

## THE MUTUAL ASSISTANCE OBLIGATION IN THE EUROPEAN UNION'S TREATY OF LISBON

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(Abstract)

The process, under which the mutual assistance obligation could offer a motive and basis for military cooperation between the Member States when addressing serious threats other than armed aggression per se, must be considered as a separate topic. The EU's Treaties also include other paragraphs which underscore solidarity between Member States. One such is the provision in TEU Article 24, which deals with the foundations of the CFSP and calls for the development of mutual political solidarity among Member States. However, due to its precise wording, the mutual assistance obligation differs from the other, more general, provisions in the Treaty which emphasise solidarity among Member States. This is why many Member States - notwithstanding the unlikelihood of the condition in the obligation - must at some stage assess its significance from the perspective of their national legislation.

*Keywords: mutual defense, mutual assistance, treaty of Lisabon, security, policy, NATO, clause, development*

### 1. Introduction

One of the most important features in the Treaty of Lisbon is the strengthening of the international role of the European Union. The potential of the expanding EU as an international actor is clearly recognised. In many ways, the amendments included in the Treaty of Lisbon aim to create the preconditions for more efficient and coherent action.

The aforementioned amendments also include the development of the European Security and Defence Policy (ESDP). The Treaty harmonises the EU's crisis management policies and brings military and civilian crisis management dimensions closer together. In a general sense, the Treaty also facilitates action among a group of Member States in the EU's crisis management just as in the development of military capabilities.

For the very first time in the EU's history, the Treaty of Lisbon incorporates the provision of mutual aid and assistance between the Member States in the case of armed aggression – the so-called mutual assistance clause – in the Union's Treaties. This obligates the Member States to provide mutual assistance. No competence is transferred to the EU or its institutions in this context, nor are any common military structures created for the implementation of the obligation. The threat scenario envisaged in the security guarantees, i.e. armed aggression against a Member State, is extremely unlikely in the prevailing European security situation. Nevertheless, by adopting this change, the European Union gives an indication of the dimension of solidarity between the Member States. Once the Treaty of Lisbon entered into force, the EU's range of security-enhancing instruments is more comprehensive, the utmost limit of which is the European common defence, which the Treaty still acknowledges. The Union is capable of carrying out extensive crisis management tasks, in addition to which its counter-terrorism capabilities have been strengthened. The mutual assistance clause is, first and foremost, associated with armed aggression.

This, however, involves phrasing the kind of interdependency that is typically viewed as a prevailing condition among Member States as a legal obligation. In practice, the single currency or the common external borders alone preclude the detachment of one Member State from the security situation of the others.

This study evaluates the key dimensions of the mutual assistance clause in the Treaty of Lisbon.

## 2. History of the mutual assistance obligation

Pursuant to the Treaty of Lisbon, the mutual assistance obligation in the Treaty on European Union (Article 28 A(7)) reads as follows:

*"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."*

The essence of this provision in the Treaty, known as the mutual assistance obligation<sup>1</sup> in this report, harks back to the relationship between the Union and the Western European Union (WEU), established in 1954. As early as 1948, five western European nations signed the so-called Brussels Treaty, encompassing a mutual defence obligation<sup>2</sup>, in addition to economic, social and cultural collaboration. A military command structure and a defence strategy were created for the purpose of implementing the mutual defence obligation. These were amalgamated into the transatlantic military alliance NATO, established a year later. Some other western European nations also joined the alliance, in addition to the United States and Canada. The founding of the WEU in 1954 as an institutional structure provided an opportunity for Germany and Italy to be included under the umbrella of mutual obligations. Up until then they had stayed outside these organisations. A Council and an Assembly, composed of representatives of the Treaty Powers, as well as subsidiary bodies, were created to manage the activities of the WEU. The organisation had no notable military role during the Cold War. Rather, it operated as a political forum for its members.

Member States in NATO which joined the EC later, such as Spain, Portugal and Greece, usually joined the WEU as well. Denmark is the lone NATO member in the EC with an observer only status in the WEU. When Finland, Sweden, Ireland and Austria joined the EU, they followed suit and became observers in the WEU.

The end of the Cold War and the expansion of integration into security

1 The term mutual assistance obligation defines the nature of the provision more accurately being a widely used legal concept in this context. It is 'mutual defence' in English, 'kollektivt försvar' in Swedish and 'une clause de défense mutuelle' in French.

2 The WEU was founded by Belgium, France, Luxembourg, the Netherlands and the United Kingdom. The mutual assistance obligation (Art. IV) reads as follows: "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".

