



Article 42(7) as an insufficient tool of last resort for Eastern Mediterranean stability

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The ongoing attempts at greater EU strategic autonomy inevitably revolve around its ability and, perhaps more importantly, the EU's willingness to act independently on issues of defence and security. In 2016 the Implementation Plan on Security and Defence (for the implementation of the EU Global Strategy) clearly highlighted the need to 'develop a stronger Union in security and defence, which is able to tackle today's threats and challenges more effectively', with a clear reference to the importance of Mutual Assistance and/or Solidarity in line with Article 42(7) TEU and Article 222 TFEU.¹



The global, and perhaps more pressingly the regional, challenges highlight the need for a more strategically autonomous EU, but unfortunately the expectations-capabilities gap is still wide, and the goal remains rather elusive.

During a talk on the US-China confrontation, Josep Borrell noted in May 2020 that 'we [the EU] have to keep a certain degree of autonomy in order to defend our interests', concurrently acknowledging that the EU does not yet have what it takes. In his words, the EU must 'have strategic autonomy on practical terms, [which] means being able to respond to a crisis by our own means and we don't have these means.'² In a similar spirit, Nathalie Tocci, one of the key individuals in developing the concept of strategic autonomy, highlights the 'lack of EU responsibility and above all risk-taking when security comes into play',³ also noting the absence of capabilities, decision-making mechanisms and strategic culture to cope with such challenges. There is also a lack of sufficient solidarity, and ultimately collective willingness, to handle crises, especially regional ones, which together ultimately challenge the EU's potential role as an autonomous security provider. Indeed, the global, and perhaps more pressingly the

¹ Council of the European Union, "Implementation Plan on Security and Defence," 14392/16 annex, (Brussels: 14 November 2016).

² Eszter Zalan, "Borrell: EU doesn't need to choose between US and China," EUobserver, (2 June 2020).

³ Nathalie Tocci, "European Strategic Autonomy: What It Is, Why We Need It, How to Achieve It," Istituto Affari Internazionali, (2021).

regional, challenges highlight the need for a more strategically autonomous EU, but unfortunately the expectations-capabilities gap is still wide, and the goal remains rather elusive.

Admittedly, fundamental changes when it comes to issues of defence and security are not expected to occur quickly or efficiently. But given the momentous transformation of the international system and the EU's self-proclaimed goal to become more influential and more autonomous, this requires concrete actions. Article 42(7) TEU is such an action and an important step towards the correct direction, but its effectiveness is yet to be seriously tested. Indeed, discounting domestic or international terrorist attacks, currently the only realistic threat of a Member State (MS) being a victim of armed aggression – which would potentially justify the invocation of Article 42(7) TEU – is either from Russia or from Turkey in the Eastern Mediterranean. The focus here is on the latter, and more specifically on the Republic of Cyprus (RoC) and to a lesser degree Greece.

A closer analysis of the tensions in the Eastern Mediterranean demonstrates that while Article 42(7) could, theoretically at least, be an important tool for deterrence, practically it may have an inadvertent negative impact. Namely, it could potentially push aggressive and revisionist states to engage in hybrid hostile actions that lead to instability and the development of grey areas, without however crossing the threshold of what would be seen as armed aggression. This brief article explores why this is the case and why Article 42(7) TEU is a useful, albeit insufficient, 'deterrence tool' for the RoC and Greece for dealing with the tensions in the Eastern Mediterranean.

For Cyprus, or Greece, invoking Article 42(7) is not a decision to be taken lightly. It is not just the numerous unclear elements in the article that generate doubts as to its useability. It is also the complexity of the sub-Regional Security Complex (s-RSC) of the Eastern Mediterranean with disputes, inter alia, among a triangle consisting of one EU and NATO member (Greece), one NATO but non-EU member (Turkey), and one EU but non-NATO member (RoC). Energized by the regional hydrocarbon discoveries, coupled with the relative withdrawal of the US from the Middle East, the East Med. s-RSC became an increasingly dynamic region without a clear security provider and with a notable power gap. Unsurprisingly, Turkey, as an aspiring hegemon, wishes to fill the gap and attempts to assert its dominant position in the region.

