

The European Union's Solidarity Clause:

Empty Letter or Effective Tool?

An Analysis of Article 222 of the Treaty on the
Functioning of the European Union

Sara Myrdal

Swedish National Defence College

Mark Rhinard

Swedish Institute of International Affairs





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Introduction¹

In the EU's rush to implement the Lisbon Treaty, little attention has been paid to the 'Solidarity Clause', now enshrined as Article 222 in the Treaty on the Functioning of the European Union. This one-page provision creates one of the most explicit demands upon EU members to act jointly and to assist one another in the face of disasters, emergencies, and crises on the European continent. Yet the precise meaning of this demand, and its implications for EU institutions and member states, has yet to be fully assessed.

In some respects, the lack of attention to the Solidarity Clause is easy to understand. The Lisbon Treaty was full of headline-grabbing and complicated changes requiring the full attention of busy governments. The Solidarity Clause has not grabbed similar headlines, perhaps because other treaty changes appear more pressing, because its brevity belies its content, or because it tends to be confused with the more narrowly focused 'mutual defence clause' (Article 42.7) on cooperation in the event of armed aggression.

In other respects, neglect of the Solidarity Clause is surprising. The word 'solidarity' hangs heavily in the air as Europe struggles with a debt crisis. The continent has been hit by a spate of disasters and crises in recent months – including ash clouds, pandemics, explosions, and cross-border infrastructure failures – which can outstrip national coping capacities. In the aftermath of disasters and terror attacks, national governments tend to loudly proclaim the importance of enhancing cooperation to protect the safety and security of citizens. The Solidarity Clause, conceived as a treaty-based method for improving EU cooperation on a range of complex threats, acknowledges the need to mobilise a host of instruments to deal with new security concerns. It thus provides a potential answer to increasingly vocal concerns.

Solidarity, however, means different things to different people (and governments). For some, solidarity is measured by how much support flows to a country in need. For others, solidarity means everyone doing their own 'homework' to avoid the need for assistance in the first place. Still others believe that solidarity against today's risks and threats is best pursued outside of EU frameworks. As long as solidarity remained

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a rhetorical device in the EU context, such differences could be tolerated. Now that solidarity has been established as a legal concept in the case of the Solidarity Clause, such differences need to be reconciled.

This paper spurs attention to the Solidarity Clause at a timely moment in its development. Not only are the complexities of modern crises becoming increasingly apparent, but the political-administrative machinery to support the Solidarity Clause is now being put in place. A proposal is due from the European Commission in the upcoming months, and an opportunity will emerge to ‘frame’ the Clause in a way that is consistent with its original intent.

After setting out the history of the Solidarity Clause, we then position it against the backdrop of other solidarity obligations in the EU and wider Europe. In a following section, we provide details on the content of the Clause and outline seven questions regarding its implementation. We conclude the paper with two sections, providing an overview of recent developments and then offering recommendations for policymakers.²

Briefly put, our recommendations encourage policymakers to take a short-term, medium-term, and long-term view of the Solidarity Clause. The short-term view focuses on the upcoming ‘implementation arrangements’ and the need to clarify the position and role of the Clause vis-à-vis other existing instruments in the EU. The medium-term examines situations in which the Clause might be ‘triggered’ and examines national readiness to provide solidarity to others. The long-term view widens the perspective to consider the development of the Solidarity Clause over time, not only as a sign-post in the inexorable journey towards ‘Europeanised’ crisis cooperation but also as a spur to thinking about solidarity obligations more broadly.

Origin

The origins of the Solidarity Clause can be traced to the European Convention debates on a draft constitution for the EU (2002-2003). Delegates to the European Convention included high-level politicians from national governments and the EU

² The findings in this report are drawn from participant interviews and documentary evidence. Interviews were conducted amongst EU officials (20) and national officials (37), and were carried out face-to-face and by telephone. EU officials were selected to proportionally represent three professional communities: lawyers, diplomats, and policymakers. National officials were selected based on their nationality, including a desire to achieve a geographical sampling of opinions, their occupational role, and their reputation as an opinion leader. Interviews were semi-structured, meaning a similar set of questions was asked to each official with flexibility allowed for elaboration of particular questions. Interviews were not recorded; comprehensive notes were taken during each interview. Officials were guaranteed anonymity in the report. A list of interviewees is on-file with the authors (see Annex 4). Documentary evidence included public, as well as internal, documents supplied to us by government officials.

institutions,³ as well as working group participants focused on specific policy questions. Working group VIII, on defence, took up the issue of security and defence and witnessed most of the deliberations on whether, and how, the European Union should develop its instruments for collective security.

Members of the working group on defence considered two types of solidarity, and debated whether either should be included in the future Constitutional Treaty. The first was a 'mutual defence' clause.⁴ The idea here was to commit EU member states to solidarity in the event of 'armed aggression', similar to the proviso in the WEU Treaty (which some leaders hoped to fold into the Constitutional Treaty).⁵ Widespread resistance to such a clause prompted ideas for an 'opt-in' provision, so as to not commit all members. To avoid such an outcome, Finland, Sweden, Ireland and Austria backed an Italian proposal stating that the clause would not prejudice 'the specific character of the security and defence policy of certain member states' nor existing NATO relationships. In return, all EU states agreed to drop the opt-in provision and fully commit themselves to the mutual defence clause (see Annex 4).

