



**UNIVERSIDADE CATÓLICA PORTUGUESA**

**COLLECTIVE SELF-DEFENCE  
AFTER THE PARIS TERRORIST ATTACKS**

What's in for the Union?

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*Les terroristes croient que les peuples libres  
se laisseraient impressionner par l'horreur.*

**François Hollande, 16 Nov. 2015, French Congress**

## **Abstract**

This paper focuses on the right to Collective Self-Defence invoked by the French President soon after the Paris terrorist attacks. It is its purpose to enlighten the possible reactions available to France and to the European Union as a whole and most specifically to understand why the French President invoked, for the very first time, article 42.7 of the Treaty on European Union. To fulfil such goal, the presentation will be divided into three main chapters. The first includes factual guidelines of the events that boosted a strong French response. The second explains the United Nations regime on the use of force for collective self-defence, crucial and unavoidable because of its primacy position. And the last chapter analyses both NATO and EU regimes simultaneously available, deals directly with the mutual defence clause (article 42.7 TEU) and with the international States solidary reactions that followed. Owing to the intergovernmental nature of article 42.7, the official positions are not easy to access.

**Keywords:** Collective self-defence; Mutual Defence Clause; Security; Solidarity; European Union.

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## **Acronyms and Abbreviations**

CSDP – Common Security and Defence Policy

EU – European Union

EU/EEAS - European Union External Action - European External Action Service

GA – General Assembly

HR – High Representative of the European Union for Foreign Affairs and Security Policy

ICJ – International Court of Justice

IS/ISIS – Islamic State or Dae'sh

MS – Member-State

NATO – North Atlantic Treaty Organization

SC – Security Council

TEU – Treaty on European Union

TFFEU – Treaty on the Functioning of the European Union

UN(O) – United Nations (Organization)

UNC – United Nations Charter

UNSCR – United Nations Security Council Resolution

## Introduction

It is this paper's aim to analyse what was the European collective defensive answer to the direct terrorist attacks happening on Friday 13 November, in Paris.

Terrorism<sup>1</sup> is now more than ever present in our daily lives. In this particular case, ISIS poses a recognized global threat to international peace and security and it has become clear that the only way to stop it is through solving the Syrian Crisis.

I believe this paper is of the utmost importance to understand what the mechanisms ready to set into action are and what has indeed been done in this current geo-political scenario of collective security.

To fulfil such purpose, I shall answer three main questions:

I) What happened? This chapter gives a brief explanation of the facts occurring on Friday 13 that unchained specific collective self-defensive actions from all Member-States.

II) What is the UN bounding regime and what did the SC do to answer to such events? To this end, it is crucial to understand the general *status quo* of the use of force for collective self-defence under international law anchored in article 51 and UNSCR 2249.

III) What are the options available in other parallel regimes like NATO and the EU, both regional organizations with a defensive component? This Chapter explores the choice for the mutual defence clause and the EU Member-States' solidarity to combat this threat.

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<sup>1</sup> Despite the inexistence of a commonly agreed definition, the 2004 Report of the UN High-Level Panel on Threats, Challenges and Change defined terrorism as "any action... that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act."

## I. Factual Guidelines

The European Union has been recently shaken by terrorist attacks.

On the 7 January 2015, a satiric French newspaper was attacked, when two brothers, armed with assault rifles and other weapons, killed 11 people and injured other 11. They identified themselves as belonging to the Islamist terrorist group Al-Qaeda's branch in Yemen, who took responsibility for the attack.

After this episode, an enormous attack occurred in Paris on Friday 13 November. It was perpetrated by gunmen and suicide bombers who hit a concert hall, a major stadium, restaurants and bars and left 130 people dead and hundreds wounded. The self-proclaimed Islamic State<sup>2</sup> soon vindicated the actions.

Despite these terrorist organizations not being the same, their actions brought to light France's vulnerability. Moreover, such acts showed beyond any doubt these organizations' global capacity of attack and the extraterritorial threat they pose. Concerning the Paris attacks specifically, it was revealed they were "decided upon, planned and prepared in Syria, organized in Belgium and carried out on French soil with French complicity"<sup>3</sup>. Moreover, as the French President put it, the attacks were considered an attack not only to France and French values and lifestyle, but to all Europe and the world.<sup>4</sup> This wave of mass killings, "this violent extremist ideology, its terrorist acts, its continued gross systematic and widespread attacks directed against civilians, abuses of human rights and violations of international humanitarian law (...), its eradication of cultural heritage and trafficking of cultural property, but also its control over significant parts and natural resources across Iraq and Syria and its

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<sup>2</sup> ISIL, IS, ISIS or Da'esh are other acronyms commonly used for the group that calls itself Islamic State of Iraq and the Levant. The self-proclaimed Islamic State is an organized and armed extremist jihadist group led by Abu Bakr al-Baghdadi. It is possible to trace its roots to US-led invasion of Iraq in 2003 that shook the State's institutions leaving a vacuum behind where armed groups like ISIS blossomed. Da'esh perpetrated numerous attacks in Iraq and set up the al-Nursa Front. In 2013, the "Islamic State in Iraq and the Levant" was born from a merger of forces in Iraq and Syria where it acts as part of the conflict with all the legal implications such qualification carries with it. In June 2014, the group formally declared the establishment of a "caliphate" - a state governed in accordance with Islamic Sharia law. For that purpose it already has territorial and military presence in several countries like Syria, Iraq, Lebanon or Libya. For the past years, it has vindicated and inspired numerous terrorist attacks in all continents. See YOURISH, Karen, WATKINS, Derek, GIRATIKANON, Tom, *Where ISIS Has Directed and Inspired Attacks Around the World*, The New York Times, 22 March 2016.

<sup>3</sup> HOLLANDE, François, *Speech by President of the Republic before a joint session of Parliament*, Versailles, 16 November 2015, §11.

<sup>4</sup> HOLLANDE, François, *Speech...* cit. "We are in a war against jihadist terrorism that threatens the entire world, not just France (...) When it is attacked, the whole world is thrown for a while into shadow".

recruitment and training of foreign terrorist fighters”<sup>5</sup> is a threat that affects all regions and all States.

To respond to the terrorist attack, on the 16 November, the French President François Hollande, made a powerful speech in front of the Congress<sup>6</sup> in which he presented the next steps France would take. He started with “France is at war”, hence representing the view of a victim State even though the legal definition of State of war is objective and therefore not dependable on the part’s will to apply international conflict rules<sup>7</sup>. It represents the French response to an act of aggression and its implications differ mostly from a Previous-Paris-Attacks reality because France might now have acts proper of war happening on its own territory.

Besides, it also justifies the call for a period of State of Emergency with the correspondent suspension of exercise of certain Fundamental Rights and the concomitant militarization of internal security.<sup>8</sup>

François Hollande proposed some measures to deal with the threat of Da’esh and among those he appealed to the SC so that the international community could express its common will to combat terrorism.<sup>9</sup> More surprisingly, he invoked article 42.7 of the TEU in order to react collectively – but why?

In order to abate Da’esh, Syria and Iraq must be solid States and that is not easily achievable.<sup>10 11</sup> It has already been recognized by the British ex-prime minister

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<sup>5</sup> SC Resolution 2249, 20 November 2015.

<sup>6</sup> The Congress of the French Parliament consists on the junction of the lower and upper houses, (respectively, The National Assembly and the Senate) and traditionally takes place at Versailles. This happens whenever there’s a need to vote on revisions to the Constitution or to listen to an address by the President of the French Republic. The previous presidential speeches to France's parliament were in 1873 and in 2009 with President Nicholas Sarkozy.

<sup>7</sup> Geneva Conventions of 12 August 1949, common article 2.

<sup>8</sup> After the Prime Minister’s recommendation to proclaim the State of emergency, François Hollande on the 14 November decreed the state of emergency. See *Décret n° 2015-1475 du 14 novembre 2015 portant application de la loi n° 55-385 du 3 avril 1955*.

During the state of emergency, it is possible to the French authorities to shut down demonstrations, impose curfews, confiscate weapons, detain persons and private resources as well as put people under house arrest among other restraints of liberty.

<sup>9</sup> HOLLANDE, François, *Speech...* cit. §13.

<sup>10</sup> *Ibid* §16.

<sup>11</sup> There has been a civil war in Syria since March 2011 along with the “Arab Awakening”. It all started with peaceful demonstrations but soon branched into violent resistance. This conflict opposes roughly four main players: The Regime (Alawi - 12%), the Opposition (Sunnis - 74%), the IS and the Kurds. Their divergences are aggravated because of the sectarian antagonism. On one hand, there’s the Assad Regime (Allawi) supported by the Ba’ath Party and the armed forces. It counts with the international support of Russia, China and Iran (Shiite majority). It also counts with support from Hezbollah. On the other hand, there’s the opposition – local resistance groups and neighbourhood militias – Free Syrian Army with permanent territorial control in the northern areas. They are trying an “Islamisation” of the conflict, which would allow further support from the Gulf Monarchies (Sunni majority), Turkey, US,

Tony Blair that ISIS is also a result of the Iraq War to oust President Saddam Hussein in 2003.<sup>12</sup> The biggest mistake was not “understanding what would happen once you removed the regime.”<sup>13</sup> François Holland, on the other hand, in order to avoid the same mistakes, is now aware that taking Assad apart isn’t the immediate solution.<sup>14</sup> The most important for the moment is to destroy Da’esh – who has in Syria its largest breeding ground – and only then find a political solution without Assad.