However, Turkey's revisionist approaches inevitably triggered balancing actions by neighbouring states, manifested through numerous bilateral, trilateral, and quadrilateral

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agreements among, primarily, the RoC, Greece, Israel, and Egypt. The deteriorating bilateral relations between Turkey, on the one hand, and Israel and Egypt, on the other, facilitated the development of the aforementioned agreements, which only exacerbated the Turkish feeling of encirclement. This feeling intensified with the deepening and broadening of the regional activities with the most notable development being the East Mediterranean Gas Forum (EMGF) with the participation of almost all regional states and two important extraregional states (France and Italy), but not Turkey. Similarly, the participation of extraregional actors such as France, the United Arab Emirates and Saudi Arabia in common military exercises with Greece, the RoC, Egypt, and Cyprus heightened the Turkish perception of exclusion and encirclement, which in turn led to more aggressive and escalatory actions, mostly against the RoC and Greece.

So far it has been controlled escalation with the ultimate dual goal being grey areas, on the one hand, and slowing down developments that would worsen the Turkish position vis-à-vis the RoC and Greece, on the other. Controlled escalation is not just an uneasy and costly setting, but also particularly worrying for the actors involved as well as other regional stakeholders, as the situation may become uncontrolled, especially in the event of an accident. Provided that neither party wishes to see uncontrolled development, there is still some room for diplomacy. That said, and despite the fact that the diplomatic avenue is Greece's primary option, it must be noted that it also has the military capacity to fend off military threats, as was for instance the case with the naval standoff between the two neighbours in August 2020⁴ and on numerous other occasions when the Greek and Turkish navy and air force had 'close encounters'. This is not necessarily the case with the RoC, whose deterrence options rest primarily on the implementation of International Law and its EU membership. Thus, for the RoC diplomacy and collective support is a one-way path. It is in this context that Article 42(7) TEU is examined as a

⁴ Michele Kambas and Tuvan Gumrukcu, "Greek, Turkish warships in 'mini collision' Ankara calls provocative," Reuters (14 August 2020).

potential strategic tool and as a deterrence mechanism, or in the undesirable extreme scenario, as a tool of mutual assistance for defence purposes.

Whether or not, or perhaps more importantly when, Article 42(7) TEU can serve this purpose is unclear. There is only one precedent – with France in 2015 after the terrorist attacks – and in that case the reasoning was political rather than defensive. It is not surprising, therefore, that France chose this option over NATO. France's goal for invoking the article was not to defend itself against domestic terrorism, but rather for MS contributions to counterattack in Syria and Iraq, and the requested contribution was achieved through bilateral arrangements between France and willing and capable member states. Thus, the only case we have so far cannot provide sufficient evidence of how it can be implemented in the Eastern Mediterranean where the threats are more traditional and largely inter-state.

Despite the absence of concrete evidence as to its implementation efficiency, Article 42(7) may act as a deterrence tool albeit only against the gravest of threats, namely armed aggression on an EU member state's territory. Unfortunately, it seems less able to do the same for threats that fall below the threshold of armed aggression, and even less so for threats in maritime areas. Indeed, it is evident that Turkey is not particularly deterred and continues to threaten with, and engage in, destabilizing actions in the Cypriot EEZ and the Aegean.

A further complicating factor is the source of the threat, namely a NATO member state. This complicates the possible options under the specific article, especially considering the historical intertwined security arrangements between NATO and the EU. While NATO may be one of the most important deterring variables for external threats, it is not particularly well equipped to deal with or prevent intra-NATO disputes, short of facilitating de-conflicting negotiations. How well equipped the EU can be under this article to take actions against a NATO (but non-EU) member in the case of aggression against either an EU-NATO member or an EU-non-NATO member is very unclear, if not doubtful. Given that 21 of the 27 EU members are also NATO members is bound to have an impact on the effectiveness of Article 42(7) TEU against a NATO member as a deterrent force, or as a defence contributor, if Greece or the RoC invoked it due to Turkish actions.

