

A comparative analysis of Article 5 Washington Treaty (NATO) and Article 42(7) TEU (EU)

The Russian aggression against Ukraine has highlighted the relative confusion that exists over the obligations that states have under Article 5 of the (NATO) Washington Treaty and Article 42(7) of the Treaty on European Union. Clarification and explanation of these articles has become particularly urgent as overlap between NATO and EU membership increases, following Finland and Sweden's application to join NATO.

Background

[Article 5](#) of the 1949 North Atlantic Treaty is considered the cornerstone of the NATO Alliance, embodying its 'one for all, and all for one' spirit. When one of the 30 (soon to be 32) NATO members falls victim to an armed attack, all other members must come to that state's assistance. This assistance *may* include the use of armed force. When the treaty was negotiated, in 1948 and 1949, the western European nations favoured an article implying an automatic and unqualified commitment of the US to defend Europe. The US, however, feared that such a strong wording would automatically engage them in European wars, something Congress did not want to [accept](#). The negotiations ended in a compromise: the security guarantee was laid down in a formal treaty (a European demand), but embedded in an Article 5 formulation that does not imply automatic US involvement in an armed conflict (an American demand), and is [strengthened](#) by Article 11. Sixty years later, [Article 42\(7\)](#) was incorporated in the Treaty on European Union (TEU) as the EU's 'mutual defence

clause', part of a cluster of articles relating to the 'progressive [framing](#) of a common Union defence policy'. Substantial uncertainty remains over the interpretation of Article 42(7). Following its [first](#) and only invocation in 2015, after the November terrorist attacks in Paris, debate intensified on how it works in practice, its scope, the definitions of 'armed aggression' and 'territory', and which forms of aggression it applies to (e.g. whether those include hybrid threats). [Experts](#) note that Article 42(7) 'leaves more room for interpretation than one might expect from a clause in a legally binding text'. Many [experts](#) hoped that the Strategic Compass would deliver clarification, however that did not [occur](#).

Comparisons of the two articles point to a number of differences. First, according to some [views](#), the EU's mutual assistance pledge can be seen as more strongly formulated, in that EU Member States have an explicit obligation to come to the defence of the victim state, and that they have to do so by 'all means' in their power, not just the means they think are necessary. Article 42(7) is thus, according to that analysis, of a much '[more compelling nature](#)'. Second, according to [legal experts](#), the threshold to invoke – armed [aggression](#) (Article 42(7)) as opposed to an [armed attack](#) (Article 5) – is [lower](#) in international law. Not every act of armed aggression [reaches](#) the threshold of an armed attack triggering the right to self-defence under Article 51 of the UN Charter. For instance, according to an expert view, a naval blockade of a harbour would [constitute](#) armed aggression but not necessarily an armed attack. However, others suggest the reference to 'armed aggression' may just be the [result](#) of a 'literal translation of the French text', rather than signifying a broader scope. Third, in terms of scope, while Article 5 applies to all NATO members in the same manner, Article 42(7) TEU states that 'this shall not prejudice the specific character of the security and defence policy

Article 42(7) Treaty on European Union

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...

Article 5 Washington Treaty (NATO)

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....



of certain Member States'. This is commonly understood to give 'special status' Member States (e.g. neutral states Malta, Ireland and Austria) an [opt-out](#) from mutual defence assistance. Article 5 has no such opt-out.

Geographical scope

For Article 5 to be applicable, an armed attack has to occur on the territory of a NATO member. The territorial limitation of Article 5 is found in [Article 6](#), which delimits the area in which the armed attack has to take place (North America, Europe and other clearly defined areas north of the Tropic of Cancer). However, it sets no geographical limit on where Article 5 counter-actions may take place. If, for example, Article 5 is triggered by an armed attack on a NATO member's soil, academics maintain that there is no inherent legal [impediment](#) to NATO carrying out collective self-defence measures in a third country, even as far away as Singapore. Article 42(7) does not entail any such strict geographical [limitation](#). By referring to 'its [Member State's] territory', it would seem to refer not only to continental Europe but could have [worldwide applicability](#). [Questions](#) also remain about the applicability of Article 42(7) to the hybrid, cyber and space domains, while NATO leaders [established](#) at the 2022 Madrid Summit that Article 5 is applicable in those domains. The November 2022 [EU cyber-defence](#) policy does note that, in cases of significant cybersecurity incidents, Member States 'need to be able to draw on mutual assistance... in the context of Article 42(7)'.

Legal obligations for members

If the North Atlantic Council (NAC), NATO's highest decision-making body, reaches a consensus determining that an armed attack has occurred within the North Atlantic area, NATO Member States are obliged to assist the victim member. However, academics posit that this obligation is caveated by the fact that it falls to each country to decide *how* exactly it will respond. Still, this discretionary element does not remove the fact that NATO members must determine the necessary action in good faith, so their response cannot be manifestly [unreasonable](#) (e.g. sharing redundant information after Russia carries out an armed attack on a NATO member). In terms of Article 42(7), when first invoked after the 2015 attacks in Paris, Member States [clarified](#) that 'no formal decision or conclusion by the Council will be required to implement Article 42(7)'. The French Minister of Defence referred to the [invocation](#) of Article 42(7) as a 'political act' and the then EU High Representative underlined that no 'further formality' was needed to launch mutual assistance. Therefore, in practice, no formal requirement to adopt a decision to trigger Article 42(7) has been established. In terms of what 'aid and assistance by all the means in their power' means, a lot remains uncertain. Some [experts](#) note this has been deliberately left 'ambiguous' to accommodate neutral and non-aligned Member States. When France invoked the article, requests and offers of assistance were discussed and organised bilaterally rather than through the EU, and took various [forms](#).

Past invocations

Article 5 has been invoked only once, in the wake of 9/11. The NAC [invoked](#) it symbolically on 12 September 2001, but added that the attack needed to have '[come from abroad](#)' to fall under Article 5. On 2 October 2001, after the NAC had been briefed by US officials about the investigation, the NAC determined that the attacks were directed from abroad, i.e. from Afghanistan. Consequently, the NAC confirmed the invocation of Article 5 and agreed on [eight measures](#), including sending NATO aircraft to patrol US skies. This suggests that Article 5 cannot be invoked in response to domestic terrorism. By contrast, Article 42(7) was invoked, also only once, precisely in response to terrorism stemming from within the bloc. France [invoked](#) Article 42(7) in the aftermath of the 2015 attacks on the [Bataclan](#). EU Member States unanimously [expressed](#) political support to and solidarity with France, and within days several came to the assistance of France in different [ways](#), ranging from military assistance (e.g. contributions to airstrikes in anti-ISIS operations in Syria and Iraq) to non-military assistance such as increased intelligence-sharing.

European Parliament position

The [draft annual report](#) on common security and defence policy (CSDP), currently under discussion in Parliament's Committee on Foreign Affairs, stresses the need to make Article 42(7) TEU operational in the short run and to clarify the coherence between the EU's Article 42(7) and NATO's Article 5. In its 2021 [annual report](#) on CSDP, Parliament urged Member States to reach an 'ambitious common understanding' on Article 42(7), including in a hypothetical cyber-attack scenario. It also underlined that the conditions for activation of the article and the modalities of the assistance required have not been clearly defined.

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