Meanwhile, other attacks have occurred in Europe up to the moment: in Brussels, on the 22 March 2016 when three coordinated suicide bombers attacked the Brussels Airport and a metro station leaving behind 32 dead civilian bodies and more than 300 injured<sup>15</sup>; again in France, Nice, on 14 July, Bastille Day Celebrations, when a lorry slammed through a celebrating crowd leaving behind 84 dead bodies and 50 injured people<sup>16</sup> <sup>17</sup>; in a smaller scale in Germany, on the 19 July, when a 17 year old stabbed train passengers with an axe, an act that was soon vindicated by the IS <sup>18</sup>; in France, Normandy, on 26 July when a priest was beheaded by two ISIS militants<sup>19</sup>.

As said above, such violent actions represent some of the most serious threats to world’s security at the time being. They will proliferate, become more sophisticated and powerfully armed leading the world years backwards if coherent and comprehensive action is not taken soon. So what are the options? What justifies the decision?

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France and UK among others. Both ISIS and the Muslim Brotherhood have Sunni affiliations, although their goal to be completely different. An ultimately there’s the Kurds, oppressed by all the other players and Turkey but supported by the US. These threats all combined have generated a massive migrant crisis. Millions of people are fleeing the region so that they can simply keep on living, as Europe has witnessed for the past years but unfortunately insists in failing them with a solution.

<sup>12</sup> Cfr. footnote 2.

<sup>13</sup> However, Blair also points out that other policies haven’t been more successful -“We have tried intervention and putting down troops in Iraq. We’ve tried intervention without putting down troops in Libya. And we’ve tried no intervention at all but demanding regime change in Syria”. See WALTERS, Simon, OWEN, Glen, BECKFORD, Martin, *Historic moment Tony Blair FINALLY apologises for Iraq War and admits in TV interview the conflict caused the rise of ISIS*, Daily Mail, 24 October 2015.

<sup>14</sup> HOLLANDE, François, *Speech* cit. §16.

<sup>15</sup> See BBC News, *Brussels explosions: What we know about airport and metro attacks*, 9 April 2016.

<sup>16</sup> See BBC News, *Nice attack: What we know about the Bastille Day killings*, 19 August 2016

<sup>17</sup> Until the moment of writing, the State of Emergency has been prolonged four times. The last extent happened on the 20 July 2016 right after the Nice attacks when it was days from ending. At the moment, it is due at the end of January 2017. See *loi n° 2016-987 du 21 juillet 2016*, available at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032921910&categorieLien=cid>

<sup>18</sup> See BBC News, *German train attack: IS releases video of 'Afghan knifeman'*, 19 July 2016.

<sup>19</sup> See BBC News, *France church attack: Priest killed by two 'IS militants'*, 26 July 2016

## II - Collective Self-Defence in the Charter of the United Nations

In order to be aware of the several possibilities of response to the Paris terrorist attacks, it is necessary to understand the global system that regulates the use of force in self-defence in international relations.

UNO was born after the Great World Wars to address the global need of peaceful developing of international relations. It was a formal and successful agreement on the limitation of the use of force between States while adopting simultaneously the principle of pacific resolution of disputes.

The whole purpose of collective security – ground of all the UN building - is to replace whenever possible the use of individual State force for collective force at anchor in the UN. It represents the transfiguration of individual interests in solidary ones. Such a system of “one for all, all for one” relegates to a secondary position potential national interests for collective security common interests<sup>20</sup>. This New International Order<sup>21</sup> - a multipolar world without leaders or followers - culminated in article 2.4 of the UN Charter<sup>22</sup> which forbids States to use or threat to use force<sup>23</sup> in respect of other State’s integrity and independence. This provision is considered universal *ius cogens*<sup>24</sup>, in other words, it is accepted and recognized by the whole of the international community as a provision without any possible derogation and only replaceable by a subsequent norm of general international law with the same peremptory character.<sup>25</sup> All States, individually or as international organization’s members, are obliged to comply with it.

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<sup>20</sup> Collective security might be considered the opposite of collective defence. This last one consists of jointed forces like military alliances to respond to external threats of certain States, while the first one’s prime goal is to avoid resort to such dramatic means and maintain global peace. VIANA, Vítor, *Segurança Colectiva*, cit. pp. 71 e 72.

<sup>21</sup> Referring to the new strength of the UNO after the Cold War and its adversities.

<sup>22</sup> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

<sup>23</sup> In reference to military or armed force. It doesn’t include political, ideological or economic force. This interpretation results both from the preparatory works on the Charter and the historic element ever since.

<sup>24</sup> ICC, Judgment, Case concerning military and paramilitary activities in and against Nicaragua, *Nicaragua v. USA*, 27 June 1986, §190.

<sup>25</sup> Article 53 and 64 of the 1969 Vienna Convention on the Law of Treaties.

In the Charter, there is only one exception to the prohibition of force of practical significance to the subject under analysis<sup>26</sup> and it lies in article 51 - the right of self-defence<sup>27</sup> - restricted by the Charter spirit.

Basically, the Charter assumes a diametric position: the use/threat of force is lawful when used in self-defence; and unlawful under any other circumstances. Article 51 must then be read under such light that any State affected by another State's unlawful use of force reaching the threshold of an armed attack<sup>28</sup> may in response arm itself of the right of self-defence and therefore use or threat to use force against the aggressor State until when the SC itself addresses the situation.<sup>29</sup>

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<sup>26</sup> The other exception concerns the SC enforcement actions pursuant Chapter VII, article 42. Often the first response to a crisis is a resolution demanding the crisis be ended and only after a resolution proposing the effective measures to solve the crisis. Chapter VII sets out the UN SC's powers to maintain peace and allows the SC to adopt resolutions authorizing peacekeeping missions and multinational forces, including those deployed by regional organizations, to use "all necessary measures/means" relating to the maintenance or restoration of international peace and security, article 24. See JOHANSSON, Patrik, *The Humdrum Use of Ultimate Authority: Defining and Analyzing Chapter VII Resolutions*, Nordic Journal of International Law, 2009, pp. 309–342.

Article 42 in particular permits the SC to use military force by air, sea or land if the non-military measures taken according article 41, that is, not involving the use of armed force namely, interruption of economic or diplomatic relations, reveal to be inadequate. This article represents a real exception of the prohibition of force, disconnected from the right of self-defence (therefore beyond the scope of this paper) but perfectly applicable. It implies according to article 2.5 that all Member-States are bound to give all assistance to the action agreed in the resolution and to refrain from giving assistance to the State against which the reinforcement action was launched. This represents the greatest difference from article 51, that doesn't impose such obligations. However, given the inexistence of a UN army, as foreseen in article 43, the UN had to "privatize" the use of force and authorize States or other regional organizations to use force on their behalf (institutional reaction). So the international legal practice since 1945, even though contrary to the intentions of the Charter, continued to be determined by the unilateral decision of States on the use of force.

<sup>27</sup> It is discussed whether and to what extent a general right of self-defence exists apart from article 51. The dominant conclusion is that article 51 is the only regulation concerning the right of self-defence. Any wider view would only affect few ONU non-member States, since it is unequivocal nowadays that article 51 doesn't hold any farther reaching right of self-defence than that eventually existent before the Charter which it supersedes and replaces. RANDELZHOFFER, A., *Article 51*, in *The charter of the United Nations: a commentary*, 1995, p. 678, "Art. 51 is also seen as a *lex specialis* prevailing over the controversial customary law".

<sup>28</sup> Despite saying in the French version "*aggression armée*", it is a poor translation of armed attack, which suffices for the application of article 51. It must not be confused with act of aggression (*acte d'agression*).

<sup>29</sup> Concerning the possibility of anticipatory self-defence, there are two main arguments supporting that article 51 must be read as forbidding such a general right: first, the threat of an attack might never materialize and, therefore, the attack will never occur; second, the wording of article 51 only envisions the occurrence of an armed attack and not its threat (like it does with obvious intention in article 2.4). It is undeniable that a mere possibility of attack (immediate or future) would unleash discretionary and real armed attacks objecting the great goal of the Charter.

However, having into account the Webster formula (1842) which admits anticipatory self-defence "when the necessity of that self-defence is instant, overwhelming and leaving no choice of means, and no moment for deliberation" and also Kofi Annan's *In Larger Freedom Report* and consequent State practice, it is safe to say that article 51 reading has been subsequently enlarged in order to permit self-defence as response to the most imminent and probable attack.

Bottom line, if effective action is not set into motion, the threatened State has to wait defenceless in an era of nuclear powers, terrorism and other unpredictably dangerous threats to see its destruction in order to

The violation of article 2.4 UNC – violation of international peace - is not enough to resort to force despite being a wrongful international fact. The right of self-defence is only admissible, or say appealable, to a certain State if and when it is victim of an armed attack.<sup>30</sup>

Since it all comes down to the term “armed attack”<sup>31</sup>, it is unavoidable to realise what it comprises. Although after more than half a decade there is still no definition to the term, an armed attack isn’t just any use of force. It exists when force is used on a relatively large scale and with substantial effect.<sup>32</sup> Looking into article 3 of the Definition of Aggression<sup>33</sup>, the provision illustrates certain examples that might characterize armed attacks as in article 51. Such cases might be: i) invasion, bombardment and cross-border shooting; ii) Blockade; iii) Attack on State position Abroad; iv) Breach of Stationing Agreements; v) Placing territory at Another State’s disposal; vi) Participating in the Use of militarily organized unofficial Groups. Not even the ICJ could come up with a more bounding definition in its Judgements such as *Nicaragua*<sup>34</sup>, *Oil Platforms*<sup>35</sup> or *Armed Activities*<sup>36</sup> cases. It starts from the Definition and then gives examples to demonstrate the vast scope of the term “armed attack”.