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4 Cf. WD 036 -V  
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and defence policy areas resulted in a reappraisal of the role of the WEU. Little by little the WEU began to emerge as the military arm of the European Community and, as early as the end of the 1980s, several EC nations proposed the integration of the WEU and its mission into the EC. The founding members of the EC pressed the issue in both of the Intergovernmental Conferences of the 1990s. However, due to resistance from the United Kingdom and other Member States backing it on this issue, integration was not achieved.<sup>3</sup> These countries were opposed to the creation of a military capability for the EU in a situation in which NATO is also the forum of military collaboration for its European members. The United Kingdom gradually adopted a more positive stance towards military cooperation under the auspices of the EU. However, the institutional structure of the WEU was dissolved and a policy planning and early warning unit was set up for the EU in support of the defence policy dimension under the Amsterdam Treaty. Even though the matter of including the mutual defence obligation of the WEU in the Union's Treaties was again proposed in the Intergovernmental Conference of 2000, this was not, however, done. The Brussels Treaty remained in force, albeit largely symbolically.

The European Convention on the future of the European Union resurrected the prospect of incorporating a military assistance obligation into the EU's Treaties. The Convention's proposal for a Constitutional Treaty included a provision, according to which a mutual assistance obligation be created and offered to all willing Member States. Even though the proposal did not contain any express link to the WEU's mutual defence obligation, the connection was obvious. The Convention Working Group on Defence prepared the incorporation of a common security clause in the Treaty, embodied in the joint Franco-German proposal.<sup>4</sup> The final report of the Working Group introduced the idea as a "*solidarity and common security clause*". The purpose of this was to permit the continuation of the mutual defence obligations of the Brussels Treaty under the auspices of the EU and among willing Member

3 In the 1996-97 IGCs the EU and the WEU were brought closer together. However, the goal of implementing the EU's crisis management tasks through the WEU remained. The EU established its own defence planning structure in the 2000 IGC.

4 Cf. WD 036 -WG VIII, Franco-German comments on the preliminary draft final report of Working Group VIII "Defence" (WD 022).

States. The European Convention's final proposal (Draft Treaty establishing a Constitution for Europe; Article I-40, paragraph 7) was based on this line of thinking and it was phrased as follows:

*"Until such time as the European Council has acted in accordance with paragraph 2 of this Article, closer cooperation shall be established in the Union framework as regards mutual defence. Under this cooperation, if one of the participating Member States 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 or other, in accordance with Article 51 of the United Nations Charter. In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article III-214."*

Furthermore, the Convention decided against automatically extending the mutual assistance obligation to all EU Member States. Instead, countries wishing to take part in such cooperation could inform the European Council of this, while the others would remain outside the obligation. Article III-214, which specified the provision, stated that *"A list of Member States participating in closer cooperation shall be set out in the declaration"*. Countries wishing to join the cooperation at a later stage could do so by subscribing to the declaration. The Draft Treaty (Article III-214) determined the decision-making procedure related to the implementation of the mutual defence obligation: Should an individual Member State request aid and assistance pursuant to the obligation, Member States were to meet at ministerial level, assisted by their representatives on the Political and Security Committee and the Military Committee. The United Nations Security Council was to be informed immediately of any armed aggression and the measures taken as the result of it.

The Intergovernmental Conference (IGC) in the autumn of 2003, which followed the Convention, caused a quantum shift as regards the military assistance obligation. Italy, holding the Council Presidency at the time, proposed that the mutual defence obligation be amended so as to be binding on all Member States. Italy's proposal also included reformulations regarding NATO and the elimination of the detailed arrangements in the

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mutual defence obligation (Article III-214). Finland, Sweden, Ireland and Austria proposed that the provision be amended in such a way that, instead of the mutual defence obligation, mainly the right to request assistance in the case of armed aggression under Article 51 of the United Nations Charter be reaffirmed. As a result, Italy's proposal was recorded in the Constitutional Treaty. The mutual assistance clause was binding on all Member States and it included a caveat, referring to the "specific character in the security and defence policy of certain Member States". In the end, the mutual assistance obligation (Article I-41, paragraph 7) in the Constitutional Treaty was phrased as follows:

*"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."*

As the Constitutional Treaty faced opposition, especially in France and the Netherlands, the criticism led to the revision of the Treaty. This criticism, however, was not directed in any way toward the security and defence policy provisions. Consequently, they were included in their original form in the Treaty Amending the Treaty on European Union, adopted in the autumn of 2007. The military assistance obligation, originally Article I-41, paragraph 7 of the Draft Treaty establishing a Constitution for Europe, was at this juncture included as Article 28 A(7) in the Treaty on European Union (TEU).

