

Collective defence and armaments control

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Collective self-defence and armaments control

Collective defence

Western European Union (WEU) came into existence with the Brussels Treaty of 17 March 1948 between Belgium, France, Luxembourg, the Netherlands and the United Kingdom. The organisation, which was known in 1948 as Western Union, was an alliance whose official aim was to guarantee mutual security by committing its Member States, as the preamble to the Treaty put it, 'to take such steps as may be held to be necessary in the event of a renewal by Germany of a policy of aggression'. The Treaty arose as a result of a British initiative from Ernest Bevin, Foreign Secretary in Clement Attlee's Labour Government, who, in a speech on 22 January 1948, proposed extending the Dunkirk Treaty of 4 March 1947 to include the Benelux countries. The underlying objective was to heighten European defence readiness in the face of what was seen at the time as a major issue at the start of the Cold War: containing or fencing in the influence of the Soviet Union and communist movements in Europe.

The commitment to self-defence in the event of attack combined the concepts of collective, mutual and automatic action. In other words, it was a treaty of alliance in which each member took part in defending all the others ('one for all and all for one'), and the principle was that of automatic aid and assistance (Article IV of the Brussels Treaty).

After the failure of the European Defence Community (EDC) and the rise in East-West tensions in Europe against the background of the Korean War, France could not oppose the Federal Republic of Germany's (FRG) joining the North Atlantic Treaty Organisation (NATO). At the instigation of the United Kingdom (a compromise put forward by Sir Anthony Eden ⁽¹⁾), the Paris Conference of 5 October 1954 decided to modify the Brussels Treaty by setting up WEU to take the place of Western Union (a protocol to this effect was signed in Paris on 23 October 1954). Italy and the FRG joined WEU at once.

The modified Brussels Treaty was still built around the principle of a commitment to common solidarity in the event of territorial aggression (Article IV of the 1948 Treaty, which became Article V), but also implied that NATO took precedence in several security and defence fields, including that of acting on mutual defence commitments (Article IV, inserted in 1954). There were several articles clearly enunciating the major principles of solidarity and common defence which only affected the full Member States (most recently the Ten), not the Associate Member States, Affiliate Members, Associate Members, Affiliate Associate Members, Permanent Observers, Affiliate Permanent Observers or Affiliate Associate Observers:

'[...]

Article IV

In the execution of the Treaty, the High Contracting Parties and any Organs established by Them under the Treaty shall work in close co-operation with the North Atlantic Treaty Organisation.

Recognising the undesirability of duplicating the military staffs of NATO, the Council and its Agency will rely on the appropriate military authorities of NATO for information and advice on military matters.

Article V

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.

Article VI

All measures taken as a result of the preceding Article shall be immediately reported to the Security Council.

They shall be terminated as soon as the Security Council has taken the measures necessary to maintain or restore international peace and security.

The present Treaty does not prejudice in any way the obligations of the High Contracting Parties under the provisions of the Charter of the United Nations. It shall not be interpreted as affecting in any way the authority and responsibility of the Security Council under the Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Article VII

The High Contracting Parties declare, each so far as he is concerned, that none of the international engagements now in force between him and any other of the High Contracting Parties or any third State is in conflict with the provisions of the present Treaty.

None of the High Contracting Parties will conclude any alliance or participate in any coalition directed against any other of the High Contracting Parties.

[...].

Article V of the WEU Treaty should definitely be seen in conjunction with Article 5 of the Washington (NATO) Treaty, which stipulates that ‘The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.’ ‘Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.’

The WEU Treaty opted for the words ‘will [...] afford [...] aid and assistance’, whereas for NATO it is a matter of assisting the party or parties attacked. There is a clear difference of interpretation in the choice of verbs: the verb ‘assist’ does not have the same force as ‘afford aid and assistance’. Moreover, ‘such action as it deems necessary’ leaves the States in the Alliance considerable room for manoeuvre as to the choice of action, ranging from a diplomatic protest to military engagement. However, even if WEU, which was ‘restructured’ after the year 2000, still relied on the binding and reassuring character of automatic collective solidarity as expressed in Article V of the modified Brussels Treaty, any commitment by the ten full members in the event of an attack would in fact be put into effect by the Atlantic Alliance. The policy of stripping WEU down in the 1950s, the lack of credibility on the European side in terms of military power and capability when compared with the Alliance’s American resources, the leading role assumed by NATO in the Cold War setting, pressure from the UK and the failure of efforts to revitalise WEU very quickly confirmed this dependence on Europe’s transatlantic partners.