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obtain legitimacy to respond. This way, the main goal of the charter – reduce the use of force and violence between States - would also be jeopardized. As an alternative, instead of referring to threats, the very concept of armed attack might be more liquid as to include theories such as the Theory of Accumulation of Events. Still for the moment many questions rest unanswered.

<sup>30</sup> Some western countries read article 51 as authorizing reactions towards indirect armed attacks which refer to “organize, assist, urge, finance, encourage or tolerate subversives or terrorist activities against another State as means to overthrow the government or take sides in a civil war for example”. And third world countries have a clear proximity to the usage of article 51 in cases of national liberation (colonialism) and of economic or ideological aggression.

COT, Jean-Pierre, PELLET, Allain, *La charte des Nations Unies : commentaire article par article*, 2005, p. 776 and 780.

<sup>31</sup> Poorly translated into the French version as “*agression armée*”, which is the most serious and dangerous act of aggression (*act d’agression*). A useful tool to determine the existence of an act of aggression can be found in article 3 of the Definition of Aggression present in GA resolution 3314 of 14 December 1974 interpreted according to article 39 of the UN Charter. It has become clear that both definition do not coincide as has been defended by the US and western countries regardless of French disapproval.

<sup>32</sup> RANDELZHOFFER, A., *Article 51*, in *The charter... cit.*, pp. 669 and especially references quoted from note 59.

Another supporting argument is the expression “relevant circumstances” on the Definition of aggression’s article which includes a certain gravity of the actions and their consequences.

<sup>33</sup> It states: “aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition”.

<sup>34</sup> ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment of 27 June 1986, §176 and following.

<sup>35</sup> ICJ, *Oil Platforms-States (Iran v. US)*, 6 November 2003, §50 and following.

<sup>36</sup> ICJ, *Armed Activities on the Territory of the Congo (DRC v. Uganda)*, 19 December 2005, §143 and following.

It is however generally accepted the cascading effect between the concepts “use of force”, “aggression” and “armed attack”.

So, when the prohibited use of force does rise to an armed attack, the affected State may resort to forcible measures in self-defence under the common limitations of admissibility: proportionality, immediacy and adequacy. Such right must be seen as an immediate protection mechanism (not pay back) and the victim State must then respect a clear procedure under which it will report as soon as possible to the SC the measures taken<sup>37</sup> and apply them only until the SC takes itself the necessary measures for the maintenance of international peace. The armed attack here is understood as only directed against the victim and not to all. Any self-defensive action is also individual unless the victim specifically asks for assistance.

On the other hand, until there’s an armed attack, forcible self-defence must be renounced and the affected State should call upon the SC to qualify the situation under article 2.4 as a breach of peace and act under article 41 (non-military) or 42 (military).<sup>38</sup> Its action is meant to assure justice and international law’s effectiveness. However, it is important to note that the SC’s action, despite its fully discretionary powers<sup>39</sup>, is always limited by “the wishes, wills, uncertainties and games of power of Member-States external policies”<sup>40</sup> as well as the weight of certain militarily superior States<sup>41</sup>. It is

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<sup>37</sup> Like also results from ICJ, on the Legality of the threat or use of nuclear weapons, Advisory opinion, 8 July 1996, “Article 51 specifically requires that measures taken by States in the exercise of the right of self-defence shall be immediately reported to the Security Council”. While on the contrary reading, the same ICJ, on its Nicaragua Case, 1986, held that “the lawfulness of the use of force in self-defence under customary law is not dependent on compliance with this requirement”.

Either way, it was only in 90’s that this provision gained weight, since so far the provision was void.

<sup>38</sup> See footnote 26. As said earlier, because of the delimitation of the object – self-defence- it is not possible to address these means of reaction that could totally address, only in different perspectives, the attacks that have been discussed.

<sup>39</sup> Referring to the qualification of given situations as threatening peace. However, the SC is undoubtedly bound by the principles and objectives of the UN, by the particularities of a factual situation, which would require balancing and by good will in general.

<sup>40</sup> BERTRAND, Maurice, *Le nouveau rôle de l’ONU, Memento défense-désarmement*, 1992, GRIP, p. 41.

<sup>41</sup> Especially relevant to this purpose is the veto right of the permanent members of the SC. Such powers might make it impossible for the SC – only source of international military legitimacy – to take a clear step addressing international community’s issues and ultimately failing the uniform application of the Charter. One of the biggest controversies is the dichotomy between “US interventions legitimized by the UN” or “UN actions supported by the US”. This prevalence of one Member-State eroded the institution’s credibility and performance. Already in 1993, it was recommended the inclusion of Japan and Germany as permanent members in order to reinforce the UN’s role in collective security. As a matter of fact, nowadays the SC represents less than 8% of the total UN Member-States, when initially it represented 20%. VIANA, Vitor, *Segurança Colectiva...*, cit. page 217. Whatever the solution found, it is imperative to democratise the SC making it globally more representative.

simultaneously possible for the affected State to resort to peaceful means such as the Human Rights Council.<sup>42</sup>

These solutions, in terms of legal policy, might seem unsatisfactory because until there is an “armed attack”, the affected State response is irremediably scant and most likely ineffective, ultimately delivering no protection for the affected State even against the clearest violation of prohibition of force. As RANDELZHOFFER puts it “this conclusion must, as a matter of legal policy, be regarded as anything but satisfactory”<sup>43</sup>.

Several methods have been pointed out in order to suppress the lacuna between article 2.4 (use of force) and article 51 (armed attack)<sup>44</sup>. However they are not applicable since the pillar of prohibition of force stands that force might absolutely only be used when an armed attack is involved and is to be excluded as far as possible also under article 2.4.

More relevant in this context is to understand if terrorist attacks perpetrated by non-State armed groups are to be considered under article’s 51 scope while bearing in mind that article 51 is an exception of article 2.4 - prohibition of use of force – that only applies between States.

The post-9/11 era brought upon some discussion since non-State groups (in this case terrorist) can perpetrate acts rising to the threshold of an armed attack. If and when they do so, there will be no violation of article 2.4 whatsoever because they are obviously not States and so this kind of acts that can constitute armed attacks wouldn’t be covered by the prohibition of force. By being so the classical hierarchical categorisation of the notions will be changed. This way, Article 51 is central to any consideration of the lawful use of military coercion against non-State actors deploying terrorist tactics.

Vast scholarly literature illuminated the complexity of the issues as well as the doctrinal divide that continues to beset the debate between those who favour a restrictive approach to the law on self-defence and those who take the view that the

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<sup>42</sup> Resolution of the General Assembly, n. 60/251, 3 April 2006.

<sup>43</sup> RANDELZHOFFER, A., *Article 51*, in *The charter... cit.*, p. 664.

<sup>44</sup> A method that matches the scope of article 2.4 and 51 would always allow self-defence. This way the victim State would always be protected and the first state using force would be responsible for its triggering actions and could not claim to be a victim of self-defence. This vision greatest advantage is that an answer to a small scale use of force could never be disproportionate in respect of the general admissibility requests. Furthermore, in terms of immediate response this system delivers an alternative view that might as well be accepted as afterwards the SC shall like always address the situation. Nonetheless, it entirely disregards the provision’s wording and spirit.

credibility of the law depends ultimately on its ability to address effectively the realities of contemporary threats.

By now, after the UN Security Council Resolutions 1368 (12 September 2001) and 1373 (28 September 2001), adopted following the 9/11 attacks in the United States, it is reasonably accepted that States do have a right of self-defence against non-State actors. These resolutions recognize new threats such as (1) successive attacks or threats of attack against a State or its interests, (2) attacks or threats of attack emanating from more than one territorial jurisdiction, and (3) attacks or threats of attack by a non-State actor operating either as a distinct entity or in affiliation with a larger non-State movement.<sup>45</sup>

The ICJ<sup>46</sup> having as a starting point the Definition of aggression establishes the same degree of intensity [acts of armed bands... of such gravity as to amount to acts listed above]<sup>47</sup>. The main criteria, called the *Nicaragua Test*, is to understand if the same event would or would not be considered an armed attack if executed by regular forces. So the basic criteria put on equal footing both State attacks and Non-State attacks. The only persistent problem is the determination of what defines the threshold of an armed attack! Concerning the Paris terrorist attacks, it is beyond doubt an attack reaching this standard because of its magnitude and consequences: number of deaths, the level of destruction, the legal consequences and the global involvement.

The victim State might then react in two ways: either (1) attacking the facilitating State for harbour<sup>48</sup> or complicity for any abetting action towards terrorists support which corresponds to a traditional vision or (2) attacking directly terrorists international bases.

It would be contrary to international law to use force against a State that hasn't helped or perpetrated the attack legitimizing self-defence even under a broad interpretation of State Responsibility (article 8, 9 and 11). As the Leiden Recommendations puts it<sup>49</sup>, the price to pay in avoiding damaging the territorial State is

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<sup>45</sup> BETHLEHEM, Daniel, *Principles relevant to the scope of state's right of self-defense against an imminent or actual armed attack by non-State Actors*, The American Journal of International Law, 2012, Vol. 160:000.

<sup>46</sup> ICJ, *Nicaragua v. USA*, Judgment of 27 June 1986, § 195.

<sup>47</sup> Resolution adopted by the General Assembly 3314, Definition of Aggression, 14 December 1974, § 3(g).

<sup>48</sup> The concept might be differently understood among States: for some it may represent positive action of support and for others it may refer to simple omissions to deter.

<sup>49</sup> RATNER, Steven, *Self-Defense Against Terrorists: The Meaning of Armed Attack*, page 18.

precisely the inaction of the victim State towards terrorist attacks - with or without State support - that are only of small or medium intensity. Therefore, in order to maintain its sovereignty, the actions of the territorial State must comply with its protective obligations.