The differences of opinion among the EU countries on the common security and defence policy lines have played key roles with regard to the fruition of the mutual assistance obligation. The Member States that have attempted to highlight the role of the Union as a security policy actor independent of NATO and the United States, have championed the integration of the WEU's mutual defence obligation into the EU, thus underlining the independence of the Union's security policy. Correspondingly, the most Atlanticist Member States view this as a potential dilution of NATO solidarity.

Therefore, they have opposed it. In this respect, the obligation included in the Treaty of Lisbon represents a compromise between the respective opinions. Along with the obligation, all key features of the WEU's *raison d'être* have, phase by phase, been transferred to the EU. Nevertheless, no practical steps have been taken to abolish the Brussels Treaty.

In the light of history we can see that political, rather than military, logic has been the wind beneath the wings of adopting the Lisbon Treaty's mutual assistance obligation as part of the EU's common security and defence policy. The EU structure has been extended by a mutual assistance obligation between the Member States in a situation in which the threat of armed aggression, the rationale for the obligation, is remote. The European Security Strategy, adopted in 2003, defines the following key threat scenarios for the Union: terrorism, proliferation of weapons of mass destruction (WMDs), regional conflicts, state failure and organised crime<sup>5</sup>. According to the Strategy, a large scale aggression against any Member State is improbable. This line of thinking is also reflected in most Member States' defence strategies.

This being the case, the mutual assistance clause was not adopted as an immediate response to the Union's threat scenarios. It was mainly justified by the need to integrate the WEU's structures and key commitments into the EU in a changed situation. However, the mutual assistance obligation is considered to strengthen the common security and defence policy and bolster solidarity among Member States. When it comes to the political debate within the Union or between the Member States, its military significance from the perspective of the EU's capacities or the ESDP has largely remained in the background. Some Member States regard the mutual assistance obligation as an important instrument in intensifying the Union's defence policy as well as a milestone in the gradual process towards the European common defence, looming in the distance.

When assessing the significance of the mutual assistance obligation from the perspective of the Union, as well as from an individual Member State's viewpoint, it is reasonable to shed light on the intrinsic legal, political and military aspects.

<sup>5</sup> A Secure Europe in a Better World. European Security Strategy, 13.12.2003

### 3. The mutual assistance obligation: key interpretations

The mutual assistance obligation in the security and defence policy of the EU (the obligation must be distinguished from the obligation in the Maastricht Treaty) and, of course, in the Treaty on the Functioning of the European Union (the Treaty of Lisbon). The European defence structure, established by the Treaty, even though recurring to the concept of mutual assistance in defence.<sup>6</sup> The solidarity of the Union's joint efforts as regards the prevention of disasters. According to the ESDP by also tapping into the resources of the Member States.

The mutual assistance obligation is a key element of the EU Treaties. Instead of the mutual assistance clause, the responsibilities which exist in the implementation of the ESDP or its institutions are defined in the Convention still including the clause: "The Ministers shall meet at ministerial level in the Security Committee and in the High Level Group on European Union." The clause does not have a strong legal basis. Hence, it differs from the clause in Art. 188r. The solidarity of the Union's joint efforts as regards the prevention of disasters.

<sup>6</sup> References to a clause in the Treaty of Lisbon are phrased it as follows: "...in the event of a crisis (italics) lead to a common decision which might lead to common action" (Art. 28A) the text reads: "...decides unanimously, so decides. The decision is in accordance with the Treaty of Lisbon."

### 3. The mutual assistance obligation as an element in the EU's Treaties: key interpretations

The mutual assistance obligation is included in Article 28 A(7) of the security and defence policy chapter in the Treaty of Lisbon. On the one hand, the obligation must be differentiated from the common defence provision, one of the key security and defence policy provisions ever since 1993 (the Maastricht Treaty) and, on the other hand, from the solidarity clause in the Treaty on the Functioning of the European Union (TFEU) Art. 188r, included in the Treaty of Lisbon. Common defence infers an increasingly integrated European defence structure for which there are no detailed provisions in the Treaty, even though recurrent amendments have paved the way for a common defence.<sup>6</sup> The solidarity clause, for its part, comprises provisions on the Union's joint efforts as regards terrorist strikes, natural disasters or man-made disasters. According to the clause, the Union's joint action extends beyond the ESDP by also tapping into non-military instruments.