The second form of solidarity, which is the focus of this report, would bind EU governments together against a range of new threats confronting Europe. There were two lines of thought in support for a new kind of solidarity obligation. For some members of the convention, the threat of 'armed aggression', although politically relevant, was out-of-date. With September 11, 2001 fresh in their minds, and with debates underway regarding a draft European Security Strategy, the threat spectrum needed to be broadened. Moreover, some members felt a mutual defence clause could not, and would not, leverage the full range of crisis and disaster response capacities available to the EU.⁶ A new kind of clause was needed to supplement (or even to counter) the mutual defence clause. A broad solidarity approach, it was believed, would distinguish the EU from a military alliance. For Swedish and Finnish members of the working group, this was an important point to be made. A broad

³ Notable members of the convention included Anna Lindh, Joschka Fischer, Dominique de Villepin, Gijs de Vries, Valéry Giscard d'Estaing and Giuliano Amato.

⁴ Although some policymakers now refer to the 'mutual aid and assistance' clause (Article 42.7), for the purposes of consistency and clarity we use the popularly used term 'mutual defence' clause throughout this paper. The latter term seems to be the one most frequently used in the European debate. Finnish documents use the phrase 'mutual assistance clause' and the French call this provision 'une clause de défense mutuelle'.

⁵ Signatories to the Treaty of Brussels in 1948 formed the Western European Union (WEU) as a collective defence agreement. Members of the WEU include only a partial group of EU members, yet by 1999 most of the WEU's military crisis management functions had been transferred to the EU. The Lisbon Treaty further transferred its mutual defence obligation to the EU, leading to a decision in March 2010 to terminate the treaty and cease WEU operations by July 2011.

⁶ See the Final report of the WG VIII – Defence, CONV 461/02, p.20.

clause would offer an alternative way of showing solidarity, in contrast to that required by the mutual defence clause.⁷

Several other discussions shaped the eventual formulation of the Solidarity Clause. The chair of the working group, Michel Barnier, made a proposal initially seen as marginal but which eventually had a significant impact. The former European Commissioner and French Minister advocated a stronger role for the EU not only in intentional threats, but also in managing unintentional disasters, both man-made and natural. His desire to strengthen the EU's existing civil protection and humanitarian aid arrangements and to build common response units to cope with disasters inside and outside the EU prompted an idea: to add natural and man-made disasters to the types of threats covered by a solidarity clause.⁸

As the solidarity issue moved to decision by the European Convention plenary, support for two separate clauses was building. But full-scale debate was halted by the March 2004 terror attacks in Madrid. At the European Council meeting held soon thereafter, a draft version of the working group's solidarity clause was adopted (albeit only with a focus on terrorism) as a 'Solidarity Declaration'. That development had the effect of concentrating minds in the European Convention. The working group on defence forwarded their recommendations for a full-blown 'Solidarity Clause' (including natural and man-made disasters) to the plenary session, which fairly swiftly approved the suggested provision (see full text, next page).

After the rejection of the Constitutional Treaty by France and the Netherlands in 2005, a period of reflection and treaty revision followed. This process did not affect the wording of the Solidarity Clause, with one exception: a joint declaration, originally formulated in the Solidarity Declaration, was added to the Clause to give member states more latitude in deciding how they would provide assistance.⁹ Even

⁷ See for example the article by Lindh and Tuomioja where this line of reasoning comes across rather clearly, 'Gemensamt EU-förslag från Sveriges och Finlands Utrikesministrar: Kontrakt tvingar alla att agera mot terror', *Dagens Nyheter*, 18 Dec 2002. Another proposal suggested within the European Convention (by France and Germany) was that of creating a 'solidarity and common security clause', spanning the whole range of threats from armed attacks to terrorism. Such a clause was meant to cover both the mutual defence clause and the solidarity clause. The proposal met resistance from a majority of Convention members, including Sweden and Finland, and probably had the effect of rallying support behind the proposal for a separate solidarity clause.

⁸ These ideas are included in the final report of the WG Defence but was later presented, in a more elaborated form, as part of the so-called 'Barnier report', titled 'For a European Civil Protection Force: Europe Aid'. See http://ec.europa.eu/commission_barroso/president/pdf/rapport_barnier_en.pdf.

⁹ Declaration No. 37 on Article 222 (TFEU) reads: 'Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a member state which is the object of a terrorist attack or the victim of natural or man-made disaster, none of the provisions of Article 188 R is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.'

with this addition, member states' legal obligation to act jointly and to assist fellow member states remained.

Content and Obligations of the Clause

It is worth detailing the content and potential consequences of the Solidarity Clause (Article 222) as a first step towards our recommendations. This section draws upon interview data and documentary evidence gathered in the course of the research project.

The Solidarity Clause

Article 222, Treaty on the Functioning of the European Union

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

- (a) — prevent the terrorist threat in the territory of the Member States;
— protect democratic institutions and the civilian population from any terrorist attack;
— assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;
- (b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions.

4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

Paragraph 1: The Solidarity Clause begins with a broad proviso: ‘the Union and its members states shall act jointly in a spirit of solidarity’ when an attack or disaster strikes. This formulation demonstrates the supranational intent of the Solidarity Clause, making it more than an intergovernmental obligation (as is the case with the mutual defence clause). The use of the words ‘the Union and its Member States’ make explicit the fact that EU institutions should be involved alongside member states in cooperation.

The next sentence focuses on the mobilisation of resources, obligating ‘the Union’ to ‘mobilise all the instruments at its disposal, including the military resources made available by the Member States’. Reference to ‘all Union instruments’ implies EU institutional tools, mechanisms, and resources related to attacks and disasters (much of which represent national resources deployed through European means). Reference to ‘military resources made available by Member States’ suggests a mobilisation of military assets, either such assets that have already been registered for use in civilian disasters, or a much wider range of resources including, for example, troops for crowd control or equipments for large-scale disaster clean-up.