However, despite the international response and implicit recognition of terrorist attacks from PKK (Turkey), Chechen guerrilla (Russia), Hezbollah (Lebanon) among other cases, as self-defence according to article 51, only recently have many States begun to grapple with the claim that attacks by non-State actors can constitute armed attacks regardless of the role of a State. All uncertainties were dissipated in 2011 by the Report of the Secretary-General's Panel of Inquiry that accepted Israel's right to self-defence against Hamas' armed attacks from outside its territory in Gaza.<sup>50</sup>

Now establishing the parallel to the case in analyse, it is important to note that in 2014 the Iraqi Foreign Affairs Minister asked for help combating ISIS<sup>51</sup> and has therefore invited and authorized to act from its territory. As part of the US-led Coalition – over 60 nations contributed either with military means or resources<sup>52</sup> - France was already engaged in Iraq. But in this case, as Da'esh couldn't be contained because of Syrian neighbour's fragility, the US also decided to intervene in Syria: "We will hunt down terrorists who threaten our country, wherever they are. That means I will not hesitate to take action against ISIL in Syria, as well as Iraq (...) you will find no safe haven."<sup>53</sup> It is commonly accepted that where a population is suffering serious harm, as a result of internal war, insurgency, repression or State failure, and the State in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect. US-led coalition seems to consider enough the "unwillingness or inability" of the territorial State to stop the threat or attack.<sup>54</sup>

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<sup>50</sup> On the 31 May 2010 Flotilla Incident, July 2011, Annex I, § 73.

<sup>51</sup> "These international terrorist groups seek to eliminate borders, exacerbate violence and fan the flames of civil war. On the other hand, the Iraqi Government is seeking to avoid falling into a cycle of violence. To that end, we need your support in order to defeat ISIL and protect our territory and people. In particular, we call on Member-States to assist us by providing military training, advanced technology and the weapons required to respond to the situation, with a view to denying terrorists staging areas and safe havens", Letter dated 25 June 2014 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General. S/2014/440.

<sup>52</sup> See J. MCINNIS, Kathleen, *Coalition Contributions to Countering the Islamic State*, Congressional Research Service, August 24, 2016, page 1.

<sup>53</sup> President OBAMA, Barack, "We Will Degrade and Ultimately Destroy ISIL", The White House, 10 September 2014.

<sup>54</sup> The Obama Administration and International Law, Speech to the Annual Meeting of the American Society of International Law (25 March 2010).

## 1. UNSCR 2249<sup>55</sup>

Two days immediately after the Paris terrorist attacks, French fighter jets bombed a series of ISIS sites in Raqqa, Syria<sup>56</sup>, in a symbolic attack that hit several ISIS key facilities. France soon asked for the SC support on the fight against terrorism and in particular against Da'esh and on 20 November 2015, the SC unanimously approved resolution 2249 reaffirming that “terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security”.<sup>57</sup>

There are two major aspects of this resolution to be considered: firstly, coming from the guardian of military legitimacy, it demonstrates a joint global commitment and responsibility to combat this unprecedented threat to international peace and security; and secondly, it calls upon all Member-States to take *all necessary means* to do so in compliance with international law and in particular with the UN Charter on the territory under control of Da'esh in Syria and in Iraq. Verifying what has been said earlier, the real dimension of collective action lies on State's individual but authorized action – article 51 – collective self-defence. This is even more important when realizing that President Assad never asked for help and is only supported as legitimate government by Russia.

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<sup>55</sup> Resolution 2249 (2015), Adopted by the Security Council at its 7565th meeting, on 20 November 2015, S/RES/2249 (2015).

<sup>56</sup>According to RUBIN, Alissa, BARNARD, Anne, *France Strikes ISIS Targets in Syria in Retaliation for Attacks*, *The New York Times*, 15 November, 2015, “Mr. Hollande’s government began bombing Islamic State-held territory in Iraq in September 2014, and it has carried out about 280 airstrikes since then. But it had only begun to strike targets inside Syria in the last seven weeks, and had carried out fewer than a half dozen bombings there before Sunday. France has struck training camps, and just last week it attacked an oil and gas depot, according to a statement by the French Defense Ministry”.

<sup>57</sup> UNSCR 2249, cit, §7.

The major goal of the UN is (article 1 of the UN Charter) to maintain international peace and security and to that end to take effective collective measures for the prevention and removal of threats to peace. The Resolution isn't just about combating Da'esh but all terrorist organizations that jeopardize international peace and security like Al-Qaeda or the Al-Nursa Front so this fight is answered pluridimensionally.

### III – UNO Cooperation Rings: What are the possibilities?

Despite UNO being the main responsible of international security in the new international order it also cohabites with other centres of power to assure global and regional security. The assumption for cooperation is precisely the centrality of UN prerogatives.<sup>58</sup> In fact, according to Chapter VIII of the UN Charter, particularly article 52, UNO has delegated and decentralized its powers on regional organizations<sup>59</sup> like NATO, the EU or even the OSCE<sup>60</sup> in favour of better effectiveness, authentic and last-longing peace.<sup>61</sup>

This synergic system, despite the possible involvement-blindness, allows better proximity and promptness, always bound by due respect of the Charter as the ultimate guardianship of peace.

Huge organizations like NATO (that played a key role in the Cold War Era) and the EU have gained leeway to deal with international security and global peace. Here the main defiance is to respect the specificity of each organization and avoid overlapping.

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<sup>58</sup> This is the best positioned and assuring organization in global terms to fulfil its mission, both in terms of global effectiveness, impartiality, coherence and legitimacy.

<sup>59</sup> General-Secretary GHALI, Boutros, Agenda for Peace, 17 June 1992, para. 61, referred that “such associations or entities could include treaty-based organizations, whether created before or after the founding of the United Nations, regional organizations for mutual security and defence, organizations for general regional development or for cooperation on a particular economic topic or function, and groups created to deal with a specific political, economic or social issue of current concern”.

<sup>60</sup> The OSCE is a regional arrangement under the scope of Chapter VIII of the UN Charter and is therefore bound by its ruling like any other such organization in any military action (that is the reason why the OSCE will not be referred hereinafter). Today the OSCE joins three main occupation fields: politico-military security, that is, common action against peace violations, economic and environmental concerns and human rights responsibility. In the last years, it was affected by Russia sense of ownership and by the growth of EU. However, as a response to the Paris terrorist attacks, the members of the permanent council of the OSCE reiterated the need “to combat by all means, in accordance with the Charter of the UN and international law, including applicable international human rights, refugee and humanitarian law, threats to international peace and security caused by terrorist acts. (...) We emphasize that terrorism can only be defeated by a sustained and comprehensive approach involving the active participation and collaboration of all States and international and regional organizations to impede, impair, isolate and incapacitate the terrorist threat.” See OSCE Declaration on the 13 November Terrorist Attacks in Paris, 1077<sup>th</sup> Plenary Meeting, PC Journal N. 1077, Agenda item 1, PC.DOC/3/15, 17 November 2015.

<sup>61</sup> Even measures resulting from articles 41 (non-forcible) and 42 (forcible) may be executed by regional arrangements, even though the second ones need SC’s permission.

## 1. NATO Regime

NATO usually operates under Chapter VII of the UN Charter, with a mandate or an authorization of the SC like a franchising use of force.<sup>62 63</sup>

Since the beginning in 1949, the principle of collective defence is at the heart of NATO and article 5 of the Washington Treaty enshrines that principle exactly – “Each State (...) 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”.<sup>64</sup>

<sup>65</sup>In other words, if a Member-State is victim of an armed attack each and every member will consider it an attack against itself. It is important to reiterate the difference from the system previewed in article 51 UN Charter. Here the armed attack is considered an attack to all members from the beginning and all members shall decide what to do.

Article 5 was first and solely invoked after the 9/11 attacks<sup>66</sup> so it was predictable it would be invoked after the Paris attacks too. Especially, since NATO Secretary General Jens Stoltenberg said Member-States are ready to assist France, reassuring strength in fight against terrorism.<sup>67</sup> Moreover, NATO has a vast and demonstrated experience on the use of armed force to restore and maintain security and it counts with the protective umbrella of the USA’s nuclear powers. Notwithstanding, NATO has not been directly called into action. This still might happen in the future especially by States with weaker Special Forces resources such as the eastern ex-soviet countries.

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<sup>62</sup> UN Charter article 53.1. Notwithstanding, some nuclear space is left for implicit or late authorization.

<sup>63</sup>“If the Washington Treaty has a hard legal core which even the most dynamic and innovative interpretation cannot erode, it is NATO’s subordination to the principles of the UN Charter”, SIMMA Bruno, *NATO, the UN and the Use of Force: Legal Aspects*, EJIL10, 1999, page 1. Also Cfr. Article 103 UNC.

<sup>64</sup> Article 6 (Modified by article 2 of the Protocol to the North Atlantic Treaty on 22 October 1951) clarifies what is to be considered under the scope of armed attack but only in geographical terms: it limits NATO action to the North Atlantic Area. Despite the provision’s clear wording, NATO Foreign Ministers Meeting, Final Communiqué 14-15 May 2002, Reykjavik, attested it also has powers to conduct its operations bellow the Tropic of Cancer. “To carry out the full range of its missions, NATO must be able to field forces that can move quickly to wherever they are needed, sustain operations over distance and time, and achieve their objectives”.

<sup>65</sup> There are other measures that could be taken in the framework of NATO but they would not fit the subject of self-defence, essential topic of the current analysis.

