

THE SOLIDARITY CLAUSE IN THE EUROPEAN UNION TREATY AS A HUMAN SECURITY VECTOR. A FAREWELL TO TERRORISM OR LEGITIMIZATION OF INFERENCE IN INTERNAL AFFAIRS?

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Abstract

The draft European Constitution crafted in the interval between the terrorist attacks of 9/11 in New York and those taken place in Moscow, Madrid, was concluded shortly before the attacks on public transportation in London in 2005, including what is called a solidarity clause (art. 42) and its implementation modalities (art. III-329), however after various vicissitudes, it was never ratified by the Member States and fell into oblivion; while it remained a driving force in the subsequent Lisbon Treaty in force since 2009 as, section 222 in the fifth part under Title VII.

Keywords

Citizens; Democracy; European fortress; European governance; Interference; Human security risk – assessment; Rule of law; Solidarity

1. INTRODUCTION

The revival of the clause fits in what Dupuy referred to as the “*sauvage coutume*” due to the lack of reference in the international realm, no yardstick for comparison, since only federal entities display a similar capability, and embody a Copernican advancement of rhetorical principles present in the United Nations Charter and in legal philosophy which from immemorial time has held that the right to preserve peace and security of internal and external threats corresponds to the sovereign state; that is, it must be remembered that Member States are primarily responsible for ensuring the security and protection to its citizens, as noted by Beck (1992), “risk, security and threats are key terms for understanding modern society”. However, the European Union transcends this solid principle and proclaims a right to intervene to clash matters that endanger human security limited to those attached to its territory, based upon the concept modelled by the United Nations as *responsibility to protect* since 2005.

International Law is being bended to the extreme in light of the fight against terrorism. For example, Dopagne (2001) has stated “that some States are inclined to nurture the coming into age of a special rule of responsibility for the behaviour of terrorist groups on the ground of some traces of solidarity or complicity with them”.

The solidarity clause inserted within the Lisbon Treaty is to be regarded as a new tool in the context of the Struggle against Terror and Welfare promotion; the term solidarity is abundant along the most recent revisions of the treaties; the problem lies in the sense and scope of the term, its prospective abuses and veering away mistakes from the past, thus depriving solidarity of the core value as the “corollary of mutual trust among member States”¹ and making it an elusive reflection. For instance, the German Constitutional Court has questioned itself whether financial solidarity within the European Union, relating to bail outs and stabilization instruments is not by definition a threat to its constitutional identity (Claes and Reestman 2005).

¹ Regarding the system of border controls but extensive to this area, quoted in Council of the European Union, Brussels, 1 october 2015 doc. 12541/15 p. 3.

2. THE CLAUSE OF SOLIDARITY

While Cedervall (2015) asserts that “the capacity to deal with crisis and emergencies in an efficient way is a paramount pillar to maintain society”, Sundelius claimed that “though there is a generalized thoughtfulness of the need to pool resources at international level to face transnational menaces, cooperation to this point had resulted in frustrating and at most meagre outcomes” (Sundelius 2005).

At cursory glance, the instrument can be perceived as a useful way to reduce the vulnerability of the Union which is a legal obligation for the Union and its members on the face of terrorist attacks or catastrophes thus allowing for cohesion and the maintenance of the values anchoring the Organization, multiplying the actors and luring civil society to a multipronged superdemocracy, resulting in more sheerness and legitimacy in face of the Community of Nations, becoming a pivotal actor¹ for conflict resolutions in the framework of the United Nations system (Yepes 1947; Fröhlich 2008).

The clause is perceived by some scholars, *inter alia*, Sperling (2014), as a progression in government by *core European values*, anchored and masterminded in Brussels, advancing from the precarious system of sanctions to members states included in the Treaty of Amsterdam at the end of the nineties that was ready to be deployed in the aftermath of the ascent of Haider to shared power in Austria (Gutierrez and Cervell 2007)². Nonetheless, others maintain that the clause is redundant, given the existence since 2001 onwards of a *Mechanism of Civil Protection*³. Furthermore, the clause is controversial given the array of mechanisms already existing, namely, the Strategy on Interior Security of the EU, the Mechanism of Civil Protection of the Union and its financial instrument, ⁴ the Solidarity Fund of the Union, ¹ the Initiative on

¹ „(...) the member states also dispose of a uniquely wide array of political, operational, diplomatic, economic, and structural instruments for the management of crisis and conflicts”. Gebhard/Norheim – Martinsen, Beyond Intergovernmentalism: European security and defense policy and the governance approach, *Journal of Common Market Studies* (2010) 48(5): pp. 1351-1365.