Article V of the WEU Treaty related solely to a possible armed attack from a non-WEU Member State on the territory of a Member State. Part III of the Petersberg Declaration stipulated that ‘the security guarantees and defence commitments in the Treaties which bind the member States within Western European Union and which bind them within the Atlantic Alliance are mutually reinforcing and will not be invoked by those subscribing to Part III of the Petersberg Declaration in disputes between member States of either of the two organizations’. This was a way of avoiding being drawn into diplomatic, legal and military difficulties in the event of tension between Greece, Turkey and Cyprus.

In other words, should the EU’s mutual assistance clause, which refers, for those Member States that are also members of NATO, to NATO’s principle of common assistance (Article 5) but is less binding than that of WEU, have required the mutual assistance clauses of the EU (the Twenty-Seven) and WEU (the Ten) to be maintained in parallel so as to preserve the most extensive and automatic military assistance for the EU

Member States that are also members of WEU and NATO? The debates took on a political and strategic nature. In the absence of another solution, the decision to keep WEU alive was temporarily justified by the cautious preservation of Article V on common solidarity rather than by any defence of the organisation's Parliamentary Assembly by the Member States' governments. At that time, there was a certain ambiguity as to the number of operational or legal guarantors. This was resolved in the report by the Council Presidency on the strengthening of the ESDP, which stated that 'The commitments under Article 5 of the Washington Treaty and Article V of the Brussels Treaty will in any event be preserved for the Member States party to these Treaties', while also incorporating the passage on the Atlantic Alliance as the foundation of collective defence.

This Article V also made it possible to start giving thought within the European Union, as from the Convention on the Future of Europe (February 2002–July 2003), the Intergovernmental Conference (October 2003–July 2004), the Constitutional Treaty and then the Lisbon Treaty, to the question of incorporating a collective solidarity provision into the EU.

However, the ratification of the Lisbon Treaty resulted in the repeal of the modified Brussels Treaty. Even so, the interpretation of the provision in the Lisbon Treaty, which applies to all 28 EU Member States, has proved to be less binding than that of Article V of the WEU Treaty.

The incorporation of a duty of mutual assistance between the Member States in the Treaty establishing a Constitution for Europe was intended to rule out the wholesale integration of Article V of the WEU Treaty at EU level. In the Constitutional Treaty, the EU supported the principle whereby if a Member State was the object of a terrorist attack or the victim of a natural or man-made disaster, the Union was obliged to mobilise all the instruments at its disposal, including military resources (Articles I-43 and III-329), to assist that Member State. ⁽²⁾

But ultimately, the texts went from a 'solidarity and common security' clause that covered both common defence and solidarity (a Franco-German proposal to the Convention) to a separation between the two clauses (Convention, final report of Group VIII on Defence), then to closer cooperation in mutual defence (Article I-40(7) of the draft treaty), and finally a mutual assistance clause for everyone with the emphasis on NATO resources for EU Member States that also belong to NATO (Treaty of Lisbon).

Among the advances made in the Lisbon Treaty ⁽³⁾, the inclusion of a 'safeguard clause' raised many questions ⁽⁴⁾.

Article 42(7) of the Treaty on European Union states:

'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 ⁽⁵⁾ 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.'

This Article 42(7), which was compared above with Article 5 of the Washington (NATO) Treaty, should be also be considered in conjunction with Article V of Western European Union's modified Brussels Treaty, namely, that 'If any of the High Contracting Parties ⁽⁶⁾ 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.'

Finally, we should note that Article 42(7) TEU can interact with Article 222 TFEU and Article 43 TEU (on EU missions and the application within these missions of measures to fight against terrorism if necessary), and also with the articles relating to national security (73, 74 and 76 TFEU).