<sup>66</sup> After terrorism being identified as a threat to NATO’s security, its response to these attacks was very energetic and opened a precedent to operations outside Euro-Atlantic zone. The whole process took about 24 hours and the Secretary General of the UN was informed right away.

<sup>67</sup> STOLTENBERG, Jens, Doorstep statement by NATO Secretary General upon his arrival at the European Council, 17 Nov. 2015.

If the French President had chosen NATO's assistance, would Russia (permanent-member with veto powers in SC) have been so jaunty to approve resolution 2249? Possibly not, since it would menace Russia's so wanted base-expansion abroad. "Russia's growing footprint in Syria offers Moscow the capacity, if it chooses, to threaten the US and allied forces operating in the eastern Mediterranean and in the skies over Syria".<sup>68</sup> Russia is willing to disregard international norms in order to achieve its "greater-power" status like when it supported pro-separatists, annexed Crimea (practical NATO-Russia co-operation is suspended since 2014 because of it), increased provocations against NATO ships and airplanes, intervened in Syria and further militarized the Arctic and, whenever possible, tries to deter ex-URSS countries to join the EU or NATO, like in Georgia, Moldova or Ukraine. In response, NATO reinforced troops in the eastern countries to prevent a Crimea recreation.<sup>69</sup> Because of all this, the tensions between NATO and the Russian Federation are considerable and NATO is considered an opponent.<sup>70</sup> At the time, France was making an effort together with Russia and some Arab countries and involving NATO would have been counter-productive for all the reasons already noted above. Moreover, within this disposition, France could only ask for external military action.

If and when article 5 is activated, an individual obligation on each ally rises and each one is responsible to provide any form of assistance they consider necessary. Each member decides according to its resources, while consulting with other members and maintaining as a prime goal security in the North Atlantic. Counter-terrorism operations are not yet a principle mission of NATO Special Forces, although the organization could deal - better than isolated forces - with this collective problem.

Concerning Dae'sh, NATO allies did agree to increase the military support to countries in the Middle East and North Africa that are targets of Islamic extremism in the fight against Dae'sh. NATO Secretary-General Jens Stoltenberg said NATO will

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<sup>68</sup> BREEDLOVE, Philip, *NATO's Next Act, How to handle Russia and Others Threats*, Foreign Affairs, July/August 2016, Page 103.

<sup>69</sup> To ensure it wouldn't happen again, During the Warsaw Summit, NATO leaders approved the deployment of four multinational battalions to Poland and the Baltic States to deter Russia, as well as a Romanian-Bulgarian brigade for the Black Sea region. Germany will lead a multinational battalion in Lithuania, with similar battalions to be led by the United States in Poland, Britain in Estonia and Canada in Latvia.

<sup>70</sup> Referring to the Warsaw Summit, Gorbachev said "NATO has begun preparations for escalating from the Cold War into a hot one", BALDOR, Lolita, DAHLBURG, John-Thorn, *NATO boosts military support to countries battling Da'esh, approves deployment to deter Russia*, The Associated Press, 9 July 2016.

start a training and capacity building mission for Iraqi armed forces in Iraq, a country he called central in the fight against Dae'sh, and it will also support Tunisian Special Forces. Stoltenberg said Obama and leaders of the other 27 NATO countries also agreed in principle for alliance surveillance aircraft to provide direct support to the U.S.-led coalition fighting Dae'sh in Syria and Iraq.

France has had some disbelieves vis-à-vis the Euro-Atlantic cooperation<sup>71</sup>, but managed to profit both from its national influential power and the alliance's capabilities and better opportunities.

## **2. EU Regime**

The consciousness of world security was recognized in the beginning of the 90's, through the expansion of democratic ideals and values, and it pushed EU policies along. States have come to understand that self-centered policies lead to self-destruction. The Lisbon Treaty has made all the efforts to build a security community in Europe and to strengthen the collective identity instead of rewarding individuality which led to massive wars - a State might only be secure if it also has into consideration the other States security.

Solidarity is more than ever one of the jewels to the crown of European integration. Besides, it gained a new legal dimension with the consolidation of responsive mechanism like article 222 or 42.7, provisions go beyond what already existed and couple to achieve stronger security both inside and outside the EU addressing threats identified in the "European Security Strategy" more coherently.

For the lack of precedent, many questions arose concerning their application. The present chapter serves to clarify the scope of both articles and the possible reasoning that lead to the French choice.

Once again, it is worth noting that also the EU obeys the UN Charter - article 21.2c) TEU and any action taken is bound by its supreme ruling.<sup>72</sup>

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<sup>71</sup> France decided to leave the NATO's military command structure in 1966, just coming back as a full-member in 2011.

<sup>72</sup> Article 21.2 UNC: The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the

## 2.1. The Solidarity Clause

Article 222 TFEU, or the “solidarity clause”<sup>73</sup> as it is also known, is prepared to be applied at natural or man-made disasters or terrorist events by mobilizing both civil and military resources in order to prevent, protect or assist Member-States at their request. Actually, the crisis management actions might be related, for example, to forest fires, floods, rescues, volcanic ashes or swine flu. It might also be implemented in order to counter Chemical, Biological, Radiological and Nuclear disasters, accidental or intentional. In fact, article 222 if “read in conjunction with article 196 TFEU constitutes a soft mutual defence commitment for non-conventional threats to the Union’s security and stability”.<sup>74</sup> The Lisbon Treaty has clarified that there’s “nothing in article 222 TFEU which suggests that the solidarity clause extends to attacks carried out by State/sponsored terrorist groups (...) or so to call them rogue States’ attacks”<sup>75</sup> especially because the fight against terrorism is shared by the CSDP and the Criminal *acquis*. Nevertheless, it might imply the use of military capabilities although associated with civil protection since it is only a security mechanism and not actually a defensive one like Charter’s article 51<sup>76</sup> or NATO’s article 5. It is also not intended to be an obligation to assist in armed conflicts (which would be article 42.7 TEU). In fact, article 222 was destined to deal with more diffuse threats beyond States capability and represents a further development of European civil protection mechanisms.

In geographical terms, this article applies to EU jurisdiction and is not bound by events occurring on a Member-State’s territory, that is, applies irrespective of whether the crisis originates inside or outside the EU. Despite the wording “Member-States is the object of” that leads to internal threats, the truth is that none of these can be circumscribed as to its provenance to a certain territory, as it has been made clear by the

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United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders.

<sup>73</sup> Just like the mutual assistance clause, it was also born with the Lisbon Treaty, 2007-2009, and has never been used to date.

<sup>74</sup> KONSTADINIDES, Theodore, *Civil Protection Cooperation in the EU Law: Is there Room for Solidarity to Wriggle Past?*, European Law Journal, Vol. 19, N. 2 March 2013, p. 274.

<sup>75</sup> Ibid. page 16.

<sup>76</sup> As relating to the prevention of terrorist threat or imminent attack<sup>76</sup>, article 222 triggering requisites are much more restrictive than those of article 51 UNO or any self-defensive general mechanism.

2003 last European Security Strategy (ESS).<sup>77</sup> Therefore, even though it doesn't represent a European territorial integrity defensive clause, this disposition also includes external action, under the CSDP, assuming then a hybrid nature.

For these reasons, this provision positioning in the Treaty is somewhat controversial.

On the one hand, since the article's wording points to emergencies occurring both materially and territorially within the Union (remember that the external dimension needed further clarification from the ESS) its positioning under the Chapter "External Action" is somehow unclear. The introduction of this article under such chapter is probably related to the will to confront terrorism more effectively. Terrorism was perceived as having internal consequences even though it came from abroad and therefore needed external action. Does this challenge the version that the "terrorism dimension of the CSDP is today fast becoming a permanent field of the EU policy"<sup>78</sup>?

On the other hand, since the fight on terrorism and catastrophes actions outside the EU are under the umbrella of the CSDP – TEU article 21.3 and 43 - Article 222 could have been perfectly included under article 42.7 with its internal dimension of security or at least under the CSDP Chapter. "It is somewhat peculiar that this clause is separated from the collective defence clause and is included in TFEU rather than together with the ESDP provisions in the TEU".<sup>79</sup> In times of emergency, nothing prevents CSDP actions entailing armed forces to realise soft security operations which enlarges the defensive component attached to the CSDP. For that reason, it is logically acceptable that this disposition is somewhat misplaced, especially as it is isolated both from other security and solidarity clauses.

When invoking this clause, what are then the legal implications for the EU and the Member-States? Their response capacity must be bound by the principles of national responsibility and EU solidarity acting together in cooperation. The solidarity obligation

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<sup>77</sup> European Union's High Representative for the Common Foreign and Security Policy, Javier Solana, A secure Europe in a better world - European security strategy, Brussels, 12 December 2003, "the threat used to be of invasion, now the first line of defence is often abroad".

<sup>78</sup> REICHARD, M., *"The EU-NATO relationship: a legal and political perspective"*, Ashgate Publishing, 2006, p. 70.

<sup>79</sup> BLOCKMANS, S., WESSEL, R.A., *The European Union and Crisis Management: Will the Lisbon Treaty make the Lisbon Treaty make the EU more Effective?*, Journal of Conflict and Security Law, 2009, p. 301.

of assistance might be provided under two levels: by the EU and the Member-States together; or by Member-States with the Council as coordinator.<sup>80 81</sup>

Concerning Member-States, the activation of this clause has to entrench the interests of those neutral States towards the use of force, those who have to balance their commitment in EU and NATO security systems and yet those seeking mutual solidarity.<sup>82</sup> This balance will determine whether this clause is merely a theoretical solution or actually has full and practical relevance. The greatest advantage of this provision is that it allows the members to decide what the appropriate means to fulfil their obligation are<sup>83</sup>. This has substantial importance in times of financial crises even though solidarity is based on the principle of reciprocity. Hence, the EU decision<sup>84</sup> tried to limit to the maximum the budgetary implications solidarity could bring along and the EU responsibilities and obligations. Consequently, Member-States can only invoke this clause, according to article 4 of the decision, if the crisis overwhelms the response capabilities available to it at both national and European levels.<sup>85</sup>

Concerning the EU, Article 222 requests Member-States to coordinate themselves in the Council and attributes to the EU the comprehensive effort to mobilize all instruments at disposal to protect and assist the members, except when involving military means now dependable on Member-States' generosity.