The mutual assistance obligation differs from the traditional logic of EU Treaties. Instead of transferring competence to the Union, it creates responsibilities which exist purely between the Member States. When it comes to the implementation of these obligations, it is expressly understood that the EU or its institutions play no part in it. Whereas the final proposal of the Convention still included the following verbiage: "*Participating Member States shall meet at ministerial level, assisted by their representatives on the Political and Security Committee and the Military Committee*", this was struck off the Treaty on European Union. In a purely legal sense the mutual assistance clause does not have a strong association with the EU or its common capabilities. Hence, it differs from the solidarity clause included in the TEU, Article 188r. The solidarity clause is established for the purpose of dealing with

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6 References to a common defence have evolved. The Maastricht Treaty (TEU Article J 4) phrased it as follows: "...including the eventual framing of a common defence policy, which might in time (italics) lead to a common defence". The Amsterdam Treaty amended it the following way: "...which might lead to common defence, should the European Council so decide". In the Lisbon Treaty (Art. 28A) the text reads: "...this will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements."



terrorist strikes or natural and man-made disasters. Should any of these threat scenarios materialise, it explicitly authorises the Union to mobilise all of the instruments at its disposal, including military crisis management resources. The intergovernmental character of the mutual assistance obligation, as well as its limited connection to the EU's institutions or capabilities, reveals its origins in the Brussels Treaty. Likewise, the Union's security policy objectives and the differences of opinion regarding the phrasing of the mutual assistance obligation have effectively restrained the creation of rules and procedures for its implementation. Therefore, only scant legal and political material exists for interpreting the mutual assistance obligation.

*3.1. The threat scenario and the nature of assistance, as defined in the obligation*

The mutual assistance obligation has a traditional military alliance character in the sense that it obligates assistance in the specific situation of armed aggression against a Member State. This collective self-defence right is based on Article 51 of the UN Charter, which is also mentioned in the appropriate paragraph of the Treaty. International law experts have engaged in an extensive debate on how the UN Charter's self-defence right should be interpreted, especially, with regard to the lawfulness of pre-emptive defence and the extent of measures taken.<sup>7</sup> The convention of interpretations of the UN Charter is of crucial importance regarding the interpretation of the Union's mutual assistance clause. Article 51 of the UN Charter also determines the boundaries of the activities implemented under the Union's mutual assistance clause.

Nevertheless, in view of the EU's extensive interdependency, it also has to be asked just how flexibly the mutual assistance clause could be interpreted in light of the threat scenario at hand, and in what respect it could offer a more general platform for claims of solidarity between the Member States in situations other than armed aggression. All activities between the Member States must, of course, comply with international law governing the use of

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<sup>7</sup> Cf. Legal grounds for the use of force. A commentary submitted to the foreign relations committee of the Parliament, April 2002. Helsinki. Ministry for Foreign Affairs.

force and, especially, Article 51 of the UN Charter. The mutual assistance clause is not the only provision in the Treaty which deals with solidarity and common security between the Member States. Therefore, in principle, mutual assistance could materialise even without invoking the clause. However, the obligation it creates for the Member States is so concrete that it is justified to evaluate the scope of its possible interpretation.<sup>8</sup> The obligation also involves the Member States' legislation, which means that they have to ponder the question of interpretation from the perspective of their respective laws.

Both NATO and the UN provide examples of how the member states have adapted the activities of these organisations in response to changing threat scenarios even without having to amend their charters. A prime example of this is how UN peace-keeping activities have expanded into complex crisis management. Likewise, NATO's entire crisis management policy and the shift in its focus to out-of-area operations are still being carried out pursuant to commitments in the original Treaty of Washington. NATO also presents examples of how its comparable mutual assistance obligation in the Treaty of Washington (Article 5) has lately been interpreted more loosely compared to its original intent. The obligation was invoked for the very first time in response to the 2001 terrorist attacks against the United States. NATO's ongoing shipping monitoring operation Endeavour, conducted in the Mediterranean, also evolved from the invocation of Article 5.

When it comes to the EU's mutual assistance obligation, its political context seems to allow for similar wiggle room in its interpretation. Being the kind of political and monetary union that the EU is, even lesser security policy tension would have a direct impact on its common policy and, in a wider sense, the economic and social stability of its Member States. On the other hand the common policy, including its mechanisms, is the adhesive which binds the EU nations to the serious security problems of other Member States.

<sup>8</sup> TEU Article 11(2): "Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions"; Under TEU Article 16: "Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity."

