarity and political will, it is in Member States' interest to support one another in these trying geopolitical times. Analysing important clauses such as this one can help EU Member States evaluate their options in the case of an attack.

The EU is currently drafting a new security strategy, to build on the 2022 Strategic Compass, and to respond to today's geostrategic shifts (Ionta, 2026). How this clause will feature remains to be seen, however it is bound to hold a prominent place in European security dialogue for the foreseeable future.

Overall, this clause remains relevant today for EU Member States as an intergovernmental and flexible tool, which can complement Article 5 NAT, or be invoked separately depending on the situation and political choice. If necessary, and when Member States decide it is in their interest, EU institutions can be allocated a role.

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