² Currently, present in article 7 of the Treaty.

³ Revised in 2007 in Council Decision 2007/778/CE.

⁴ Allowing the adherence of non – member States such as Croatia, Former republic of Macedonia, Iceland, Liechtenstein and Norway, overlapping with the Solidarity clause might create legal troubles.

serious cross-border threats to health;² Structures of Crisis and Analysis response of the European External Action Service (EEAS),³ Crisis responses units of the Council and agencies as Europol or Frontex.

The former would open the door to a reinforcement of the militarization⁴ by the Union (Luhmann 2010) and to the increasing perception of a European fortress limited to its own security neglecting problems abroad as the current refugee problem, the ongoing civil strife in Syria or the failure of the Arabs Spring highlight.

Both political vicissitudes and the level of international conflict will activate the clause or leave it to its present lethargy, as many other items of the European jigsaw. However and despite its relevance, so far it has received scarce attention by scholars.

The intent of this essay is to shed light on its benefits, more degree of human security, and to highlight gaps such as “democratic deficit”⁵ and the need to observe “rule of law” in European Law (Köchler 1995), therefore contributing to set the pace and example for regional integration in the world.

¹ Created after the catastrophic floods during the summer of 2002 in Central Europe, see, Council Regulation (EC) No. 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund, OJEC L 311/3 14.11.2002.

² The Initiative paved the way for a permanent framework in order to guarantee a comprehensive response to health alerts.

³ See, emphatically critical on this service, the Court of Auditors of the European Union, http://www.eca.europa.eu/Lists/ECADocuments/SR14_11/SR14_11_EN.pdf, last consulted November 30 th, 2015.

⁴ Adding to Agencies like the European Defense Agency cited in Protocol n. 10 of the Treaty that pertains to achieve enhanced permanent cooperation in these matters are a reminder of an overlapping threatening a unified response.

⁵ In order to put behind the characterization of the Union as “an unidentified political object” seen as a Byzantine system of differentiated decision making that in this regard can bring about more evil than good, if not clarified in advance. See, Spence, D.; *International Terrorism: the quest for a coherent response* en Bayles, A.; and Frommelt, I.; (eds) *Business and Security*, Oxford University Press, 2004 p. 1

3. DISRUPTIVE FEATURES OF ARTICLE 222

The article, lacking clarity and ambitious is positioned somehow awkwardly and isolated within the Treaty¹ (Konstadinides 2011), reads:

“1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to: (a) - prevent the terrorist threat in the territory of the Member States;- protect democratic institutions and the civilian population from any terrorist attack;- assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack; (b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

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

3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed. For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions.

¹ Straddled amidst the perennial norms pertaining external and commercial and articles comprising the form, functioning and decision making by the Institutions; in this matter, decision making lacks transparency meanwhile a practice is created. The location of the article should move in order to ward off criticism about purely rhetoric, to chapter 2, art. 77 *et al.*, or closer to Title XXIII on Civil protection.

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

First, the aim of the article is to establish a mechanism to deactivate and react in the face of menaces and acts that can endanger the security of EU member states, including natural catastrophes complementing another clause more intimately linked to military matters, for mutual assistance in case of armed aggressions. Both are interrelated and have been present in the debate of the European construction from the inception of Monnet plans, the precedent dates back to the so-called Trevi Summits during the seventies. Still the drafters of the Treaty incurred in the same mistake; that is, to slice in two articles, what should be wrapped into one (Myrdal and Rhinard 2010), given the intimacy of the duet “interior – exterior” (Konstadinides 2013). Moreover, given a threat by “a non – identified agent” a combined triggering by the Institutions is well a possibility, adding more confusion still.

In order to avoid duplicity and malfunctions, the new Service of Exterior Action of the Union shall be more consistent gaining from the experiences with community actions *versus* extra community ones from past decades.

Second, the operation and implementation of the Clause could injure principles engraved in the national constitutions of Member States even those values the Union pertains to defend, on the basis of policies to date not defined in depth: namely, the establishment of a - so far - minor, body of transnational police with military status under the term of European Gendarmerie; the deployment of military troops to crisis management under murky rules of engagement, or conceived, such as the use of secret and espionage services; a central command for civil protection; new functions for the Service of Exterior Action of the Union and the status of its personnel¹.