Paragraph 1a, 1b: The first indent in paragraph 1 focuses on terrorism, to specify what kinds of actions are expected of member states: to ‘prevent the terrorist threat’ in the territory of member states, to ‘protect democratic institutions and the civilian population’ from attack, and to ‘assist a Member State in its territory, at the request of its political authorities’ after a terrorist attack. The second indent in paragraph 1 focuses on natural and man-made disasters, specifying in those cases that a stricken member state should be assisted ‘in its territory, at the request of its political authorities’. The separation of these two indents implies that member states’ obligations may be higher for terrorism than for disasters, considering the specific references to preventing and protecting attacks, in addition to assisting after an event.

Paragraph 2: If the first paragraph speaks specifically to Union-level responses, the second paragraph speaks to member states. It states that if a member state is the object of an attack or disaster, ‘the other Member States shall assist it’. This paragraph thus suggests that member states must actually give something in response. A specification of what must be given is stated in the declaration added to the Solidarity Clause post-drafting: the declaration states that member states will be allowed to ‘choose the most appropriate means by which to comply with its own solidarity obligations’ towards the stricken state. The last line in paragraph 2 requires that the provision of assistance, of whatever type, shall be coordinated between member states in the Council.

Paragraph 3: The third paragraph deals exclusively with the ‘arrangements for the implementation’ of the Clause. Those arrangements ‘shall be defined by a decision

adopted by the Council acting on a joint proposal by the Commission and High Representative'. Should those arrangements have any 'defence implications', the Council will vote by unanimity (thus implying that qualified majority voting will take place otherwise). The Council will be assisted by the Political and Security Committee (PSC) and the Committee on Internal Security (COSI), which can both offer joint opinions on the matter.

Paragraph 4: The final paragraph of the Clause mandates the European Council (e.g. not the Council of Ministers) to 'regularly assess threats facing the Union' in order to allow the Union and its member states 'to take effective action'.

Based on the above-mentioned provisions and the prevailing perspective of those interviewed for this report, we can identify several obligations the Clause places upon member states.

- First, the Clause establishes a duty of the Union and member states to 'act jointly' if an attack or disaster takes place. This obligation stands in contrast to previous references on solidarity within the treaties, and applies to joint action between member states and the EU institutions.
- Second, the Clause establishes a duty of the Union to 'mobilise all instruments at its disposal'. This obligation suggests the EU institutions must be capable of drawing upon instruments in a coherent, coordinated, and effective fashion.
- Third, the Clause establishes a duty of member states to 'assist' a stricken member state. It prescribes that member states make assistance available, in addition to acting jointly. As noted above, there is wide room here for defining what it means to assist.¹⁰

Our interviews also revealed a number of additional themes. One is that the Clause will most certainly heighten the profile of EU cooperation on crisis and disaster issues, both for national governments and in the eyes of the public. National governments will have to take a more principled (and thus high level) stance on such issues. Another theme is that the threat assessment provision in the Solidarity Clause is likely to cast questions of where responsibility will lie (within the institutions) for preparing the assessment, and over which threats and risks.

¹⁰ A duty 'to be prepared' was also mentioned by some interviewees. This interpretation is based on the fact that obligations to prevent, protect and assist one another suggest some kind of advance effort in preparing for solidarity.

Open Questions

Although the general obligations of the Solidarity Clause now seem clear, more specific questions regarding the nature and breadth of the Clause remain:

- **What types of threats are covered by the Clause?** Few respondents narrowed the types of threats covered beyond the original articulation of ‘terrorist attacks, natural disasters and man-made disasters’ (which leaves few threats out). Some respondents suggested the Clause should cover the ‘major’ kinds of events requiring a combination of available EU instruments. Nevertheless, many respondents accepted that less complex events (e.g. more frequent natural disasters) might also push member states to trigger the Clause to increase the likelihood of a well-resourced national response.
- **What is the scope of the Clause?** Most respondents argued that the Clause should serve as an ‘umbrella’, framing all EU cooperation on crises and disasters. This would provide a broad remit for the Clause spanning the full scope of EU policies, from pandemics to earthquakes, and from terrorism to critical infrastructure failures. By using the Clause as an additional legal basis in developing new proposals, the provision was also believed likely to spur enhanced cooperation in a number of areas.
- **What are the legal implications of the Clause?** Although it is hard to imagine a member state being called to the Court of Justice for violation of the Clause, other legal implications are significant. Respondents mentioned that the legal footing of the Clause, if only used alongside other legal bases to justify new policies, will quicken the pace of legislation. Others discussed the possibility that the Clause might be used as an independent legal basis for cooperation in extraordinary circumstances.
- **What is the role of military capabilities in the Clause?** Respondents identified several likely scenarios for the use of military capabilities in relation to the Clause. First, additional emphasis will be placed on making more military resources available for the protection of civilian populations outside of the CSDP framework. Second, member states may have to consider how to combine the coordination capacities for civil protection in the Commission with a use of CSDP structures and military resources within Europe (a possibility that has never been pursued). The Clause is likely to put additional pressure on each of these activities, leading some to argue that the upcoming revision of the Headline Goals will need to account for these implications of the Clause. At the very least, improved relations between the Commission’s civil protection capacities and the Council’s civilian crisis management structures will be given priority.