Such a situation would also probably result in a very pragmatic evaluation of the joint action included in the mutual assistance obligation. On the other hand one must note that the general sensitivities displayed by some Member States vis-à-vis the existence of the mutual assistance obligation may generate rigid responses from them as regards acceding to any loose interpretations of implementation. Military interoperability would naturally also affect the eventual modes of operation.

From a purely legal point of view it has to be stated that the implementation of the Union's mutual assistance obligation and the roles of individual Member States would be unanimously agreed between the Member States. Since this is not an area of EU competence, EDSP decision-making provisions per se cannot be used in this context.

Like Article 5 of the North Atlantic Treaty, the EU's mutual assistance obligation also leaves it to the other contracting parties to decide how to assist the ally which has become the victim of armed aggression. The verbiage in the Lisbon Treaty, according to which "*the other Member States shall have towards it an obligation of aid and assistance by all the means in their power*", closely resembles that of the Brussels Treaty.

(i.e. "*the High Contracting Parties will... afford the Party so attacked all the military and other aid and assistance in their power*"). It is clear that the spirit of traditional defence alliances (an attack against one member state is tantamount to an attack against all member states) calls for providing, specifically, military assistance to an ally.

Nevertheless, the interpretation of the EU's mutual assistance obligation is not necessarily unambiguous in an age when security environments and threat scenarios are in flux. Whereas it could be seen as justified to invoke the obligation to address threats other than armed aggression, the primary one, so the nature of assistance offered should also transcend military instruments. Even in this respect the political and military context would be of paramount importance as regards the interpretation of the obligation. This being the case, the scope of the EU's mutual assistance obligation does not differ from that of NATO. However, there are fundamental differences between them involving military readiness structures and joint military planning. NATO strategy and

joint planning always derive from the interpretation of the key commitments in the Treaty of Washington, which provides more specific substance to them. The fact that the EU does not have a comparable common military structure leaves more room for interpretation.

### 3.2. *Specific references in the mutual assistance obligation*

There are two separate paragraphs in Article 28 A(7) of the Treaty on European Union concerning the mutual assistance obligation, which deserve attention as regards implementation. The text of the obligation ends as follows:

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

The Presidency included this verbiage as a compromise, based on a proposal from the nonaligned countries. This did not fulfil the nonaligned countries' objective of amending the phrasing itself of the mutual assistance obligation. Instead, it was included as a separate addendum to it. The second paragraph involves the role of the NATO alliance:

“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.”

The significance of both paragraphs, as the main obligation itself, can be equally well assessed from legal or politico-military perspectives. From a purely legal standpoint the significance of neither paragraph is clearly evident. First and foremost, the collective defence obligation included in the mutual assistance clause has to be considered equally binding on all Member States of the Union. After all, neither paragraph includes any general caveat to its reference group as regards the implementation of the obligation. Nor have other Member States come to such a conclusion when they have evaluated the mutual assistance clause. The reference to the specific character of certain Member States is widely interpreted as recognition of, especially, the nonaligned Member States, offering certain protection to their military non-alignment policies. With regard to Austria the reference is crucial because

it better harmonises Austria's internationally recognised neutrality with the Treaty of Lisbon. In its own appraisal of the Lisbon Treaty, the government of Austria underscores the nonaligned EU nations' freedom to choose the instruments for the implementation of the mutual assistance clause.

Even though the paragraph which refers to the specific character of nonaligned countries rose to the forefront when the Treaty was negotiated, its significance has to be put into perspective regarding the very essence of the mutual assistance obligation. To begin with, one must question how much effort would be spent in producing a detailed legal interpretation, should the Union face such a security threat which, on the consensus of the Member States and pursuant to Article 51 of the UN Charter, would be considered sufficient for an invocation of the mutual assistance clause. The examples involving NATO show that the prevailing political and military situation would probably be far more important to the interpretation of the mutual assistance obligation's nature of implementation than any precise legal interpretation. The character of the EU structure and the strong interdependence between the Member States would also have a parallel impact, compelling the Member States to reassess the threat scenarios at hand from a common ground as well as determine their own action from this perspective.

However, the second paragraph of the mutual assistance obligation is more problematic because it brings the NATO-EU relationship into play as regards the interpretation of the mutual assistance clause. The paragraph reads as follows:

"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."

In general, this is to be construed as a signal indicating that the EU's mutual assistance clause is not intended to lead into an arrangement rivalling NATO. Instead, NATO shall retain its status. This reference emphasises the EU-NATO affiliation in situations relating to implementing the mutual assistance obligation. It also requires all EU nations that are NATO members to take into account their allegiance to both. In this respect, the existence

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of NATO's common defence structure naturally establishes the strongest guarantee for NATO's primacy. In the final analysis, the significance of the second paragraph is related to this very aspect and, therefore, it is analysed in more detail in chapter 5 of this report.