Third, on the financial and legitimacy level, the blocking minority vanishes from the scope of the clause, notwithstanding the triggering amounts to an additional expense pending approval by the European Parliament, the

¹ In this respect, see the recent case presently with the malfunctioning of the external European borders, reluctantly oversee by national forces which has prompted in Brussels the discussion of an intervention by a yet to be created European Union Border Patrol.

latter with no essential role in clear contrast with the ordinary legislative procedure that the Treaty of Lisbon requires for Civil Protection measures¹.

Fourth, the experience and assistance of the *Petersberg Missions* merging civil and military authority might well serve as a “umbrella” in the time needed for the system to develop its degree of maturity and transparency, after 15 years of its landing within the European Union bodies. Moreover, it is worth considering the relevance of other International Organizations, for instance, the Organization for Cooperation and Security in Europe (OSCE) as an impartial third actor committed to the maintaining of human rights in the region throughout quiet and shuttle diplomacy.

Any advancement in the domain of interlinked security must be respectful of the relevance of International Law, specifically the works undertaken by the International Law Commission (ILC) on responsibility by International Organizations covering both the responsibility of States for illicit acts committed by an International Organization, as the responsibility of the International Organization for illicit acts committed by States,² in order to have a clear basis for acts that can be subject to the definition of an international crime, and likewise with respect of the International Criminal Court in force for all the European Union members, paving the way to individual adjudication for crimes of its Statute, that can well fall within actions by the triggering of the Clause.

For sake of argument, it is not unconceivable that a Member State of the EU, actively or passively³, prompts an action of the EU in order to protect “the European public order” just off the limits of the Union’s competences and

¹ See, Chapter 3 Annual Budget of the Union, especially, article 314, according to which, all expenses by its nature are attributed to the shared competencies of the European Parliament and the Council, therefore in the respect, and given that there is no authorization by the former after being merely informed of the necessity to trigger the Clause, the action could be financed in an improper way throughout the Civil Protection chapter or alike, i.e funds existing for the Second Pillar, by- passing the Parliament, and having access to the budget, forcing the Parliament to a *fait accompli*, and to make adjustments to an instrument that is not conceived to finance the Clause of Solidarity.

² Sentences like Bankovic failing to admit the responsibility of the NATO or its members states by the European Court of Human Rights are a reminder that impunity can still be condoned to International Organizations.

³ Political leaders of a member state, out of pressure by other Member States, may call for an intervention, and vote in their quality as representative of the country, in favor once the decision is debated in the Council, taking refuge under the wings of the Organization after the intervention is decided, and freed of all responsibility.

bordering an action *ultra vires*. In this case, it will be infeasible to prove bad faith of one of various States, given the level of secrecy at the European Council and to discharge all responsibility within the International Organization, as the burden of pressure is too much to cope with by the European Court of Justice, the European Parliament Human Rights Committee or the European Ombudsman.

Moreover, the participant States are given a wide scope of discretion to choose the mechanisms esteemed adequate to fulfil their obligation of solidarity; certainly we can foresee troubles in this context, for instance, countries more willing to deploy military aid, personnel or material, while other more prone to offer political venues, grant financial aid or equipment.

Fifth, regarding the thorny issue of terrorism, it is worth mentioning that for the first time, common parameters and thus certain degrees of legality exist for all citizens and denizens within the Union, namely, a Framework Decision of 2002 revised in 2008 (Dumitriu 2004) not limited to Islamic terrorism and in line with the values overarching the European development. Actions in the fight of terrorism cannot be triggered out of an interpretation foreign to the legal text, and this is a tremendous achievement to account for, which is unfortunately affected by the appearance of the Solidarity Clause that can be set off by political authorities.

Sixth, regarding legal basis, the experience with article 352 TFEU pertaining to subsidiary powers has had its saying in the realm allowing hauling “the feeling” of Union solidarity to a legal regime of assistance to terror and other crimes’ victims, specifically, access to lump payments to victims in transnational situations¹ and civil protection²; still very marginal but a breakthrough, as a genuine concern for victims in responded on a European scale.

