



After Paris: why (now) the Lisbon Treaty

by Antonio Missiroli

The perfect storm which has been building up over Europe for the past months probably peaked with the series of coordinated terrorist attacks in (and on) Paris on Friday 13 November. After President François Hollande declared them “an act of war”, France sought the solidarity of its EU partners through Article 42.7 of the Lisbon Treaty. On Tuesday 17 November, EU defence ministers unanimously declared their support for France and expressed their readiness to assist it, directly or indirectly.

Article 42.7 states that ‘if a member state is the victim of armed aggression on its territory, the other member states shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the UN Charter’. But it somewhat qualifies the obligation by clarifying that ‘this shall not prejudice the specific character of the security and defence policy of certain member states’ and that ‘commitments and cooperation in this area shall be consistent with commitments under NATO which, for those states which are members of it, remains the foundation of their collective defence and the forum for its implementation’.

It is the first time that Article 42.7 has been invoked since 2009, when the new treaty entered into force. In fact, this does not require a formal decision by the Council – it is sufficient that a member state makes reference to it – or the activation of any special EU implementing procedure. In other words, it

is primarily a *political* act of support which may not necessarily trigger a coordinated operational follow-up.

In this respect, it is somewhat different from Article 5 of the Washington Treaty, the activation of which did entail immediate military implementation. This was indeed the case in September 2001, in the wake of the 9/11 attacks in New York and Washington, when NATO-owned AWACS aircraft were sent to the US to provide air surveillance while American AWACS were flown to Afghanistan to prepare and accompany the US-led Operation *Enduring Freedom*.

This said, it is entirely conceivable that, in the weeks and months to come, specific actions of military support by EU partners will be agreed upon and carried out: force substitution in CSDP missions and operations (in order to free up French troops for redeployment), for instance, or the provision of tactical intelligence and possibly assistance in counterinsurgency. These are all options that are likely to be discussed also on a strictly bilateral basis.

In this respect, incidentally, the Lisbon Treaty offers the additional option of resorting to Article 44 TEU, which states, *inter alia*, that ‘the Council may entrust the implementation of a task to a group of member states which are willing and have the necessary capability for such a task’. While it is another article that has remained unused, at least so far, some preliminary collective thinking about how and when

it could be activated and implemented has already been done [EUISS Brief 27/2014].

Inside out and outside in

The ‘shock and awe’ actions perpetrated by the militants affiliated to the Islamic State of Iraq and Levant (ISIL) in Paris on 13 November, however, have also further highlighted the increasing difficulty of separating external and internal security. This is true for Europe as it is elsewhere, with the Paris attacks preceded by similar atrocities in Ankara and Beirut, as well as the downing of a Russian airliner above Sinai. ISIL’s tactical setbacks in Syria and Iraq have prompted an escalation of violence outside its original theatre of operations, blurring the distinction between ‘here’ and ‘there’, and between the international campaign against the jihadist group and Europe’s domestic arena(s).

The so-called ‘foreign fighters’ are the most visible incarnation of this phenomenon: home-grown radicals who straddle regions and are engaged in a ‘war by terror’ against unarmed civilians and military personnel alike. The drivers of their radicalisation are both local (inside Europe) and global (the *jihad*), often with regional input from Syria, Iraq or the Maghreb. ISIL is just currently the leading ‘brand’ in a constantly evolving galaxy which needs to be fought through a combination of tailored warfare, smart policing and multi-pronged social policies – both at home and abroad.

All these responses require a mobilisation of extra resources – human and financial, operational and political – that, in turn, has the potential to challenge the current parameters of Western, and especially European public policies. To some extent, France’s request for European support is also driven by concerns about the compatibility between a warlike domestic situation and its fiscal policy commitments at EU level. Much as the stability pact for the euro foresees, in principle, some budgetary flexibility in the event of unexpected extreme domestic crises, the fight against violent jihadism and its root causes seems hardly comparable to a one-off natural disaster or industrial incident. At the same time, the mobilisation of additional means to tackle the increasing challenges to Europe’s overall security – wherever they may come from – cannot be limited to only one country or only the national level.

The quest for solidarity

Over the past weeks and months, the other major storm brewing over Europe – the escalating migrants crisis – has prompted calls to resort to another hitherto unused provision of the Lisbon Treaty, the so-

called ‘solidarity clause’ enshrined in Article 222 TFEU. The unprecedented exposure of countries like Croatia and Slovenia to the thousands of refugees streaming through south-eastern Europe had seriously challenged their internal capacities to handle the issue. Greece, for its part, had highlighted the virtual impossibility of fully patrolling its coastal borders and hosting thousands of refugees on its (mostly tiny) Aegean islands.

This gave impetus to the ongoing discussions over a possible activation of the clause, which states, *inter alia*, that ‘the Union and its member states shall act jointly in a spirit of solidarity if a member state is the object of a terrorist attack or the victim of a natural or man-made disaster’. To this effect, ‘the Union shall mobilise all instruments at its disposal, including the military resources made available by the member states’. It is worth noting here that the EU institutions have already finalised detailed Integrated Political Crisis Response (IPCR) arrangements to facilitate common decision-making and response at the highest political level, which would be automatically triggered by the invocation of Article 222.

The tensions that culminated in a series of sharp exchanges between EU countries over the handling of refugees have been portrayed as a quasi-existential crisis for the Union, putting into question the very notion of European solidarity. The crisis has highlighted the urgent need for more consistent and co-ordinated approaches – for instance, to asylum rules and practices – as well as the impossibility (and undesirability) of isolating the European ‘homeland’ from the outside world. Of course, there are no drawbridges to be pulled up around a ‘fortress Europe’, and solidarity is not just a naively altruistic notion: it always entails a degree of self-interest, including the expectation that it will be reciprocated if and when needed. In this respect, Article 222 and its implementing procedures have the additional advantage of operationalising solidarity in concrete and predictable terms.

2015 has severely tested Europe as a polity and community: the risk of dis-integration and de-commitment has suddenly become apparent. Yet, in this hour of need, the member states appear willing to make use of instruments they created some time ago and have rarely thought about since. Distinct from the more ‘prescriptive’ articles in the treaty, these ‘enabling’ provisions first require political will to be activated and then operational capacity to be effectively implemented. Their mobilisation may yet become, *malgré tout*, a source of confidence and hope in the future.

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