- **What is the balance between ‘prevention’ and ‘response’ in the Clause?** The prevention and protection provisions apply only to terrorism, if the wording and structure of the Clause are to be taken literally. They imply actions in advance of an attack, but how far in advance of an attack is a question open to interpretation. A restrictive interpretation would suggest these duties apply only to the immediate moments before an unfolding attack, e.g. intervention teams to stop the attack (ATLAS). A growing line of argument suggests these duties apply also to increased critical infrastructure protection, enhanced intelligence cooperation, advanced protocols for police cooperation, and capacity for quicker deployment of CSDP. It also suggests more actionable threat assessments, since the EU has more responsibility for preventing attacks in the first instance.
- **How will the annual ‘threat assessment’ for heads of state be conducted?** The Clause requires the European Council to conduct a regular threat assessment ‘to enable the Union and its Member States to take effective action’. Reports from the European Convention reveal members’ intention to create a high-level, ‘early warning system’ to target the most pressing threats facing the EU. This requirement could be considered the operational equivalent of updating the European Security Strategy for more pressing threats. Or it could remain a technical matter, to be conducted by the Council’s Situation Centre (perhaps in cooperation with the Commission). Whatever the case, this requirement casts a spotlight on the role of the European Council President.
- **What is the relationship between Article 222 and Article 42.7?** Respondents highlighted both clear differences and confusing similarities between the two provisions. Some differences are that Article 42.7 applies to situations of ‘armed aggression’ against the territory of a member state. It is purely intergovernmental in character and creates no role for EU institutions. An activation of the mutual defence clause does not require political coordination at the EU level. These differences should not obscure similarities between the two clauses, however. Both introduce binding commitments amongst member states. Both are predicated on the ability to draw on ‘all available means’ when requested. There are theoretical possibilities that both clauses could be triggered together, particularly in cases when a ‘threat agent’ is unclear (the Estonian cyber attacks, for example).

Wider Context

For guidance in answering these questions, it may be useful to look into the wider context in which the Solidarity Clause emerged. The Solidarity Clause is not the only mutual assistance agreement in the Lisbon Treaty, nor is it the only reference to

‘solidarity’. The word appears in an unprecedented number of places in the consolidated treaties.¹¹ This section reviews other examples in the treaties before widening the scope of the discussion beyond the EU.

EU References

In terms of other references (implicit or explicit) to solidarity within an EU context, the ‘mutual defence clause’ provision in Article 42.7 (TEU) deserves attention. Although discussed briefly above, some elaboration is in order.

The mutual defence clause can be described as purely intergovernmental in nature: it binds member states ‘horizontally’ without transferring any competence ‘vertically’ to EU institutions; nor does it require coordination at the EU level in situations when the mutual defence obligation is invoked.¹² In a legal sense, Article 42.7 differs from most treaty provisions because it is only weakly associated with EU institutions and EU level capabilities. It makes no mention of how EU partners should assist one another, only that ‘...the other member states shall have towards it an obligation of aid and assistance by all the means in their power’. In principle this formulation allows for many forms of assistance but, in practice, the explicit reference to armed aggression points most specifically to military means.¹³

Given the relatively low likelihood of an armed attack against an EU member state, the mutual defence clause is perhaps best conceived not only as an operative mechanism but also as a tool for policy development. For example, although the mutual defence clause makes no mention of the EU’s Common Security and Defence Policy (CSDP) structures, it could very well be used to motivate action in that area. By the same token, the territorial defence focus of Article 42.7 could be interpreted as an instrument towards boosting defence cooperation in such areas as common procurement. To some member states, Article 42.7’s mutual defence clause may even be seen as a stepping stone towards a long-awaited common defence agreement outside of NATO, despite a clear prioritisation in NATO in the Article 42.7 treaty text. Whatever a country’s preference for mutual defence, it stands to reason

¹¹ See Frank Hoffmeister, ‘Das Prinzip der Solidarität zwischen den Mitgliedstaaten im Vertrag von Lissabon’, in Ingolf Pernice (ed.), *Der Vertrag von Lissabon: Reform der EU ohne Verfassung?*, Baden-Baden, 2008.

¹² Earlier versions of the Draft Treaty (Article III-214) included implementation arrangements with procedures for member states to meet at ministerial level when the mutual defence obligation was to be called upon (assisted by the Political and Security Committee and the Military Committee). However, as part of the redrafting made at the IGC, these arrangements were eliminated together with a reaffirmation of Article 51 of the United Nations Charter. See the report by Teija Tiilikainen, *The Mutual Assistance Obligation in the European Union’s Treaty of Lisbon*, Publications of the Ministry of Foreign Affairs of Finland, 4/2008.

¹³ It is worth mentioning that the WEU’s Article 5, from which the EU’s mutual defence clause draws its inspiration, states that all members shall ‘afford the Party so attacked all the military and other aid and assistance in their power.’

that the potential undermining effect of the EU's Article 42.7 on NATO's Article 5 will be much studied in the years to come.

It may prove to be the case that the interpretation of Article 42.7's mutual defence obligation varies over time and becomes more flexible. Concepts such as 'armed aggression' are not static but evolve together with a changing security landscape. This creates grey zones in defining the applicability of the mutual defence clause in situations involving large-scale attacks on member states' information and communication networks, for instance (see Annexes 1 and 2 for a comparison of the mutual defence clause and the Solidarity Clause).

Other broadly defined 'solidarity obligations' can be found elsewhere in the Lisbon Treaty. One prominent reference refers to the likelihood of 'supply crises' in the EU. Article 122 (TFEU) stipulates that the Council should act in a 'spirit of solidarity' to assist a member state suffering a severe shortage in the supply of essential products or services, namely energy. Although couched in economic terms (related to the economic impact of supply crises), the commitment is interesting to note. The same article provides for the possibility of 'Union financial assistance' to an affected member states. The European Council President is given the authority to determine when to offer financial assistance during 'exceptional occurrences' or 'natural disasters' that may impact supply.