Perhaps the most relevant question for the region is whether the Turkish actions in the Eastern Mediterranean 'allow' for the invocation of Article 42(7). And if not, why not,

given that the EU acknowledges Turkey's actions as illegal and escalatory.⁵ Turkey's actions in the Cypriot EEZ and in the Aegean are testing the reaction limits of the RoC, Greece, as well as that of the international community, and more importantly those of the EU. While Turkey's actions may be intimidating, in violation of international law, and certainly against any good neighbour principle, it is debatable whether they qualify as armed aggression. More importantly they are unlikely to qualify as armed aggression on an EU MS's territory, as they mostly take place in maritime areas disputed by Turkey. The article's clear mention of armed aggression against a MS on its territory casts doubts as to its applicability in maritime zones – Exclusive Economic Zones (EEZ) and continental shelves – which is where most of the hostile activities have occurred. The fact that there are no delimitation agreements between Turkey, on the one hand, and Greece and Cyprus, on the other, is an additional complicating factor as Turkey does not accept that it is in violation of any international law claiming that all actions take place on its own EEZ/continental shelf.

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Furthermore, the issue may become much more complicated regarding the article's implementation depending on the intensity of the incident. Turkey's seemingly controlled escalation tactics could easily become uncontrolled in the event of an accident, as was the case in mid-August 2020 after the collision between a Greek and a Turkish frigate.⁶ Had the incident been more serious, or had there been casualties, would that justify the invocation of Article 42(7)? How easy or possible would it be for the EU to reject such a Greek request – because the incident would not be territorial – without a massive credibility loss as a security provider?

⁵ See for instance: European Parliament, "European Parliament resolution of 17 September 2020 on the preparation of the special European Council summit focusing on the dangerous escalation and the role of Turkey in the Eastern Mediterranean," Official Journal of the European Union C 385/117, (22 September 2021).

⁶ Yaroslav Trofimov and David Gauthier-Villars, "Turkish, Greek Frigates Collide in the Mediterranean Sea," The Wall Street Journal, (14 August 2020).

Lastly, the article's ambiguity is not only vis-à-vis the successful invocation prospects, but also regarding the actual follow-up actions by the EU. According to the article, in the event of armed aggression (on MS territory), 'the other Member States shall have towards it an obligation of aid and assistance by all the means in their power'. The assumption is that it is not the EU as a whole – hence the absence of the words 'EU institutions' – but rather individual states that are expected to aid the state in need. Furthermore, the article provides a way out for states that are traditionally neutral or are unwilling to engage in military disputes,⁷ which subsequently means that any aid essentially boils down to the capabilities, and more importantly, the willingness of specific states to help. Similarly, the phrase 'all means in their power' may also be subject to different interpretations as it does not provide clear guidance, and subsequently clear expectations, on how Article 42(7) TEU would be implemented.

There are, therefore, significant grey areas, both in terms of literally the area in which the destabilising actions occur, but also in terms of the interpretation of the article. The fact that the article is ill-equipped to deal with these grey areas reduces its usability and essentially renders it a rather weak deterrence tool for hybrid harmful actions or any non-territory-based military actions. Thus, it may be a fairly unusable tool in most cases – if not dangerous due to a potentially inadvertent negative impact – for countries like Cyprus and Greece. Specifically, there is a risk of invoking the article if the outcome is unclear. It is not simply the case that the states in need of assistance will not receive the help that they have requested. A failure to act under the article once invoked may embolden the aggressor which may feel more empowered and legitimised given the absence of concrete deterrent actions. At best, the aggressor will continue to grey the area to further reduce the prospects for any collective action, and at worst, feeling empowered by the unwillingness to engage in collective action, it will intensify its escalatory actions to improve its regional position.

As a result, Article 42(7) may potentially minimise the possibility, and the threats, of very severe military actions against EU territory, but it may, at the same time, inadvertently render hybrid actions that occur below the threshold that would justify the article's invocation as the preferred pathway for escalation and destabilisation. At the same time, the lack of clarity regarding serious, albeit non-territorial aggressive actions, can easily

⁷ Article 42(7) (TEU) clearly states that "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.*" [emphasis added].


cast shadows on the article's functionality, as well as on the EU's credibility as a security provider for the region. Indeed, these ambiguities further highlight the EU 'expectations-capabilities gap' regarding the EU's role as a global actor and as a potential international security provider.

With the above in mind, Cyprus and Greece consider Article 42(7) to be a potential strategic option for the naval confrontations in the East Med., but mostly as a tool of last resort. Indeed, the invocation of the article will not resolve the root causes of the tension in the East Med., so as a security mechanism it does not provide a sustainable solution to the problem at hand. And to be fair, it was never designed to do so. Thus, if it cannot eliminate, or even diminish the impact, of the root causes, it is unlikely to be considered as a strategic option for the normalisation of the region, discounting its potential use as a strategic defence option in the unwanted event of a fully-fledged conflict.