Several considerations may be raised after a first reading of this assistance clause. Firstly, the EU incorporates the notion of assistance in the event of armed territorial aggression. It also preserves the specific characteristics of the 'non-aligned' countries and nuclear countries (see Article 42(7) TEU), and states that, as for WEU

(Article IV) ⁽⁷⁾, the mutual assistance clause will be implemented via NATO for EU Member States that are also members of NATO. Finally, Article 42(7) of the Treaty of Lisbon uses the expression ‘shall have towards it an obligation of aid and assistance’, whereas the WEU Treaty and the Convention on the Future of Europe that prepared the Constitutional Treaty had chosen the wording ‘afford the Party [...] aid and assistance’. Again, there is a clear difference of interpretation in the choice of verbs and the specific implications of each term.

Armaments control

Of the protocols attached to the modified Brussels Treaty of 1954, the last two laid down the provisions relating to armaments control. Protocol No III defined the types of weapons to be controlled: firstly, nuclear, biological and chemical (NBC) weapons, the manufacture of which by the FRG was prohibited, and, secondly, what was described as the conventional type, comprising long-range weapons systems: guided missiles, strategic bombers and warships. Protocol No IV, cited in Article VIII(2) of the Treaty, laid down the control procedures and dealt with the establishment and mode of operation of the Agency for the Control of Armaments (ACA), acting under the control of the WEU Council. Like the other three protocols, it entered into force on 6 May 1955, when ratification took place. In fact, their purpose was to reassure European countries, especially France, in the face of the gradual political and military rehabilitation of the FRG and the controlled rearmament of that country within NATO. The purpose of the surveillance was to monitor the FRG’s compliance with the commitments it had given not to manufacture certain types of armaments on its territory. The plan was also to put together a voluntary system of quantitative control of the armaments possessed by all the member countries on the mainland of Europe by organising inspections of arms industries, military units and military depots. In fact, all the States parties to the Treaty were subject to controls, in order not to single out the FRG.

The object of Protocol No IV was to rebuild all-round trust among European countries after the disaster of the Second World War. In addition, controlling the levels of stocks, depots and resources was a way of making WEU Member States accept their responsibility for standing shoulder to shoulder on the mainland as a guarantee and a source of credibility under Article V, on self-defence. After all, Europeans were the first to be affected by the geopolitical situation on the Old Continent.

But ACA procedures relied on the goodwill of the Member States to answer the questionnaires which the Agency sent out (for the purpose of assessment on the basis of records). Also, inspections (for on-the-spot checks) could not be carried out on installations under NATO authority, which eliminated a great many sites located, more often than not, in the FRG. In such cases, only documents supplied by NATO could be inspected, with sample checks for other forces.

As for the controls of the types of conventional weapons listed in the 1954 protocols, they were only a partial success, since the British refused to allow any checks on their depots on the mainland of Europe, and France and Italy required advance notice of inspections. The countries named had not in fact ratified the ‘Convention concerning measures to be taken by Member States of Western European Union in order to enable the Agency for the Control of Armaments to carry out its control effectively and making provision for due process of law, in accordance with Protocol No IV of the Brussels Treaty, as modified by the Protocols signed in Paris on 23 October 1954’.

Fairly soon, there was a relaxing of the binding features set out in ACA documents, owing to pressure from national strategic and industrial interests (concerning confidentiality and competition), the slow progress made in drawing up the tables setting the manpower and armament levels of the States parties to the Treaty on the mainland of Europe (data were not received until 1964), battles for influence with Euratom (the European Atomic Energy Community, 1957) and with NATO, including French objections regarding its nuclear strike force ⁽⁸⁾, and the priority given to the conventional rearmament of the FRG in the front line facing the Warsaw Pact. From 1958 to 1984, the clause allowing Annex III to be revised (at the request of the FRG and on a recommendation from SACEUR ⁽⁹⁾) was invoked 13 times to allow warships to be built and the prohibitions on guided missiles and influence mines ⁽¹⁰⁾ to be gradually relaxed.

In the new, bipolar world which had emerged from the Cold War, confronted with the democracy now well-established in the FRG, and having regard to the importance of the Atlantic Alliance, on 27 June 1984 — when the process of revitalising the modified Brussels Treaty organisation was under way — the WEU Permanent Council repealed the provisions setting limits on the production of what were termed conventional weapons, and went on, on the same date, to take a decision to abolish the Agency. The question of controls on nuclear, biological and chemical weapons also took on a lower profile, being left to Euratom and to the processes of NBC control, supervision and disarmament taking place in other bodies and at other levels.