Summing up, veering off the “war against terror” deployed by the United States, Europe trails away with the charting of an autonomous “European style” (Rhinard and Boin 2009) fight against terrorism out of necessity, due to the fact that Europe is not only target for terror acts but home to terrorist hubs and cells, given the colonial past of a number of countries, and the gruesome actions in Paris are a clear snapshot. Thus, it is obliged to sketch

¹ Directive 2004/80/CE Council 29th April 2004 OJEU L 261&15 6th august 2004.

² Remodeled in a „ad hoc” article n. 196 TFEU that formalizes civil protection as a ambit of „shared competences” among the Union and member States.

a multipronged strategy to counteract the threat, and decided to uproot critics voicing that Europe is the weakest link of the lock to fend off Terror Nonetheless (Wright 2006), while aiming this objective, it has to endorse that respect for human rights and the adherence to democratic values are not diminished.

4. GLIMPSE ON THE CONTENT OF ARTICLE 222. LIMITS AMIDST INTERGOVERNMENTAL AND SUPRANATIONALITY

In a cursory glance, the article aims to set aside concepts of sovereignty and subsidiarity for terror attacks, in contrast with other procedures of crisis management dispersed along the Treaty; article 222 puts it into one piece, the mention to catastrophes is deemed as secondary and is explained in terms of victims and destructions that can bring about (Ekengren *et al.* 2006). Both phenomena exclusive similarities are the exceptional nature, driving a need to build up a ditch or firewall for the sake of the Union security.

The article must be observed in connection with other parts of the Treaty aiming to different objectives but overlapping, such as article 196 TFEU on civil protection, articles 75, 83 and 88 on humanitarian assistance and in the bigger picture, with Titles V 1 and V 2.

The first paragraph shows clearly the supranational nature on account of the actions, a prominent role is offered to the European Commission and the High Representative, but in last instance responsibility lies in the Council of Ministers which abides by a transparency policy that however, for reasons of caution, will have a more secretive stance, basing the action in bodies such as the Standing Committee on Internal Security (COSI) and the Political and Security Committee (PSC) under command by the COREPER. Both venues, either cooperating or concurring, gives an outcome far from optimal, casting a shadow of secrecy; moreover, it is rather improbable that they could reach similar conclusions.

A wide reading of the terms **prevention** and **protection** of letter a) could justify an intervention in a country without its acquiescence what put us facing a situation that infringes a basic principle of international relations, the non - intervention in internal affairs causing a breach of its sovereignty and national security.

Regarding situations that can open the procedure of article 222, there was an intense debate within the European Parliament on account that not all attacks perceived to be terrorist could trigger the clause, only those that amount to a threat to the government or to an important part of the population. Therefore, a degree of proportionality is required in line with the doctrine underlining the right to self-defence by most scholars based upon the Caroline incident settled in the XIX century, less volatile than the decisions of the Security Council of the UNO.

The territorial scope is limited to the surface of the Union, inside waters, territorial waters, diplomatic post, and the aerial space of the Member States, including oil and gas platforms, in territorial, economic exclusive zone, continental platform of a Member State, such as those in the North Sea. *Exceptionally*, in a preventive response, it can be stretched to vessels carrying European flag or flying over international air or sea space, and can be inferred a danger for the Union. However, these incidents given the necessity of fast reaction and protocols already existing within NATO after 11/9/2001 events appear here in a non – practicable way.

On the instruments at hands by the Union, nothing is said on this respect, however, in the document titled “Strategy for an European Security” is mentioned; intelligence, police, and judicial bodies and to a lesser extent, military forces (European Security Strategy 2003). The latter refers to military deployment less intrusive such as expert’s teams, equipment; and chemical, biological, radiological, or nuclear decontamination gear.

5. PROGRESSIVITY ON THE DEPLOYMENT.

4.1 The joint proposal by the Commission and the High Representative of the European Union for External Affairs and Security Policy¹

Despite of being a mere formulism and a prerequisite of legislative initiative abiding the proportionality and subsidiarity principles; the explanatory recital adds to an array of instruments determined to guarantee

¹ Council of the European Union(2012), JOIN (2012) 39 final, 21.12.2012, Joint proposal for a Council Decision on the arrangements for the implementation by the Union of the Solidarity Clause

the security of the European fortress. Impelled by the proposal, the European Parliament with a limited competence, despite the implications of its full-fledged execution being only informed afterwards, presented a resolution on November 2012 urging that the clause being extended to “economically motivated blockades”; “attacks in cyberspace, mass epidemics, energy and/ or migratory crisis, and environmental catastrophes”. The representatives of the States in the Council gave a lukewarm response no-committal. Only attacks on cyberspace are deemed to trigger the clause.¹

A minority of the members of Parliament went a step beyond showing its disapproval of whole article, stating that “this new competence of the Union will enlarge the path to the arms lobby and paved the way to military interventions within the European territory and far away, what enhanced the deepness of a crisis”².