Summing up the mutual assistance clause's legal interpretation, one has to first assert that it involves an intergovernmental obligation, in lieu of creating additional competence to the EU. It is considered to create an equally binding obligation on all EU Member States under international law. So long as procedural provisions for implementing the obligation do not exist, one must conclude that the implementation and its detailed arrangements would be unanimously agreed upon among Member States. Nevertheless, even for the sake of the character of the Common Foreign and Security Policy, it is probable that the key CFSP actors would play some role in preparing the implementation of the obligation. The letter of the obligation calls for aid and assistance to other Member States in situations involving armed aggression. However, taking the obligation's EU context into account, one cannot entirely exclude the possibility of invoking it in a serious threat other than actual armed aggression. This would be achieved on the basis of consensus between the Member States and it would observe international rules governing the use of force and, especially, Article 51 of the UN Charter. Similar flexibility would seem to apply to the nature of assistance expected of the Member States. The prevailing political and military security environment during the invocation of the mutual assistance clause, as well as the threat which triggered the implementation, would be elemental with regard to the character of assistance expected of the Member States.

#### **4. The mutual assistance clause and the Member States' defence systems**

The mutual assistance clause in the Treaty of Lisbon creates an obligation for the EU Member States to defend one another, should one of them become the victim of armed aggression. When assessing the military implications of the mutual assistance obligation, the primary focus falls on the Member States' existing defence solutions, including the role of the EU's mutual assistance obligation in this framework. Following this, the relationship between said

obligation and the EU's military structure has to be evaluated.

The first relevant aspect in the evaluation of the EU's defence policy solutions is the fact that 21 of the EU's 27 Member States are also members of the North Atlantic Treaty Organisation, i.e. NATO. Hence, NATO cooperation forms a central part of their defence policies. In the final analysis, even NATO member states' defence policies rely almost solely on their respective national systems, with NATO playing an important role in their development.

When it comes to the member states of the Alliance, NATO's defence policy role embodies participation in the common defence structure, consisting of political and military command and control systems as well as joint planning. The strategic outlines of this structure are defined in NATO's Strategic Concept which, since the turn of the century, has emphasised the threat scenarios included in the comprehensive security concept, whilst the threat of a large-scale attack is thought improbable. NATO, too, has developed its command and control systems and operational planning on the basis of a transient threat scenario. Nevertheless, even in spite of this change, Article 5 of the North Atlantic Treaty which details the common defence obligation is still considered elemental. Interoperability requirements, facilitating crisis management activities, are also regarded as conducive to cooperation under Article 5, should they be needed. Furthermore, NATO philosophy continues to rely on the role of the United States, with its nuclear weapons, as the citadel of common defence and the ultimate deterrent.

The strategic Allied Command Operations, commanded by the Supreme Allied Commander Europe (SACEUR), is the epicentre of NATO's military structure. SACEUR conducts military planning, including the identification and requesting of forces required for the full range of Alliance missions (promotion of stability, contribution to crisis management and provision for effective defence). In principle, all armed forces of every member state are included in the Alliance's military planning. In spite of this, member states place their troops into categories. Firstly, there are the troops which are necessary for the defence of their own territory and their near environs and, secondly, there are troops which can be deployed to out-of-area operations.

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On the basis of this, NATO requests the required capabilities and troops from member states for commonly determined strategic requirements by using a specific consultation process. In addition to force planning, the planning system also covers a wide range of topics, such as defence materiel, resources, command and information systems, logistics, civil emergency planning and nuclear policy.

European NATO members also engage in certain non-NATO military cooperation such as the multinational rapid reaction force EUROFOR, composed of forces from France, Spain, Portugal and Italy, as well as the multinational maritime force EUROMARFOR, comprising units from France, Italy, Spain and Portugal. Both are intended for use in international crisis management operations and are included, *inter alia*, in the EU's capabilities. The most longstanding multinational capability, however, is the EUROCORPS, composed of earmarked army units from France, Germany, Belgium, Spain and Luxembourg. It has been widely used, also in NATO-led crisis management operations.

Of the EU's Member States, Finland, Sweden, Austria, Ireland, Cyprus and Malta are not members in NATO. As regards Finland, Sweden and Austria, the decision is purely political. Austria's neutrality also has a legal basis, having been recorded in its constitution in 1955. Finland, Sweden, Austria and Ireland have increased their cooperation with NATO under the auspices of the Partnership for Peace programme and they have also participated in NATO-led crisis management operations.