The problem of energy shortages reappears in a separate, more explicit location in the treaties. Article 194 (TFEU) on the EU's energy policy states that member states should act 'in a spirit of solidarity...to ensure the security of energy supply in the Union'. This provision has already prompted discussions on a 'solidarity mechanism' for natural gas crises, currently under discussion in the European Parliament.¹⁴

References to solidarity are also found in the treaty sections dealing with the EU's area of freedom, justice and security. Article 67 (TFEU) calls for the development of a common policy on asylum, immigration and borders 'based on solidarity'. This type of solidarity is made in reference to recent refugee flows across the Mediterranean, but could take a wider scope in the future.

Other references to solidarity feature in EU policymaking pre-Lisbon, including the use of 'solidarity payments' to Eastern and Southern partners following the 2004 and 2007 enlargements. A 'Solidarity Fund' was created in 2002 to assist stricken regions overwhelmed by natural disasters, a direct response to severe flooding in Central Europe at that time. The EU's recently adopted 'Strategy for the Baltic Sea Region'

¹⁴ Although there are still divisions among member states on how to best design the triggering thresholds of such a mechanism, there seems to be basic agreement on the need for more formalized procedures for mutual assistance in this area.

contains elements aimed at boosting regional capacities for improved safety and security from a solidarity perspective.

Finally, the EU encourages ‘solidarity’ as an organising principle with neighbouring states confronted with man-made and natural disasters. A number of programmes are currently underway to encourage crisis solidarity amongst Mediterranean countries (as part of the Euromed partnership) and amongst countries in the EU’s Eastern neighbourhood (as part of the Eastern partnership). Such programmes aim to build capacities for improved security and safety amongst countries concerned.¹⁵

Wider Europe¹⁶

Solidarity discussions within the European Union take place against a backdrop of wider security commitments. The most familiar commitment outside the EU is amongst signatories to the North Atlantic Treaty. From the earliest deliberations in the European Convention, the ‘NATO question’ raised its head. This was the case particularly in relation to the ‘mutual defence clause’, in terms of whether the elements of the WEU collective defence provision should be included in an EU treaty. As described above, the more Atlanticist members of the EU (such as the UK, the Netherlands and Denmark) were keen to maintain NATO’s primacy in ‘hard’ defence and to avoid confusing obligations of countries belonging both to the Union and the Alliance. For other members of the EU, the idea of an alternative to NATO for EU defence in the longer term proved attractive.

NATO obligations have been safeguarded, at least in the short term, in both formal and practical ways. Formally, as described above, the EU’s mutual defence clause includes text upholding NATO as the ‘foundation of...collective defence’ for its members who are also a part of the Union (see Annex 4). In other words, a NATO and EU member facing military attack would look to NATO first for help. In practical terms, NATO retains a collective defence strategy and capability, including nuclear forces and the opportunity to rely on US support, which the EU does not have and has no plans to acquire.¹⁷

Reversing the comparison, the Lisbon Treaty’s mutual defence clause and Solidarity Clause together offer an expanse of solidarity that NATO does not provide and has no practical intent or plans to acquire. The North Atlantic Treaty’s Article 5 is limited

¹⁵ These programmes are known more prosaically as the PPRD initiatives (Prevention, Preparedness and Response to Natural and Man-made Disasters).

¹⁶ This section owes much to the written contributions and helpful advice of Alyson Bailes, who participated as part of the research team on this project and co-authored a previous report on which this text is drawn.

¹⁷ Moreover, the EU Treaty language leaves open the possibility that if a non-NATO EU member were attacked, other European states coming to its aid might wish to make use of NATO-earmarked forces, other assets and procedures to do so in the most effective way – depending of course on the Non-EU Allies’ complaisance (which opens up some intriguing political scenarios).

to an 'armed attack', and as was seen after September 11, 2001, was invoked in a case of non-conventional and non-state attack but was not followed up by immediate action nor concrete contingency plans. NATO collective action against such 'new threats' was quickly diverted onto other people's territory (Afghanistan) and into naval patrols instead. Perhaps an area of more obvious overlap is in NATO's Article 4, which allows allies to consult and consider action 'whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the allies is threatened'. This provision could potentially cover a wider range of scenarios, including military attacks, civil conflict, and non-military actions, to which both EU and NATO could potentially respond. The current review of NATO's 'Strategic Concept' may revisit these scenarios.

Other solidarity discussions take place at a sub-European level. Nordic cooperation, for instance, increasingly features references to solidarity and mutual assistance. In 2009 the so-called 'Stoltenberg report' (named after its author, a former Norwegian Foreign Minister commissioned to study security and defence issues in the Nordic region) proposed a number of measures to enhance security cooperation amongst Denmark, Finland, Iceland, Norway, and Sweden. One proposal was for a binding 'Nordic Solidarity Declaration', which would guarantee for mutual assistance in situations of 'external attack or undue pressure'.¹⁸ Although the response by Nordic ministers to such a provision was muted (not least because it might interfere with NATO obligations of solidarity), the value in the wording of the text bears mentioning as an example of ambitious, sub-regional cooperation. Other examples illustrating the development sub-regional security concepts are found in the North European organisations of post-Cold War Europe, such as the Council of Baltic Sea States (CBSS), founded in 1992, and the Barents Euro-Arctic Council (BEAC), established in 1993.

Wherever shared land borders exist, bilateral cross-border arrangements can be found in Europe. In certain cases, neighbours have institutionalised cooperation, building on notions of solidarity and shared threat perceptions. Combating terrorism has prompted wide ranging cooperation between the UK and Ireland, while the threat of flooding in the sea and river systems of Rhine and Danube basins has generated a long line of cooperation agreements amongst affected countries. Some European countries share in localized confidence building, arms restraint and monitoring regimes, notably in and around the Western Balkans.