The procedure begins with both the Commission and the HR elaborating a response package<sup>86</sup> upon which the Council will decide with qualified majority (or unanimity for defensive or military actions). Additionally, other organs like the Political and Security Committee (PSC) or the Standing Committee on International Security could be involved and a response would be dependable on the adoption from the Council of a common position under CSDP and decision to undertake military action.

For all said above, is article 222 TFEU truly eligible to give Paris terrorist attacks a full and proper response?

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<sup>80</sup> Such decisions are adopted on a common proposal of the Commission and the HR with a qualified majority. Only when there's a defence component must it follow the rules settled in article 31.1 TEU.

<sup>81</sup> The Council is backed with support from the Political and Security Committee (art. 38) and the Standing Committee on Internal Security (art. 71).

<sup>82</sup> After the Lisbon Treaty it became more central (disposition 4.3 TEU – sincere cooperation) as it is commonly linked with the process of integration. See Robert Schuman's Speech on 9 May 1957.

<sup>83</sup> Declaration 37 annexed to the Final Act of the Intergovernmental Conference at Lisbon.

<sup>84</sup> Council decision of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause setting the modalities of implementation of the solidarity clause.

<sup>85</sup> Ibid. Art. 4.1. The problem with such requirement is that it might be practically impossible for other States to assess the situation which is ultimately a counter-productive and superfluous.

<sup>86</sup> ZANDEE, Dick, *Europe's Security Upside Down*, Nação e Defesa, 2014, N. 137, p. 20.

This decision-making difficult marathon, dependable on EU institutions' assessment, leaves numerous uncertainties vis-à-vis the outcome. The greatest the threat, the more urgency is to be expected, especially if dealing with small countries with less assets (that are more likely to use this clause). Falling that, the activation of article 222 becomes an option of last resort as this clause is, additionally, not defensive. Even after Brussels major terrorist attacks the clause wasn't activated<sup>87</sup>. Isn't this symptomatic of a complicated and somewhat empty provision? Is the choice of article 42.7 a better solution?

## 2.2. The Mutual Defence Clause

As announced in the very begging of this paper, this article was the legal provision chosen by the French President as a response to the Paris terrorist attacks.

It was the very first time this provision was invoked and therefore its interpretation is somewhat baseless because of the lack of guidelines or precedent. Yet, the Commission and the HR actually delivered a joint communication on countering hybrid threats pleading for a common operational protocol on article 42.7.<sup>88</sup>

Article 42.7, better known as the "EU mutual assistance/defence clause" was born with the Lisbon Treaty and came into force in 2009 as primary law. This article was initially thought as a response to cases of aggression<sup>89</sup>, but now it is clear it may be applied to military, diplomatic or internal or border security situations thanks to its wide spectrum. It substantiates a mechanism to complement the EU's crisis management<sup>90</sup> powers under the CSDF ultimately under the mandate of the HR Global Strategy Plan. Especially because of its origins and clear wording referring to the UN Charter and the

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<sup>87</sup> FUCHS-DRAPIER, Marie, *The European Union's Solidarity Clause in the Event of a Terrorist Attack: towards solidarity or maintaining sovereignty?*, Journal of Contingencies and Crisis Management, vol. 1, N. 4, December 2011, page 185.

<sup>88</sup> The European Commission and the High Representative, *Joint Framework on countering hybrid threats*, Brussels, 6 April 2016.

<sup>89</sup> Article V of The Treaty of Brussels (which created the Western European Union in 1954) inspired the creation of a similar mutual defence clause extended to all EU Member-States in order to respond to cases of aggression.

<sup>90</sup> The concept of crisis management has been clarified in the Petersburg-Declaration of the Council of Ministers of the WEU of 19 June 1992. The tasks it comprises are now present in article 43.1 TEU covering areas like combating terrorism.

NATO commitments, it is beyond any doubt that the “assistance clause” has defensive implications covering collective self-defence.

Any European military action has to pass the sieve of the UN Charter, supreme ruler on the use of force, and in particular of article 51.<sup>91</sup> Paying attention to the wording, article’s 42.7 scope covers all “armed aggression”, but it is simply a linguistic issue<sup>92</sup> that doesn’t affect the threshold of “armed attack” from article 51 UNC<sup>93</sup>.

As NATO dispositions are accepted by article 42.7, NATO’s article 5 takes precedence when invoked because it is older<sup>94</sup> and article 42.7 can only be invoked for as long as the NATO regime isn’t. Actually, its invocation is consistent outside NATO framework just like it happens with the US-led coalition. Despite all the similarities between article 42.7 and article 5 of the Washington Treaty, these provisions don’t overlap essentially because article 42.7 doesn’t have a geographical circumscription which makes it a great solution for situations occurring beyond NATO influence in the North Atlantic Area. Another particularity relates to the NATO’s higher efficiency to operationalize defence plans and diverse military means.<sup>95</sup>

Since both EU and NATO countries have their defensive protection assured one way or another, the mutual defence clause has in fact been paid more attention by non-NATO Member-States. For example, Greece warmly supported this provision as it wanted an additional level of defensiveness against rival Turkey, which is a member of NATO but not of the EU.

In order to apply it, it is only needed the victim State to request for assistance. Then, when set into motion, a binding legal obligation to assist France arises to all the Member-States, despite specific pacts. That results clearly from the letter of the article “aid and assistance by all the means in their power”.

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<sup>91</sup> CÎRLIG, Carmen, *The EU's mutual assistance clause First ever activation of Article 42(7) TEU*, European Parliamentary Research Service Briefing, November 2015, p. 3.

<sup>92</sup> The discussions on this article were held in French and in the French version of the UNC it says “*aggression armée*”, so it is seen as a simple case of poor translation.

<sup>93</sup> See bellow page XXXXX

<sup>94</sup> Vienna Convention on the Law of Treaties, article 30.2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

<sup>95</sup> Since 1 January 2007, the EU also has a permanent standing battalion of 1500-strong multinational "battlegroups" for peacekeeping operations.

France was an enthusiastic impeller of a greater and closer cooperation concerning defence in the EU<sup>96</sup> and the clause, even without referring the word directly, also encompasses a far-reaching solidarity obligation.

Solidarity in cases of armed aggression may include the deployment of States' forces in any territory. All Member-States are agents of the aligned CSDP<sup>97</sup>, but it must be borne in mind that certain members, such as Austria, Finland, Ireland, Malta and Sweden – all EU and NATO Member-States - have a neutral position towards the use of force. Therefore, the type and level of assistance depends on the State's decision and may vary from at least civilian to utmost military.

Then, consensus depends on governments as the whole process will be developed bilaterally between France and the other Member-States, without any interference from EU institutions. The sole role of EU/EEAS is to facilitate the decisions reached by the pairs in country-to-country dialogue. This same way no extra competences for the EU arise concerning enforcement mechanisms for States' compliance. Regardless of the confirmation of Federica Mogherini of the full availability of the EU to contribute as such (by its own means which would ultimately involve other procedures and the Council) France dismissed this opportunity.<sup>98</sup> A relevant consequence of such a choice is that no EU operations will be launched under the CSDP.

Since the clause has zero precedent, France would have to make it clear to its partners what it needs.

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<sup>96</sup> During the debates for the Constitutional Treaties, a Franco-German proposal wanted to join together a mutual assistance obligation (like that of article V of the Treaty of Brussels) and a solidarity obligation to respond to new threats like terrorism. However compromise was not reached and two separate clauses were born: 42(7) and 222 incorporated in the Lisbon Treaty. This was the only way to reconcile three major wills: those earnest of NATO competencies, those traditional neutral States and those seeking mutual defence commitment. See, CÍRLIG, Carmen, *The EU's mutual assistance... cit.*, p. 2 and EMMOTT, Robin, *Germany, France to revive EU defense but no plans for EU army*, Reuters, 3 June 2016.

In fact, after this new clause incorporation, the WEU States Part decided to terminate the Treaty leading to the dissolution of WEU (June 2011).

<sup>97</sup> See European Council decision 2013/106/EU, 11 May 2012, article 3: "It will be for the Member-States (...) acting on a spirit of solidarity and without prejudice to its traditional policy of military neutrality to determine the nature of aid or assistance. (...) It will be for any Member-State to decide, in accordance with any domestic legal requirements, whether or not to participate in any military operation".

<sup>98</sup> Presented its operations in the Political and Security Committee on 24 November and kept it informed thereafter.

The French Defence Minister Jean-Yves Le Drian request is that “France would be happy to either be helped in Syria or in other theatres where it is currently engaged”<sup>99</sup>.