When the defence policy implications of the mutual assistance clause to the EU's Member States are assessed, the fact is that the obligation's entry into force does not generate any immediate changes in the Union's present military structures. Military cooperation within the EU happens on a much smaller scale compared to NATO, even though NATO's transformation has brought about certain analogous features. Whereas NATO's common defence was originally created to counter territorial threats against its member states, the concrete starting point of the EU's military structure was the implementation of the Union's crisis management operations. At present, the EU's common military structures as well as the level of common capabilities



aim to support these activities even in spite of recurring political discussions for the development of some kind of "common capacities".<sup>9</sup>

The EU does not possess a planning system like that of NATO. Instead, a capability development process exists for the purpose of creating and improving crisis management capacities. The purpose of the process is to generate the kind of crisis management capabilities that the Member States have established as goals on the political level and on the basis of Member State's bids. In principle, the Member States can offer the same military capabilities to the EU and NATO. Therefore, the dissimilarity between the systems is found at the level of total volume, planning and staff structures, rather than at the troop level.

Along with its force planning system, NATO's military command structure plays a central role in the Alliance's common defence. It comprises two strategic level commands: Allied Command Operations (ACO) and Allied Command Transformation (ACT), three operational level joint force commands as well as several tactical level land, maritime and air headquarters. In addition to these, NATO has High Readiness Forces (Land), designated by the member states.

The EU does not possess a command structure comparable to that of NATO. The EU established a 200-strong Military Staff (EUMS) for the preparation of its crisis management-related decision-making. The EUMS conducts strategic planning. However, it does not lead operations. The so-called Berlin Plus arrangement was established for the purpose of leading crisis management operations. It is based on the possibility of drawing on NATO's capabilities. In practical terms this means that the two crisis management operations transferred from NATO to the EU have been led by the ACO, operating at the Supreme Headquarters Allied Powers Europe (SHAPE).

<sup>9</sup> The Lisbon Treaty amended the TEU by emphasising this, for example, in Article 28 A(3) as follows: "Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as "the European Defence Agency") shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities."

Due to the different mechanism has not worked as well as capability has been developed provided by the large Member have been made available to their inauguration. In addition cell at the EUMS for the purpose which require the comprehensive operations centre was established ops centre in future crisis man

If the importance of the is assessed in light of the pressure behind NATO in the mutual concrete, common capabilities geared towards crisis management membership alone give it robust. The contribution of the United it seems evident that most of are not in a position to extensive arrangements, independent mutual assistance clause. When defence solutions and abilities, have any great effect, at least no

If, counter to all expectations implemented in the near future assistance mechanisms would aggression is a NATO nation common defence arrangements non-NATO Members would proportion befall an EU Mem

<sup>10</sup> France, Germany, the United Kingdom. The German-led headquarters were headquarters are presently being used in C

Due to the different memberships of the EU and NATO this arrangement has not worked as well as expected. Consequently, the EU's autonomous capability has been developed by using multinational operational headquarters, provided by the large Member States. At present, five operational headquarters have been made available to the Union.<sup>10</sup> These will be multinationalised at their inauguration. In addition to these, there is a so-called civil-military cell at the EUMS for the purpose of planning and commanding operations which require the comprehensive use of civilian and military instruments. An operations centre was established at the EUMS in 2007. The aim is to use the ops centre in future crisis management operations.

If the importance of the mutual assistance obligation's defence policy is assessed in light of the present situation, it can be easily said that it lags behind NATO in the mutual cooperation of member states and in developing concrete, common capabilities. Even if NATO's present activities are more geared towards crisis management than common defence, its history and membership alone give it robust abilities to implement the common defence. The contribution of the United States is, of course, considerable. Therefore, it seems evident that most of the EU nations which also belong to NATO are not in a position to expend political capital for the purpose of creating extensive arrangements, independent from NATO, for implementing the mutual assistance clause. When it comes to the EU Member States' territorial defence solutions and abilities, the mutual assistance clause does not seem to have any great effect, at least not in the near future.

If, counter to all expectations, the mutual assistance clause would be implemented in the near future in strict accordance to its letter, military assistance mechanisms would primarily depend on whether the victim of the aggression is a NATO nation. With regard to NATO members, NATO's common defence arrangement would assume primacy. The EU and its non-NATO Members would play a supporting role. Should a crisis of such proportion befall an EU Member State, it is self-evident that the Union's

<sup>10</sup> France, Germany, the United Kingdom and Greece have made headquarters available to the EU. The German-led headquarters were used in Operation EUFOR RD Congo and the French-led headquarters are presently being used in Operation EUFOR TCHAD.

economic and political action would already be in place and, if the situation continued to escalate, perhaps military assistance between the Member States would take place as well. Accordingly, it can be considered that the security policy arrangements in the EU and NATO are complementary to a high degree.