4.2 Council Decision of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause³

With the intent of making the text in the Treaty less laconic and to respond to a number of various questions over the extent of its applicability, scope of threats and the entry into action, this measure was adopted on rules and procedures to activate the clause that unfortunately runs behind the expectations that arose and proves that the political momentum has plummeted (Keller-Noellet 2011). As a paradox, the text a perfect blueprint for interventionism was passed during the Greek Presidency of the Council, a country in dire straits and economically only nominally sovereign since 2010 (Wilkinson 2015)⁴. The content details the role of the Union and highlights the

¹ European Cyber-Security Strategy (2013) JOIN(2013) 1 final, 7.2.2013, p. 19.

² European Parliament (2012), Committee on Foreign Affairs on the EU´s mutual defense and solidarity clauses: political and operational dimensions, A7-0356/2012, 31 October 2012. (2012/2223(INI)).

³ Consejo de la Unión Europea (2014), Decisión del Consejo de 24 de junio de 2014 relativa a las modalidades de aplicación por la Unión de la cláusula de solidaridad (2014/415/EU), OJ L 192, 1.7.2014, p. 53–58. Adopted in secrecy by the General Affairs Council as a point not listed in the agenda of the meeting.

⁴ Greece was connected by European financial markets to the rest of Europe. As this process of bailing out wore on, the European financial crisis evolved into a full-fledged sovereign debt crisis for the country, and to a minor extent to Portugal and Ireland.

need and the options of enhanced cooperation by all actors within the Member States and on EU level.

Article 4(1) reads: in the event of a disaster or terrorist attack, the affected Member State may invoke the solidarity clause if, after having exploited the possibilities offered by existing means and tools at national and Union level, it considers that the crisis clearly overwhelms the response capabilities available to it. It is a task for the Commission and the High Representative with the expertise of the European Exterior Action Service, on the request by a Member State to identify the instruments and capacities of the Union that can best contribute to deactivate the crisis.

On the matter of the scope, clearly, an effort is made to clarify the realm of threats covered by article 222, extensive to all situations that “can or could have a relevant impact on the population; environment, private property, including cultural heritage”.¹ A cursory scrutiny of the text fails to comply with the slightest respect for legality and shows the European Union, deliberately, has chosen not to limit the applicability of the article, but the territorial scope, leaving a loophole in the disguise of an abstract danger, the mention of man – made disaster is a *catch all* phrase, pre-empting action for any incident with a “grave impact”² completely unlinked to a physical, finance, transnational, multi-sectorial, and so on damage (de Guttry, Gestri and Venturini 2012).

Surprisingly, the reference to the Framework Council Decision of 2002, revised in 2008 including acts therefore it is our understanding that acts of “public provocation to commit a terrorist offence” and “recruitment and training for terrorism”³ can be constructed as an easy trigger for action under article 222 which is rather shocking given the importance given to prevention and protection, and it might undermine the efforts on public relations by the Union for a multicultural stance and respect of religions with its territory. Furthermore, the Decision fails to include a clear mechanism for its closure,

¹ Council Framework Decision (2008/919/JHA) of 28 November 2008 L330/21 09/12/2008. Art. 3. a).

² In our opinion, a correct implementation of *Council Directive 2008/114/CE of 8 December 2008 on the identification and designation of European critical infrastructure and the assessment of the need to improve their protection* L 345/75 23(12/2008), can be best used as a benchmark to evaluate the damage in an objectively manner not prone to political foul play.

³ Included in the Council Framework Decision 2008/919/JHA of 28 November 2008 L330/21 09/12/2008. Art. 3.

that is to say, a revision or evaluation process of the action undertaken by the European Union once the clause is activated. There is an empty space of governance between the *Emergency Response Coordination Center (ERCC)* operating within the European Commission Humanitarian Aid and Civil Protection¹ and the national interest of the State deciding upon the beginning and the ending of the emergency.