In summary, the solidarity principle appears both in historical context and with increasingly frequency in today's European policy discussions. In some cases, the principle is used as a rhetorical device to encourage unity. In other cases, it comes as

¹⁸ The Stoltenberg report can be found online at http://eng.utanrikisraduneyti.is/media/Frettatilkynning/Nordic_report.pdf.

a political obligation or even as a legal obligation (as we argue is the case for the Solidarity Clause). None of this takes away from the fact that ‘solidarity’ means different things to different people, which could lead to conflicting expectations and possible misunderstandings. The Solidarity Clause, which we return to in the next section, might provide an opportunity to clarify expectations and build towards common understandings.

Recent Developments

Following the adoption of the Lisbon Treaty in December 2009, a drive is underway to develop the ‘implementation arrangements’ for the Solidarity Clause. According to the treaty text, the Clause must be implemented via a Council decision based on a joint proposal from the Commission and High Representative. The PSC and COSI also have a role: they can issue recommendations to the Council before the implementation decision is taken. Through this process, many of the current uncertainties will be ironed out, including the Clause’s scope, breadth, and administrative machinery.

Our interview data shows that, at the time of writing, member state positions on the Solidarity Clause, generally, and its implementation arrangements, specifically, remain in flux. It is possible, however, to detect three roughly proportionate ‘camps’, based on personal opinions voiced from national capitals. The first camp includes member states with a generally positive attitude towards the Clause, supporting its legal standing, encouraged by its provisions to draw the full range of EU instruments into a more cohesive unit, and heartened by the signal of mutual support it represents. This camp is likely to support an extensive and proactive implementation of the Clause.

The second camp includes member states with an ambivalent attitude towards the Clause, largely taking a ‘wait and see’ approach and neither openly supporting or rejecting the idea of an extensive implementation. The third camp includes member states with a generally negative attitude towards the Clause, because they are either not convinced that it is necessary or concerned that it will be ‘abused’ by opportunistic governments. This camp is likely to resist a wide-ranging and proactive implementation provision for the Clause.¹⁹

The position of the EU institutions also demands consideration. The European Commission, which will draft the implementation language, seems to hold views that coincide with either the first or second camps, depending on which directorate-

¹⁹ We have chosen not to identify which member states fall into which opinion camps, for reasons of confidentiality.

general is surveyed.²⁰ The European Parliament is likely to take a strong interest in the Solidarity Clause, not least because of its authority over the EU budget. The Parliament has been given a limited role in the implementation of the Clause (it 'shall be informed' of the arrangements) but its longer-term role may be more extensive. The Parliament has been an active proponent of initiatives aimed at strengthening mutual assistance in crises and disasters, and our interview data suggest an attitude mainly in line with the first camp.

On balance, therefore, the positive member states, plus the ambivalent member states and the EU institutions, point towards a rather extensive set of arrangements for implementing the Solidarity Clause. Our recommendations, set out in the next section, therefore speak to the content of this implementation decision.

Other policy questions currently under deliberation in Brussels will impact upon the Solidarity Clause. First, the Internal Security Strategy, which makes frequent reference to solidarity, will be followed-up through legislation in the autumn of 2010. Links between the Solidarity Clause and the Internal Security Strategy, especially in the area of new threat assessments, are likely to emerge. Second, there are several 'lessons-learned' exercises currently underway in relation to recent events. The Haiti disaster and the volcanic ash crisis both had a formative impact on the EU's self-perception of its own effectiveness during crises and will likely prompt new assessments and proposals. Third, a review of the EU's disaster response capacities will be presented in a Commission Communication in November 2010. This review may highlight gaps and weaknesses that could be rectified by the Solidarity Clause. Fourth, a process is underway in the Commission to assess the EU's civil protection cooperation 'post-Lisbon'. Those results will be captured in a policy package introduced in early 2011.

The Way Forward: Breathing Life into the Clause

Few can dispute the fact that the Solidarity Clause in Article 222 (TFEU) sends an unprecedented, treaty-based signal to European elites that meaningful cooperation is required to combat today's complex risks and threats. The EU is already engaged in a host of what might broadly be called 'crisis cooperation' activities (threat analysis, crisis preparation, and disaster response initiatives), but never before has that full spectrum been highlighted in a single provision.

²⁰ We are grateful to Alyson Bailes, from the University of Iceland, and Emma Hallencreutz, a member of EUROSEC in the Swedish National Defence College, who contributed national opinion data useful for drawing conclusions in this section.

Moreover, with the entry into force of the Lisbon Treaty, the Solidarity Clause is now in effect. Any member state may call upon the Council, at any time, to trigger the Clause, even though there are not yet any 'implementing arrangements' in place.

The task thus facing European and national policymakers is to flesh out details regarding the commitments embedded in the Clause. Ignoring those commitments, or assuming that the Clause will never be triggered, is wishful thinking. The history of the EU's crisis cooperation activities is one of inexorable development towards where we are today: a multitude of policies and instruments which function largely independently of one another, with varying degrees of effectiveness, and with unclear levels of national government participation (or even awareness). Should a major, transboundary, complex crisis strike Europe, the likelihood of a well-integrated response across Brussels institutions and between national and European levels is very much in doubt.

We argue that policymakers should develop their positions on the Solidarity Clause with short-, medium-, and long-term considerations in mind.

Short-Term (Implementing the Clause)

Short-term considerations relate mainly to the upcoming proposal for 'implementing arrangements' for the Solidarity Clause. The central issue here is how this should be carried out. Should those arrangements be comprehensive and detailed, setting out new policy initiatives and decision frameworks? Or should they be brief and vague, pointing out the existence of the Solidarity Clause but going no further? In short, what role should the Solidarity Clause play against the backdrop of what already exists in the EU?