As regards military assistance outside NATO structures – involving the EU's nonaligned Member States as providers or recipients of assistance or should NATO's common defence not have been implemented – it would have to take place under bilateral treaties between the recipient and providers of the aid. The EU's crisis management capacities or other military capabilities shared by EU Member States might have a role in mutual assistance. Nevertheless, so long as no common defence planning exists, these would have to be put into operation by ad hoc arrangements.

The defence policy significance of the EU's mutual assistance clause seems to be concretising with time. Therefore, it should be considered as one item in the larger scheme of an independent security capacity for the EU. This process was spawned by the Union's crisis management activity, for which said independent capacity is only gradually being created. Correspondingly, it was not until recently when the EU's own territorial security has been seen as the Member States' shared challenge, due to increasingly common external borders, the single currency and the expansion of the EU. Yet, the threats against the EU's territory do not primarily involve traditional armed attacks or some other forms of aggression. Likewise, the instruments developed to address the threats are mainly non-military.

Taking the EU's overall development into account it seems justifiable to approximate that, in the long run, the mutual assistance obligation will affect the military cooperation between the Member States as well as the development of shared assets. The volume and the time span for this depend greatly on NATO's development as well as on the development of the European security environment in general. Even if present-day military cooperation within the EU mainly provides crisis management instruments, it does contain germs of further cooperation. These include, for example, the European Defence Agency (EDA) and the permanent structured cooperation

included in the Treaty to strengthen the Union, saying that the proposed assistance clause would be of the clause may be management cooperation. Simultaneously, however, increase along with

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A Secure Europe is  
Consolidated version  
[www.consilium.europa.eu](http://www.consilium.europa.eu)  
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<http://european-council.europa.eu>

included in the Treaty of Lisbon. Both offer the Member States flexible ways to strengthen the Union's military cooperation capacities. It goes without saying that the preparedness required by the implementation of the mutual assistance clause will take more than one step. Nevertheless, the existence of the clause may advocate the intensification of defence policy and crisis management cooperation towards a more wide-ranging array of defence tasks. Simultaneously, however, the challenges of defence policy responsibilities increase along with the expansion of the European Union.

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## Obligația asistenței reciproce în tratatul Uniunii Europene de la Lisabona (Rezumat)

Una dintre caracteristicile cele mai importante din Tratatul de la Lisabona este puterea de întărire a rolului internațional al Uniunii Europene. Potențialul de extindere al UE ca actor internațional este recunoscut în mod clar. În multe feluri, modificările incluse în Tratatul de la Lisabona au scopul de a crea condițiile necesare pentru acțiuni mai eficiente și mai coerente.

Modificările menționate mai sus includ, de asemenea, dezvoltarea Politicii Europene de Securitate și Apărare. Tratatul armonizează și apropie politicile Uniunii Europene de gestionare militară și civilă a crizelor. Într-un sens general, Tratatul facilitează, de asemenea, acțiunii în cadrul unui grup de state membre pentru gestionarea crizelor precum și dezvoltarea capacităților militare.

Pentru prima dată în istoria UE, Tratatul de la Lisabona încorporează clauza de ajutor și asistență reciprocă între statele membre în cazul unei agresiuni armate. Aceasta obligă statele membre să ofere sprijin și asistență reciprocă. Nici o competență nu este transferată către UE sau instituțiilor sale în acest sens, și nici o structură militară nu este creată pentru punerea în aplicare a obligației. Scenariul agresiunii armate împotriva unui stat membru avut în vedere în garanțiile de securitate este extrem de puțin probabil în situația securității europene. Totuși, prin adoptarea acestei schimbări, Uniunea Europeană indică dimensiunea solidarității între statele membre. Gama de instrumente de sporire a securității este mai cuprinzătoare, la limita superioară acestora se află Apararea comună europeană. Uniunea este capabilă să efectueze sarcini complexe de gestionare a crizelor, în plus capacitatea sa de luptă împotriva terorismului a fost întărită. Clauza de asistență reciprocă este, în primul rând, asociată cu agresiuni armate.

Acest studiu evaluează dimensiunile-cheie ale clauzei de asistență reciprocă în Tratatul de la Lisabona.

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