The main reason for the choosing of article 42.7, as was clarified by French Defence Minister after the Conference of Ministers in past November, lies on political grounds. The fact that the “mutual defence clause” allows to work apart from the European Institutions in an intergovernmental way permits France to control in a deeper manner the preferable outcome. While searching for collaboration either by relief or support in its operations<sup>100</sup>, France would play a prime role in foreign policy for the Middle East. At the time, France was the only EU country acting in Syria, so basically, it would be glad to be relieved either there or in other operations inclusively under the UN or EU frameworks.. When that happens, it would be the answering of a long prayer for French that feel left alone in several theatres where also NATO current possibilities are scarce. In addition, Paris gets the chance to put away criticism for its individual intervention in Mali (2013) and Central African Republic (2014).<sup>101</sup>

The particularity is that France didn’t ask for assistance in its territory but rather abroad wherever necessary supplementary efforts where needed. This consubstantiates a rather flexible reading of the article. It could even have been a good opportunity to define a common strategy for the future of Syria and Iraq under the CSDP in order to push a common view and strategy.

It is logical that the rule’s maturation depends on time and practice.

Although some experts point out some grey areas or overlapping between the two clauses<sup>102</sup>, they might play a complementary role when applied simultaneously. Precisely because the perpetrators involved in the Paris attacks also had connections inside the EU, the internal protective dimension is also at stake, and consequently, article 222 could also be invoked.

In conclusion, it would still be better if article 222 were circumscribed to civil protection and article 42.7 dealt with State violence against one or more Member-States

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<sup>99</sup> European Commission audio visual Service, video N. 112330, 17 November 2015, available at <http://ec.europa.eu/avservices/video/player.cfm?ref=112330&sitelang=en&videolang=EN>.

<sup>100</sup> Carmen-Cristina Cirlig, EU’s mutual clause... cit., page 8.

<sup>101</sup> ECFR, Commentary, *Article 42.7: An explainer*, 19 November 2015, page 2.

<sup>102</sup> Carmen-Cristina Cirlig, EU’s mutual clause... cit., page 7.

and State-sponsored terrorism through CSDP military means to overcome current challenges.

### **3. Official positions from Union Member-States**

All EU Member-States, especially during the Foreign Affairs Council meeting (in the format of Defence Ministers) have unanimously promised their full aid and support to France. Where deterrence fails, collective defence arises.

Germany and the UK (along with France) constitute the EU bog three and collectively account for almost two-thirds of EU defence spending. Their decisions clearly affect the whole and have an enormous impact on EU policies. It is therefore crucial to know what their positioning on the matter is. As Portuguese national, it is equally unavoidable to approach the Portuguese plans and contributions.

What has then been done for the past years to recover international peace in a world without Da'esh terrorist threat?

#### **3.1. United Kingdom**

The UK has always been a big military player in Europe. That comes clear, e.g. from its contribution to the CSDP, its positioning in the SC and participation in UN peacekeeping operations and also from its nuclear power leverage.

David Cameron addressed the Paris terrorist attacks on the 26 November, already after the SC Resolution.<sup>103</sup> He recognized the danger for the UK, its values and lifestyle coming from Da'esh and understood national interests must be respected and security delivered whenever necessary.

Previously to the resolution, the UK was engaged in Iraq based on the country's request, but now with resolution 2249 (especially under article's 51) there's also legitimacy to intervene in Syria even more when close allies ask for British assistance. The Prime Minister "firmly supports the action President Hollande has taken to strike

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<sup>103</sup> CAMERON, David, PM statement responding to Foreign Affairs Selection Committee report on military operations in Syria, Prime Minister's Office, 26 November 2015.

ISIS in Syria.” As “the risks of inaction are greater”, “it is my firm conviction that Britain should do so too.”<sup>104</sup>

According to the Government, the help given would fundamentally reside on financial aid. Nonetheless, the Ministry of Defence announced the deployment of 75 military personnel to train Syrian rebels as part of a US-led programme last year 2015.<sup>105</sup> Concomitantly, on the 16 December, the Foreign Secretary, Philip Hammond confirmed that Britain could be sending a very substantial number of non-combat troops to Syria to support a new Saudi-led Islamic military coalition which has been set up to combat the jihadist forces controlling areas of Syria and Iraq.<sup>106</sup>

In August 2016, despite the inexistence of a government confirmation, journals spread the news that British troops were spotted operating in Syria in support of the Free Syrian Army pushing ISIS back from strategic territory near the borders with Iraq and Jordan.<sup>107</sup> British Special Forces are also said to be fighting against IS in Iraq and Libya.

So, Britain has grown its presence in the region and seems available to use its capabilities as far reaching as possible. The final goal of the UK’s operations is to damage and ultimately to eradicate ISIS while finding a new strong government to command its people. When a new embracing government in Syria is found, the UK will support a proper post-conflict reconstruction in order to reach peace and stability.

### **3.2.Germany**

Despite the recent events and all the complications in Syria, the public opinion and politics in Germany are not favourable to a military intervention in Syria mainly because of the previous involvement in Afghanistan. On the contrary, a more suitable option would be the relief of French forces in Mali – as France wished.

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<sup>104</sup>Ibid.

<sup>105</sup> UK Ministry of Defence, UK troops to train moderate Syrian opposition, News, 26 March 2015.

<sup>106</sup> MORRIS, Nigel, UK could send 'substantial' number of non-combat troops to support war on Isis in Syria, UK Independent, 16 December 2015.

<sup>107</sup> DEARDEN, Lizzie, British Special Forces photographed on front line against Isis in Syria for first time as support for rebels continues, Independent, 9 August 2016.

On the 4 December, three weeks after the attacks, Germany's parliament voted to authorize military assistance to the coalition striking ISIS targets in Syria<sup>108</sup> under a broad interpretation of collective self-defence in conjunction with article 42.7 and UN Resolution 2249<sup>109</sup> as proposed by Angela Merkel's government.<sup>110</sup> As a consequence, a military mission to Syria of up to 1,200 soldiers and a deployment of up to 650 extra troops to Mali was approved. This reinforcement of military bases in Mali is justified because of the weapons and terrorism fluxes that spread in North and Central Africa threatening these regions scarce stability. After such measures, Germany is now able to maintain four separate deployments of nearly 1000 soldiers each, surpassing the French presence and therefore leading the operations which are authorized until December 2016.

Despite Germany not engaging in combat, it has discarded its former restraint and cautious approach in deploying its army abroad. Since the post-war, Germany has never responded so quickly and strongly as it has to the Paris attacks which shows the new seriousness in German foreign policy and its determination to confront Islamic terror. Having taken such a significant step, Germany aligns with its larger military ally's policy and engages into a new *ius ad bellum*.

### **3.3. Portugal and Spain**

Having into consideration that Portugal stands up for the real values that lay under prosperous and real peace it is easy to understand the sympathetic position the State takes concerning terror.

The intervention on the fight of radical jihadism is a powerful move to Portugal in terms of international relations. It not only affirms its standards, but also exalts its sovereignty, negotiation powers and visibility in the international arena.

As all States are limited by capacity, risks and costs, it is not expectable for all States to act on the same intensity level. Portugal in particular has limited budget for

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<sup>108</sup> Bundestag Proposition (18/6866), Request of the Federal Government, 1 December 2015.

<sup>109</sup> UNSCR 2249, cit., 20 November 2015.

<sup>110</sup> Bundestag Proposition (18/6866), 1 December 2015, particular emphasis in item 2: *Action against the IS in the exercise of the collective right of self-defense under Article 51 of the Charter of the United Nations is covered by United Nations Security Council Resolution 2249 (2015). In so far as the collective self-defense is carried out in favour of France, Germany's military contributions are also made in accordance with the EU Treaty clause under Article 42 (7) of the Treaty on European Union (our translation).*

the military and therefore must prioritise where national interest needs more or brings more security in short or long run.

Portugal receives influence from all the international organizations mentioned earlier, but it also has its own geo-political strategy. Whereas it is obvious Portugal will fulfil its obligations, it is also true that a direct intervention in Syria is a last resort option.

Since the beginning, the State is well aware of the importance to fight terrorism. After the decision of 16 December 2014, by the National Defence Superior Council<sup>111</sup>, Portugal is part of the US-led Coalition against ISIS in Iraq. Its contribution, which involves 30 militaries, is mainly connected to training of the Iraqi army.

After the Paris terrorist attacks, in December 2015, according to the Portuguese Defence Minister, José Azeredo Lopes, negotiations related with equipment in other scenarios that not Syria were under being discussed.<sup>112</sup> Soon after, in February 2016, the Defence Minister assured that assistance to France in the fight against Dae'sh will be given through the reinforcement of its engagement in Africa, namely in the EU mission's in Mali (European Union Training Mission in Mali, currently under the French control) and in Central African Republic (EUMAM RCA - European Military Advisory Mission), as well as in MINUSCA (*Mission Intégrée Multidimensionnelle de Stabilisation des Nations Unies en République Centrafricaine*), SANGARIS Operation (French military force) and other NGO's present in the country. This action was approved by the Superior Council of National Defence during its meeting on 24 March, also driven by the events occurring in Brussels that brought to attention the need to establish short and long-term goals for the Portuguese Defence Policy.<sup>113</sup> This way Portugal contributes deeply to a diffuse response that aspires to global peace and security with the correspondent profits.

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<sup>111</sup> "The Superior Council of National Defence, advisory body of the President, reviewed and gave its assent to an assistance mission and support under the framework of NATO and the possibility of participation in the multilateral coalition in Iraq, in the context of training and military training of participation in the multilateral coalition in Iraq, in the context of training and military training ", as can be read in site of the Portuguese Presidency, see *Nota Informativa da reunião do Conselho Superior de Defesa Nacional*, Palácio de Belém, 16 December 2014.

<sup>112</sup> Portugal studies three other theatres of operations that are not Syria, TSF, 16 December 2015.

<sup>113</sup> *Nota Informativa da reunião do Conselho Superior de Defesa Nacional*, Palácio de Belém, 24 March 2016.

