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42.7: EUROPEAN COVER FOR FRENCH DEFENCE

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France has taken a step towards the Europeanisation of the Paris attacks on November 13th after already having declared itself “at war” with Islamic State. By invoking the mutual defence clause (Article 42.7 of the Treaty on European Union), Paris showed its desire to transfer co-responsibility for responding to the attacks to the other 27 European capitals. In the French National Assembly, President François Hollande made reference to the activation of this cause for the first time, making a call for European values to be safeguarded, for solidarity between EU countries and for a strong, joint response, stating that “the security pact prevails over the stability pact”. At a meeting of the 28 defence ministers his partners responded with unanimous agreement.

Article 42.7 establishes that if a member state is the victim of armed aggression on its territory, the other states have the obligation to help and assist, using all available means, without prejudice to their priorities in national and international security and defence issues and any that conflict with commitments to NATO. This step forward on matters of mutual defence was introduced by the Treaty of Lisbon and is found in the chapter on the Common Security and Defence Policy. It is governed, therefore, by the rationale that guides foreign and defence policy: intergovernmentalism and unanimity as decision-making mechanisms.

42.7 was drawn up in the image and likeness of Article 5 of the North Atlantic Treaty, commonly known as the collective defence clause, and is the heir to a similar provision of the extinct Western European Union. But does invoking it mean that Europe is moving towards a less national and more Europeanised defence policy? Will 42.7 lead to European co-responsibility for fighting Islamic State within and beyond its borders?

Let’s take it step by step. Hollande referred to 42.7 in preference to Article 222 of the Treaty on the Functioning of the EU, which establishes the so-called solidarity clause. 222 is specially designed for EU institutions and member states to act jointly in the case of terrorist attack or disaster caused by nature or human action. And at first sight, it seems more appropriate for responding to the November 13th attack.

Nevertheless, 222 transfers many more competences to the EU as a whole. European institutions are those responsible for mobilising all the tools at their disposal,

including military (in the hands of the states), to respond to the attack. Legal provisions can also be derived from 222 in the case of non-compliance and the EU is obliged to act as a whole, not just those states who feel inclined to. In other words, it is an article that promotes joint action in terms of security and defence and is not guided by the intergovernmentalism chosen by Hollande.

With 42.7, by contrast, EU states have no obligation either to act together or to support French foreign policy in the fight against terrorism. The governments of Spain and Germany have been reluctant to participate in the bombings against Islamic State, the first because of the long shadow cast by the 2004 attacks in Madrid and the second in keeping with its traditional reticence about interventionist foreign policy. Other states, particularly the more Atlanticist, will be quick to remind us that collective defence is best guaranteed under the NATO umbrella, something Paris has always viewed with caution. So, more than a common response to Syria, the invocation of 42.7 will result in bilateral agreements with the countries most sympathetic to French interventionism and the fight against Islamic State, like the United Kingdom.

The words of Europe's High Representative in a joint appearance with the French defence minister show the difficulty of translating solidarity between Europeans into specific measures. After confirming the high symbolic and political value of the agreement on 42.7, Federica Mogherini recalled that a specific commitment by the EU or its member states did not necessarily follow from it. The various capitals will decide if their commitment is to be on intelligence cooperation, technical or logistical assistance or, if they so wish, foreign military action.

Recently, every crisis has raised the (illusory) hope that handling it will involve greater levels of European integration. The Greek crisis brought proposals to light to deepen the fiscal union and the democratisation of eurozone governance but, as yet, all policies have been restricted to larger doses of German-flavoured austerity. The refugee crisis could have resulted in a common asylum policy, but many member states remain reluctant to accept the relocation quotas proposed by the European Commission. After the Paris attacks, and despite the activation of article 42.7, common defence will still have to wait.