The WEU Parliamentary Assembly continued its reflections on disarmament and arms control. A number of reports⁽¹¹⁾ were drafted and debated until the organisation was dissolved. These focused on the general monitoring of arms reduction agreements, the role of the ACA, control of biological and chemical weapons, the Treaty on Conventional Armed Forces in Europe, nuclear disarmament, satellite monitoring of compliance with agreements, the Non-Proliferation Treaty and the ban on nuclear testing.

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(1) The failure of the EDC having created a vacuum, the British Foreign Secretary successfully proposed maintaining considerable numbers of British troops in Germany, comprising four divisions and its tactical air force (the United States and Canada made the same commitments to provide troops in the NATO framework), proposing at the same time that Bonn should participate in the defence of the West through the Atlantic Alliance and regain its sovereignty (under supervision). France, meanwhile, secured endorsement for the idea that the Brussels Treaty should also be used as an instrument for limiting and controlling future German rearmament. A conference was held in London on 28 September 1954 to finalise the details and sign the final act on 3 October 1954.

(2) The terrorist attacks of 11 March 2004 in Madrid played a major role in the adoption of this form of solidarity by the Council of the EU.

(3) See EPC, Egmont and CEPS (Joint Study), *The Treaty of Lisbon: Implementing the Institutional Innovations*, Brussels, November 2007; Haenel, Hubert, *Le Traité de Lisbonne*, in Senate Reports No 76, Delegation for the European Union, Paris, 8 November 2007; Poncet, Jean-François, Information report No 188 on behalf of the Committee for Foreign Affairs, Defence and the Armed Forces (1) on the Treaty of Lisbon, Senate, Paris, 30 January 2008; Corbett, Richard; Mendez de Vigo, Inigo, Report on the Treaty of Lisbon, A6-0013/2008, Committee on Constitutional Affairs, European Parliament, 29 January 2008; Missiroli Antonio, The Impact of the Lisbon Treaty on ESDP, Policy Department External Policies, Briefing paper, European Parliament, Brussels, January 2008; Poniatowski, Axel, Information report No 439 on the changes effected by the Treaty of Lisbon to the Treaty on European Union and the Treaty establishing the European Community, National Assembly, Paris, 28 November 2007; Masseret, Jean-Pierre, *Traité modificatif et sécurité et défense de l'Europe* — Response to the Annual Report of the Council, document C/1979, Assembly of Western European Union, Paris, 6 November 2007; Chopin, Thierry; Macek, Lukáš, 'Le traité réformateur: vers une Union européenne politique?', in *Questions d'Europe* No 78, Fondation Robert Schuman, Paris, 5 November 2007; Dumoulin, André, 'Sécurité nébuleuse dans le traité de Lisbonne', in *L'Echo*, 11 April 2008.

(4) These had already been raised during the debates within the Convention and regarding the substance of the Constitutional Treaty. They are once again the focus of discussions in terms of both the scope for legal interpretation and the political analysis of the role, importance and relevance of this clause within the EU and also, indirectly, in relation to WEU and NATO.

(5) Note that Article 51 states that 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.'

(6) This concerns the ten full Member States (Belgium, Germany, France, Italy, Greece, Spain, the Netherlands, Luxembourg, Portugal and the United Kingdom), and not the states with various other statuses, which did not benefit from this solidarity.

(7) 'In the execution of the Treaty, the High Contracting Parties and any Organs established by Them under the Treaty shall work in close co-operation with the North Atlantic Treaty Organisation. Recognising the undesirability of duplicating the military staffs of NATO, the Council and its Agency [editor's note: the Agency for the Control of Armaments, or ACA] will rely on the appropriate military authorities of NATO for information and advice on military matters.'

(8) Following refusal by the Council, the ACA was never able to carry out any checks on nuclear and biological weapons, even though the Council approved the list of biological weapons on 7 February 1962.

(9) Supreme Commander Allied Forces in Europe

(10) Mines which detonate in response to changes brought about by a vessel either in certain ambient conditions or by radiation given off by the mine itself.

(11) These include the first report of the WEU Assembly on these questions drafted by Mr Fens, *Activity of Western European Union in the sphere of security and the production and control of armaments*, document 12, 17 April 1956, and the final report on this topic, by Lluís Maria de Puig, *Monitoring international discussions on arms control and disarmament*, document 1784, 5 June 2002.