Both Portuguese and French Defence Ministers met last May and France proved to be pleased with the Portuguese contribution to the invocation of article 42.7.<sup>114</sup> In fact, these operations are a win-win for Portugal. They not only fulfil Portuguese obligations under article 42.7, but also strength the Portuguese participation in the international arena on political and military levels – both under UN and EU frameworks.

Concomitantly, Spain – close neighbour - also shares this approach of non-intervention in Syria, but live up to their responsibilities through action in Africa.

Regardless of the internal governmental uncertainty, Spain has strategic interest in Sub-Saharan region and usually contributes significantly to the CSDP.<sup>115</sup> While alleviating French forces, it strengths its presence in the continent moved by economical and energetic interests and to address its more direct threats in terms of migration flows and, consequently, domestic political and security affairs. “Spain has an essential interest in maintaining military ties with France in Africa at this time and intensifying the Spanish mission in the Sahel. (...) Spain has to take a more pro-active attitude, without waiting for a French request to get involved in Mali, the African Central Republic and Senegal.”<sup>116</sup> However, Spain cannot forget the persistent lack of unity inside the country. Would it be possible to project abroad what is missing inside?

### **3.4.Italy**

Italy is also important to mention as it has been playing a considerable role in the CSDP and has a project that aligns with those of Portugal and Spain – European southern flank with a vision to Africa.

After the denouement of a civil war, potential crimes against humanity and the violent death of President Qaddafi in Libya, Italy was especially reticent about intervening in Syria. Since Da’esh is also spreading in Libya, in May 2016 it was considered whether Italy should or not intervened in Libya, along the multi-state

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<sup>114</sup> Ministry of Defence, *França destaca “aliança preciosa” de Portugal no combate ao terrorismo transnacional*, 3 May 2016.

<sup>115</sup> As several studies demonstrate, including Institute Elcano, *Spain Looking South: From the Mediterranean to the Sahel*, declaring Spain’s “pivot to the South has been justified on the basis of the risks that dominate the region. However, we should debate how to take advantage of economic opportunities in this turn”.

<sup>116</sup> LERNER, James, LOPEZ, Alejandro, *After Paris attacks, Spain offers to reinforce French troops in Africa*, 24 November 2015.

NATO-led coalition that joints France, the UK and the US to protect economic agreements and yet another wave of migrants fleeing ISIS. The destination from Libya is very likely the ex-Italian-colony. However, a national unity government should exist which, nonetheless, won't make the situation any easier. Any land with no strong powers, might easily derive in terrorist's dens. Meanwhile, Italy is one of the greatest contributors to the global coalition against Da'esh in Iraq, participating in training missions, sharing intelligence, humanitarian aid or protection of cultural heritage. Italian Defence Minister, Roberta Pinotti, assured in early 2015 that "her troops were ready to lead a UN force into the anarchic North African state".<sup>117</sup> Apparently, according to Italian reports, "Italy has used a new law (approved after the Paris terrorist attacks) to send Special Forces to fight the Islamic State group in Libya under the control of Italy's secret services, rather than under military control".<sup>118</sup>

### **3.5. Brief remarks**

A truce entered into force on 9 September 2016, agreed upon by US Secretary of State John Kerry and Russian Foreign Minister Sergey Lavrov. This was seen as a way to dispel long-standing mistrust between the two powers over the Syria conflict and as a compromise after some alerts concerning crimes of war and crimes against humanity being committed on the territory involving Russia.

If successful, it implies humanitarian aid to flow and indiscriminate bombings to cease. For that to work, Russia should assure Assad doesn't attack anti-governmental forces and the US should assure rebels back down. It would actually be an ideal moment to establish a common enemy - IS and Al-Nusra Front, since July called Jabhat Fateh al-Sham - and combine effective strategies.

However, the truce was (predictably) unsuccessful. As has been released by the news, Syria's government is conducting a major offensive in Aleppo in a renewed attempt to take back rebel-held neighbourhoods. This aggravates even further the Syrian nightmare, especially the drama in Aleppo, considered by Ban Ki Moon, UN SG, a

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<sup>117</sup> The Economist News, *Italy ponders military intervention in Libya*, 5 May 5 2016.

<sup>118</sup> KINGTON, Tom, *Italy Reportedly Sends Special Forces to Libya*, Defence News, 11 August 2016.

place worse than a slaughterhouse.<sup>119</sup> And the problem is that there's scarce hope in the horizon as hatred and mistrust is ever rising between the parts involved.

Russia just vetoed, on the 8 October, the Franco-Spanish UN resolution that would have demanded an end to air strikes and military flights over of Aleppo. Concerning the matter, Ban Ki Moon asked if "it is fair for any one country or few countries to yield such disproportionate power and hold the world hostage on so many important issues".<sup>120</sup> The SC is implicitly accepting gross violations of Human Rights and its impotence has been particularly exposed in Syria. After the veto, France accused Russia of committing war crimes in Syria<sup>121</sup>, and President Putin just cancelled the meeting with his French counterpart.

Amongst all these growing tensions in and outside Syria, a meeting is adjourned for 15 October in Lausanne, where Russia, France and the US, as well as Iran and Saudi Arabia - opponents that dispute regional hegemony for years - will seat together to discuss the future of Syria. What will then happen is something we shall eagerly wait to see.

Whereas it is important to always be available to constructive dialogue, it is also important to maintain certain basic standards. Russia is certainly not the best partner for Europe in this action against terrorism. Every time a decision is made, it faces future criticism, but in this case, the price of acting along Russia is too high to take a chance.

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<sup>119</sup> "Imagine a slaughterhouse. This is worse. Even a slaughterhouse is more humane." Ban Ki Moon, UN Security Council meeting, 29 September 2016.

<sup>120</sup> Opening Assembly debate, Ban Ki Moon calls on world leaders to 'act now,' work together for a better future, UN News Center, 20 September 2016.

<sup>121</sup> "If I receive him, I would tell him that it is unacceptable, that it is bad even for the image of Russia. What I tell them, is that these populations are populations that are today victims of war crimes. Those that commit these acts will have to face up to their responsibility, including in the ICC," DOWAN, Angela, *Vladimir Putin snubs France after Syria war crimes comments*, CNN News, 11 October 2016.

## Conclusion

It is undeniable the Paris Terrorist attacks did not only had tremendous consequences for all those close to death or sorrow, but also threatened a way of life. They managed to test Europe's faith in tolerance and liberty as fear and hate are able to justify almost everything including extremist positions towards Islam, migrants or even terrorists in an endless cycle of ignorance.<sup>122</sup> Let's make clear that the best answer to attacks is more democracy and respect for fundamental rights.<sup>123</sup>

The New International Order, that faces growing challenges, has its cornerstone in the prohibition to use or threat to use force. One of the exceptions to this paradigm lies in the right of self-defence, article 51 of the UN Charter, that only allows using force in self-defence when there's an imminent or actual armed attack. As seen earlier, the definition of this concept holds a special weight in international relations but nonetheless is still one of the greatest challenges in times of global terrorism. On the contrary, something that is already established is the possibility to use this right against non-State actors and despite the involvement of a State.

Even though there was already a coalition to fight Da'esh, with the UNSCR 2249, States are assured they can act militarily in Syria and Iraq.

That is the reason why actions under the framework of NATO or the EU enter into analyse. Both regimes foresee defensive military action and are prepared to address terrorism. Nonetheless, France didn't activate NATO's article 5 which could be justified because of Russia animosity towards NATO. Instead, France chose an intergovernmental approach, that it can control at all times and use to its full support. The solidarity envisaged for article 42.7 is being delivered through a more adjustable way since all states are contributing, one way or another, to the eradication of ISIS. "They are (just) killers, they are (just) criminals".<sup>124</sup> . If no State wants ISIS in its own territory, wouldn't it be agreeable and therefore easy to sink it jointly?

So, the great question that arises these days, is whether the real problem is not the lack of capabilities to terminate ISIS threat, but rather the choice of who to attack in such a huge amalgam of parts that bottom line oppose Shiites (Iran) versus Sunnis

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<sup>122</sup> LOPES, José Azeredo, "*São (só) assassinos*", Opinion, Jornal de Notícias, 15 November 2015.

<sup>123</sup> Terror shouldn't make people worse people, #NoHateNoFear Movement, Council of Europe's PACE initiative.

<sup>124</sup> LOPES, José Azeredo, "*São (só) assassinos*"...*cit.*

(Saudi Arabia<sup>125</sup> and other Gulf Monarchies). “A missile can kill a terrorist, but only good governance can kill terrorism”.<sup>126</sup> If only States came to an agreement on who’s the bad part... after witnessing a European parliamentary session one finds the most varied kinds of support, either Russia, Al-Nursa Front, Assad Regime, or any other (terrorist) group according to their particular interests. Basically, ISIS could be playing the useful idiot role and being manipulated through even more serious and aggressive foreign policies in the Middle East. Through this perspective, Dae’sh is just a mean, and the greatest concern should then be the end (?) to this conflict that must be analysed.

Another question is whether the EU has, first, the internal will to act within a joint strategy and second, the capacity to control negotiations on the future of Syria in a multipolar world.

As affirmed earlier, while the situation in Syria is not solved, the threat will proliferate and intensify. For the time being, the immediate actions to be taken are clear: stop hostilities, circulate humanitarian aid and negotiate with all the parts involved. Diplomatic dialogue is always an option.

Nevertheless, concerning the real drama in Syria, one can only hope evidences are being collected for future eventual trials and international criminal law enforcement.

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<sup>125</sup> Saudi Arabia forms Muslim anti-terror coalition without mention ISIS.

<sup>126</sup> Ban Ki Moon, UN Secretary General.

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