We agree with the strand of opinion arguing that the Solidarity Clause should serve as a framework for existing efforts (or, as some responded, an 'umbrella instrument') rather than as a stand-alone provision with substance in its own right. The Clause should provide a political-legal platform upon which to (a) monitor relationships and improve coordination between existing policy initiatives, (b) streamline information assessment and decision structures, and (c) identify gaps and overlaps in preparation, tools, and funding sources. Currently, there is no central location for these efforts, nor is there political ownership over this broad range of activities. In this way, the Solidarity Clause would provide the (widely demanded) 'value added' by affording the opportunity for central leadership.

This approach would also answer the Solidarity Clause's implicit call to the EU institutions to 'get their house(s) in order'. The Clause speaks to multiple threats, the use of 'all available instruments', common responsibilities between national and supranational levels, and joint decision and assistance obligations. Current EU cooperation activities, although substantial, remain fragmented. Recent crises (ash

clouds, pandemics, energy shortages) have revealed serious coordination challenges within the EU institutions. As similar crises loom on the horizon (statistics suggest they will hardly decrease), the EU's institutional fragmentation could damage response effectiveness.

Medium-Term (Triggering the Clause)

The question of triggering the Clause requires careful consideration. Under what conditions should the Clause be triggered? On the one hand, our conception of the Solidarity Clause as a platform upon which to build readiness for crises, rather than as an instrument in itself, makes the 'scope and threshold' question slightly less relevant. Whenever the Solidarity Clause is triggered, for whatever reason, the resulting response should be comprehensive, integrated, and smooth (owing to effective preparedness spurred by the oversight role associated with the Solidarity Clause). This approach is consistent and complementary to the political reality that member states will trigger the Clause if and when they see fit, for different kinds of reasons.

On the other hand, common sense dictates that not all events are worthy of triggering the Solidarity Clause. Should member states, or the EU institutions, move towards a specification of a 'threshold' for triggering the Clause, one option is to add implementation language suggesting that the Solidarity Clause should only apply to large-scale incidents simultaneously or consecutively affecting multiple member states. Such incidents are variously described as 'cross-border', 'cross-sectoral', and/or 'multi-level'. The latter refers to the fact that such threats, and resulting crises, are likely to be the kinds that cause great harm to individuals and life-giving infrastructures. These kinds of threats could be painted in a broad brush, and would be consistent with the threat types outlined in the Clause. Most terrorist attacks, for example, usually fit the transboundary definition by the nature of their planning, execution, or effect.

What happens at the national level when the Solidarity Clause is triggered? In the medium-term, the Clause requires national governments to consider their solidarity obligations more carefully. National governments will need to increase their capacities to respond to two of the Clause's main obligations. First, to 'act jointly' requires that national governments improve their ability to partner with others, and with Brussels, when disaster strikes. Second, to 'assist' one another demands that national governments enhance capacities for providing and receiving assistance. Most member states have well-functioning systems for providing humanitarian aid to non-EU countries. The systems for giving assistance within Europe across the wide range of potential situations covered by the Solidarity Clause (e.g. health threats, social unrest, infrastructure disruptions), however, are less well explored and tested. This includes legal questions, divisions of responsibility within government,

questions of financing and operational coordination across sectors. Much of the same issues apply in relation to receiving assistance.

Another consideration relates to the Solidarity Clause's threat assessment requirement. This provision, which requires that the European Council take action based on a comprehensive threat analysis, is the first of its kind to mandate a threat assessment exercise at the political level in Brussels (the European Security Strategy was a one-time exception). In the medium-term, this provision affords an opportunity to achieve two tasks. First, it should spur efforts to draw together the EU's currently fragmented and narrowly focused threat and risk assessments (currently divided between such units as Europol, Frontex, MIC and the Situation Centre). That effort might encompass a wider range of potential threats (and risks), much as national governments currently do. Second, a threat and risk assessment validated at the European Council level could be used to steer and prioritise both policies and funding decisions.

Long-Term (Developing the Clause)

Some officials interviewed for this report made a simple but insightful comment: the real impact of the Solidarity Clause will be felt over the long-term. Owing to the prevalence of tools and activities at the European level, national governments will increasingly orient their policies in a European direction. National instruments and tools may become increasingly devoted to European purposes (as is currently underway in some civil protection activities). In academic terminology, this refers to a process of 'Europeanisation'.

Studies reveal that Europeanisation, although unsteady and unpredictable, can be accelerated through supranational funding incentives.²¹ If EU officials wish to assist national governments in 'preparing for solidarity', new funding and co-sponsorship opportunities (beyond what currently exists) should be made available. Additional funding would have to be provided based on some degree of conditionality if some member states (especially those from Northern Europe) are to engage enthusiastically in these solutions.²² Conditionality could be based on the degree to which member states comply with overall, long-term capacity goals, akin to the (albeit more narrowly defined) 'headline goals' in the field of CSDP. EU-wide standards for prevention and preparedness could be agreed amongst member states and supervised by the European Commission.²³ On-going training and exercise programmes, especially for the political-administrative level of disaster and crisis

²¹ See, for example, Christoph Knill (2001) *The Europeanisation of National Administrations: Patterns of Institutional Change and Persistence*. Cambridge: Cambridge University Press, 2001.

²² Such member states tend to be skeptical of EU funding for disasters clean-up, for instance, if the affected government is perceived as not having invested sufficiently enough to prevent the disaster or alleviate damage.