The risk emanating from the article's ambiguity, as well as the risk of an emboldened Turkey should the article be invoked but without the expected outcome, reduces the usefulness of the article as a short-term tactical tool that can be used for either leverage or de-escalation. However, given that the RoC primarily relies on International Law and EU solidarity to counter Turkey's destabilising actions, it is willing to use all its diplomatic weapons in its arsenal to minimise the impact of Turkey's actions, including the invocation of Article 42(7). However, unlike the use of sanctions (or the threat of their use) which can be gradual and adjustable based on the developments, the invocation of the article is in and of itself an indication that developments have escalated to a critical point and de-escalation may become much more challenging. Similarly, it will push EU-Turkey relations further down a slippery slope; an outcome that neither the EU, nor Turkey, or, indeed, Greece or Cyprus wishes to see.

It should be noted that the non-invocation of the article does not connote that Greece or Cyprus have doubts as to whether the EU perceives Turkey's actions as illegal; this has been clearly acknowledged on numerous occasions. EU sanctions, or the prospects thereof, and other diplomatic measures are the current preferred path to deal with these tensions. The prospects of sanctions do not just attempt to curb escalation, but also to register unequivocally the EU's position concerning the Eastern Mediterranean developments. Evidently and unsurprisingly, sanctions alone are insufficient to fully deter Turkey, but their presence at least demonstrates that the EU does support its Member

States' positions, while it concurrently keeps the door open for de-escalation and normalization through the removal of sanctions when developments allow for this.



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Given that a naval confrontation between Greece and Turkey is more likely, compared to between Turkey and Cyprus, Greece is the one that is most likely to invoke or warn that it could invoke the article. Indeed in the autumn of 2020 PM Mitsotakis reiterated that Article 42(7) TEU exists (and is therefore on the table as an option), also noting that "[he] wished that the country will never have to activate the clause".¹⁰¹ Similarly, during the same period the Greek Minister of Foreign Affairs, Nikos Dendias, in a letter to Josep Borrell noted that '[...] the only way forward for the EU is to stick to its principles – especially on internal solidarity and mutual assistance between its Members, as enshrined in EU Treaties, including 42(7) TEU [...]'.⁸ Cyprus, on the other hand, seems to be much more reluctant to raise this possibility given the risks and ambiguities mentioned earlier, but also because the risk of an actual military confrontation on the sea is much less likely between the RoC and Turkey.

That said, in the RoC's and Greece's strategic calculations, Article 42(7) TEU can be conceptualised as a hybrid – diplomatic and hard defence – option of last resort, which can be used not only in the event of armed conflict, but also to intensify diplomatic pressure and to induce more concrete EU actions to curb Turkey's actions, as the invocation of the article would place the EU and numerous MS in a difficult position. Thus, while both Greece and the RoC recognise the article as a potential tool, they know that it is not easy for the EU to drastically corner Turkey, and invoking Article 42(7) would do precisely that. This would unquestionably have a negative impact as it would further push Turkey away from the West. This would be negative not only because Turkey is a

⁸ Nikos Dendias, "Letter of the Greek Minister of Foreign Affairs to H.E. Mr. Josep Borrell," (Athens: 19 October 2020).

significant NATO member – and a further rift between the West and Turkey could easily be utilised by non-friendly states – but also because it is an important trading partner for many states in Europe. What is more important is Turkey's size and geostrategic location, which is key for Europe as it can act as a buffer against the turbulent region of the Middle East. Being well aware of its importance, it is well known that Turkey leverages its position by, among other things, weaponising immigration. Thus, Turkey's importance and leverage further complicate the Cypriot (and Greek) decision-making calculus regarding the invocation of Article 42(7) TEU against the former.

Turkey's importance coupled with the aforementioned ambiguities regarding potential implementation render Article 42(7) TEU an important tool, albeit a theoretical and a last resource option, for Greece or Cyprus. Thus, both states have sought parallel, if not alternative, options to enhance their security, namely through bilateral defence agreements. While the latter are not mutually exclusive with Article 42(7) TEU, they also indicate that there is not much faith in the EU's ability to provide the necessary deterrent force required to stabilise the Eastern Mediterranean.