EU's mutual defence and solidarity clauses: political and operational dimensions

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The Committee on Foreign Affairs adopted the own-initiative report by Ioan Mircea PA?CU (S&D, RO) on the EUs mutual defence and solidarity clauses: political and operational dimensions.

Members recall that the framing of a common defence policy aims at a common defence is reinforcing the European identity and the strategic autonomy of the EU. They also recall that while Member States retain the primary responsibility for the management of crises within their territory, serious and complex security threats, from armed attacks to terrorism to natural or CBRN disasters to cyber-attacks, increasingly have a cross-border nature and may easily overwhelm the capacities of any single Member State. They therefore urge the Member States, the Commission and the Vice-President/High Representative to make full use of the potential of all relevant Treaty provisions, and in particular the mutual defence clause and the solidarity clause, in order to provide all European citizens with the same security guarantees against both traditional and non-conventional threats.

They also make reference to Article 42(7) of the EU Treaty (mutual defence clause or mutual assistance clause) and Article 222 (solidarity clause) of the Treaty on the functioning of the EU.

In particular, the report details the manner in which these clauses should be interpreted and enforced in terms of scope and capacities.

1) Mutual defence clause:

Scope: Members remind the Member States of their unequivocal obligation of aid and assistance by all the means in their power if a Member State is the victim of armed aggression on its territory. And, while large-scale aggression against a Member State appears improbable in the foreseeable future, both traditional territorial defence and defence against new threats need to remain high on the agenda. In this regard, non-armed attacks, for instance cyber attacks against critical infrastructure, can be launched with the aim of causing severe damage and disruption to a Member State.

Members also recall that the Treaty stipulates that commitments and cooperation in the area of mutual defence shall be consistent with commitments under NATO. However, they stress the need to be prepared for situations involving non-NATO EU Member States or EU Member States territories that are outside the North Atlantic area, as foreseen in the Berlin Plus agreement.

Capacities: Members emphasise the need for European countries to possess credible military capabilities. They therefore encourage Member States to step up their efforts in terms of collaborative military capability development, notably through the complementary Pooling and Sharing and Smart Defence initiatives of the EU and NATO, which represent a critically important way ahead in times of restrained defence budgets. They consider that, in order to consolidate their cooperation, both NATO and the EU should concentrate on strengthening their basic capabilities, improving interoperability, and coordinating their doctrines, planning, technologies, equipment and training methods.

Members reiterate their call for the systematic harmonisation of military requirements and for a harmonised EU defence planning and acquisition process, matching up to the Unions level of ambition.

Structures and procedures: Members invite the Vice-President/High Representative to propose practical arrangements and guidelines for ensuring an effective response in the event that a Member State invokes the mutual defence clause, as well as an analysis of the role of the EU institutions should that clause be invoked. Where collective action is taken to defend a Member State under attack, Members consider it should be possible to make use of existing EU crisis management structures where appropriate, and in particular that the possibility of activating an EU Operational Headquarters should be envisaged. They reiterate their call on the Member States to establish such a permanent capacity, building on the recently activated EU Operations Centre.

2) Solidarity clause: if a Member State is the victim of a terrorist attack or of a natural or man-made disaster, the Union and the Member States have an obligation to act jointly to assist it and mobilise all the instruments at their disposal, including the military resources made available by the Member States (e.g. in the event of a terrorist threat). Members demand that account is taken of all sorts of threats, such as attacks in cyberspace, pandemics or energy shortages.

Member States are called upon to invest in their own security and disaster response capabilities and not to excessively rely on the solidarity of others. The solidarity clause is implemented only once it has been invoked at the request of a Member State.

Capacities and resources: Members stress that the implementation of the solidarity clause should form an integral part of a permanent EU crisis response, crisis management and crisis coordination system, building on the existing sectoral instruments and capabilities. To this end, they point out the fundamental role of the Civil Protection Mechanism and express their support for the future mechanism which will replace it.

Members highlight the importance of ensuring that solidarity is underpinned by adequate EU-level funding mechanisms offering a sufficient degree of flexibility in emergencies. In this regard, they welcome the proposed increased level of cofinancing under the Civil Protection Mechanism, in particular for transport costs. They recall that the Solidarity Fund can provide financial assistance after a major disaster and that further Union financial assistance may be granted by the Council pursuant to Article 122(2) TEU, when a Member State is in difficulties or is seriously threatened. They stress the importance of seeing this provision as part of a comprehensive Union solidarity toolbox for addressing new major security challenges, such as those in the area of energy security and security of supply.

Structures and procedures: Members stress that the EU needs to possess capable crisis response structures with 24/7 monitoring and response capacity. They note the establishment of the Situation Room within the European External Action Service, as well as the existence of a number of sectoral monitoring centres within Commission departments and specialised EU bodies. They reiterate the need to avoid unnecessary duplication and to ensure coherence and effective coordination in action, all the more so given the current scarcity of resources.

As regards structures, Members consider that all specialised services at EU level should be integrated within a single secured information system, for example, within the ARGUS internal coordination platform. They highlight the need for political coordination in the Council in cases

of severe crises. They welcome the establishment of the new EU Emergency and Crisis Coordination Arrangements.

Members also call for:

- the development of an Integrated Situational Awareness and Analysis (ISAA) for EU institutions and Member States, and calls on the Council to ensure timely implementation, and welcome the planned upgrade of the Monitoring and Information Centre to create a European Emergency Response Centre;
- the enhancement of capacities for providing and receiving assistance, as well as for exchanging best practices;
- the creation of the necessary procedural and organisational links between relevant Member State services, in order to ensure the proper functioning of the solidarity clause following its activation.

With respect to the decision-making process in the Council following a request for assistance under the solidarity clause, Members consider it must not be detrimental to EU reactivity, and that crisis response through the existing mechanisms, such as the Civil Protection Mechanism, must be able to start immediately, irrespective of any such political decision. They point out the fact that the use of military assets to support civil protection operations is already possible on operational level without the activation of the solidarity clause, as evidenced by the successful cooperation between the Commission and the EU Military Staff on past operations in Pakistan or Libya.

Members consider that threat assessments must be complemented with risk assessments analysing threats in the light of existing vulnerabilities and thus identifying the most pressing capability gaps to be addressed. They therefore encourage the Member States to share their national risk assessments and risk management plans, to enable a joint appraisal to be made of the situation.

Members stress that the European Parliament should be kept informed of the situation on the ground in the case of a disaster or attack that triggers the solidarity clause, as well as of the origins and possible consequences of these event.

General considerations: Members also make a series of general considerations, in particular in regard to the existing links between the EU and NATO. They call for increase political collaboration between the Unions VP/HR and NATOs Secretary-General for the purposes of risk assessment, resource management, policy planning and the execution of operations, both civil and military. They also reaffirm that the use of force by the EU or its Member States is only admissible if legally justified on the basis of the UN Charter. In this context, they underline the inherent right of individual or collective self-defence.

Lastly, Members call on the Commission and the Vice-President/High Representative, before the end of 2012, to make their joint proposal for a Council Decision defining the arrangements for the implementation of the solidarity clause according to the provisions of Article 222(3) TFEU, clarifying in particular the roles and competences of the different actors.

It should be noted that a minority opinion in the context of this report was tabled by several GUE/NGL Members who reject the solidarity clause because of the lack of definition of its real scope and the fact that it would favour military to civil measures outside and inside the Union. These Members call for a civil European Union favouring the resolution of civil conflicts.