²³ This idea was inspired by the comments of both Magnus Ekengren and Alyson Bailes.

management personnel in member states, could be put in place to further encourage fluid European cooperation.

Many EU member states will need to reconcile their EU solidarity commitments with pre-existing security obligations over the long-term. The Clause adds a new layer of obligation to European security arrangements, from NATO (Article 5) to the EU mutual defence clause (Article 42.7) to regional security arrangements. Some of these arrangements lie at the heart of member states' security policies, and will remain paramount. Against the backdrop of today's complex, cross-border, and non-state-based threats, however, there is reason to anticipate a gradually increasing use of the EU's Solidarity Clause. Not only do such threats require more tools and instruments than offered in the other obligations, but the most common kinds of hazards on the threat horizon today are those covered by the Solidarity Clause. Recognising the risk of weakening NATO and more 'hard' security guarantees, some member states will need to delineate and clarify the different 'zones of application' of different agreements.

In this respect, and with a view to the long-term, the implementing arrangements for the Solidarity Clause should include a clear delineation between the two clauses in the Lisbon Treaty: the mutual defence clause and the Solidarity Clause. Surprisingly, there appears to be a need to clarify for member states the difference between the two and to eliminate misunderstandings. The mutual defence clause's focus on territorial defence is uncomfortable to both non-allied/neutral states and to some NATO members of the EU. A clearer delineation would benefit the operational effectiveness of the Solidarity Clause and avoid public perceptions that the EU is overly 'securitising'. The mutual defence clause could be used as contrasting narrative to the Security Clause, in so far as the latter is focused on non-territorial and non-military cooperation focused on building a resilient EU capable of protecting European citizens and societies against cross-border risks and threats. Articulating more clearly this kind of 'vision' would go a long way towards avoiding confusion between the clauses and the ramifications that could go along with it.

We encourage policymakers to consider these short-, medium-, and long-term recommendations as attention to the Solidarity Clause continues to build. The policy choices made today will have a lasting impact on whether the EU can build a better organised and more comprehensive security community in the face of increasingly complex risks and threats.

ANNEX 1

A comparison between solidarity provisions Article 42.7 and Article 222

	Mutual Defence Clause 42.7 (TEU)	Solidarity Clause 222 (TFEU)
Binding on all MS	yes	yes
Binding on the Union	no	yes
Establishing additional competence for the EU	no	yes
Legal/ECJ implications for non-compliance	no	yes
Connection to European Security Strategy (ESS)	weak	strong
Relevant threat scope	narrow	broad
Union instruments implied	no (CSDP?)	all
MS resources implied	all	all
Minimum assistance specified	no	no
Specified implementation process	no	yes
EU demands on national preparedness	no	possibly

ANNEX 2

Possible crises and disasters and their relevance for 42.7 (TEU) and 222 (TFEU)

Might a clause, or both, be invoked by MS in the following situations?

	42.7 (TEU)	222 (TFEU)
----- Disruptions of oil supplies to the EU -----	No	Yes
Declared intent by terrorist group in third country to stage a 9/11 attack in Europe -----	No (?)	Yes
Radiological bombs exploding in vicinity of EU institutions -----	No (?)	Yes
A major earthquake devastating a MS -----	No	Yes
(State-sponsored) cyber attacks against strategic information networks in MS -----	Yes (?)	Yes
Severe pandemic -----	No	Yes
Armed attacks against a MS (e.g. Greece) -----	Yes	No (?)
----- Massive migratory inflow -----	No	Yes

ANNEX 3

Interview Lists (Names withheld for confidentiality reasons)

Brussels

Secretariat-General (2)	Commission
Council Situation Centre (2)	Council
General Secretariat (5)	Council
Legal Services (2)	Commission
Legal Services (2)	Council
Counter Terrorism Unit (3)	Council
Other Directorates-General (3)	Commission
CSDP Policy Officer (1)	National Permrep
Civil Protection Representative (8)	National Permreps (SE, DK, BU, RO, IT, FR, UK, NL)
Other diplomats (2)	Permreps
MEP (1)	Parliament

Finland

Secretary of State (1)	Prime Minister's Office
Under- Secretary of State (1)	Prime Minister's Office
Head of Policy Planning (1)	MFA
Security Expert, Planning Staff (1)	MFA
Secretary of State (1)	MFA
Head of Information (1)	MoD
Head of EU Affairs Committee (1)	Parliament
Advisor, Foreign Affairs Committee (1)	Parliament
Head of EU Office (1)	Commission Delegation to Helsinki
Board Members (3)	Utrikespolitiska Institutet, Helsinki
Journalists (2)	Helsinki
Policy Expert (1)	Crisis Management Initiative, Helsinki
Desk Officer (1)	Civil Emergency Management

Sweden

Senior Advisor (1)	Prime Minister's Office
Deputy Director(1)	Prime Minister's Office
Director-General (1)	Swedish Civil Contingencies Agency
Strategic Advisor (1)	Swedish Civil Contingencies Agency
Head of Department (1)	Ministry for Foreign Affairs
Deputy Director (1)	Ministry for Foreign Affairs
Head of Department (1)	Ministry of Defence
Deputy Director (1)	Ministry of Defence
Deputy Research Director (1)	Ministry of Defence
Head of Department (1)	National Defence College

ANNEX 4

'The Mutual Defence Clause' Article 42(7), Treaty on European Union

7. 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.

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Sara Myrdal och Mark Rhinard

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Utrikespolitiska Institutet

The Swedish Institute of International Affairs

Postal address: Box 27035, SE-102 51 Stockholm

Visiting address: Drottning Kristinas väg 37

Tel: +46 8 511 768 00 Fax: +46 8 511 768 99

info@ui.se www.ui.se