Whereas, first, for its operability, the Emergency Response Coordination Centre would play a focal point role and command centre, but can be changed if the Commission considers it most convenient for sake of coordination and drafting of in -site rapports; ² second, financial sustainability, the Decision mentions the *Solidarity European Fund* which raises concerns due an enhancement of its natural ambit and eligibility criteria that can dilute the proper aim of the Fund³ and overcharge it twofold.

Summing up, the complex and sketchy text of the Decision is praiseworthy for containing a periodical revision process that corresponds the Council, previous a joint rapport by the Commission and the High Representative, but it is regrettable that given the relevance of this instrument for the working of democracy in Europe and the state of human rights, as a beacon for the rest of the world, the European Parliament – Committee on Liberties and Fundamental Rights has only a marginal role, only is subject to be informed its President, and there is no clear assignment for the Antiterrorism Coordinator.

The first rapport due to be published in 2015 (no disclosed to date) will determine the level of response capacity and national situations, but this cannot be taken as an additional mechanism for financing o redistribution of resources sustained by the wealthier Member States of the Union.

6. MAIN FLAWS OF THE SYSTEM

First, as a measure rooted in the field of security and common defence policies, its main limitation is that is submitted to article 24(1) that reads: “the

¹ Within the Directorate General of Environment.

² One of its main flaws is the lack of access to military means.

³ For instance, the idea that the Fund is activate various times a year, the active participation of the European Parliament in the concession of the financial aid, and finally that the Fund includes non – member States.

Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to common foreign and security policy nor with respect to acts adopted on the basis of those provisions"; hence, first, the Court shall refrain from going in the merits due to a lack of direct effect, second, irrespective of the relevance of these questions, the Union leaves the States a wide margin of discretion to establish the appropriate means of legal redress¹.

Second, the question of when is proved that the reaction capabilities of the concerned State have been overwhelmed, whom is to determine, and here we are confronted by a disturbing loophole that States has not deemed necessary to fill till now. In case the Presidency of the Commission fails to consider that the situation requires the activation, there is no institution to which resort. The participation of European agencies of monitoring might be a desirable option and would grant a further degree of legitimacy.

Third, the risk of being attacked implies the authorization of self-defence pre-emptive actions and if this is the case, where to draw the limits to keep an antiterrorist strategy purely European diverse of that planned by the United States. Furthermore, deployment of military capabilities would shy away some States that due to their national basic laws are impelled to restrain; namely, Finland, Austria, Ireland, Cyprus or Sweden (Winnerstig 2014). Leaving aside the role of the NATO as its functioning is foreign to the Basic Treaties that conform the rule of law of the European Union, where debates are instructed by the *acquis communitarie* and a logic of integration and *supranationalism* that is at odds with the NATO structures, however the links proposed in the *Berlin plus* plan, or the patrolling in the Aegean Sea.

Fourth, in the discussions, political conflicts or strike were not present but I understand that "by any situation that can result on an adverse outcome on the population, environment, or private property political leaders could twist the phrase on their advantage creating a *perfect storm* or a self-made catastrophe, in cases of popular upraises, civil unrest, blockades, cyberattacks, etc. , resulting on a plea for the fast-track Article 222 to appease the demands of the population, relinquishing parliamentary debate. The aftermath, their responsibility both in the political and judicial plane becomes blurred.

Fifth, so far it has never been declared the responsibility of an International Organization for acting against its objectives, the appearance of

¹ Article 19.1 paragraph 2 reads: " Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union Law. "

the clause offers a new discretionary power to the Council that can bring the Juvenal (s.f.) Phrase, of “quis custodiet ipsos custodies” or “who will guard the guards themselves?”, out of the doctrinal floor to adjudication and values like those found in article 2 and 3 of the Treaty of Lisbon subject to a political reinterpretation by the recourse to the clause... out of the doctrinal debate to the venue of legal adjudication, a role too excessive for the Judges in Luxembourg to bear.

Lastly, upon this vested right of inference by the European Union acting as a self-contained legal regime (Conway 2002; Hartley 2001), recognized by its own judicial tier questions arise as how the Security Council, the sole warrant of peace and security, or the jurisprudence of the European Court of Human Rights interpreting on human rights protection in times of emergency are going to take the gauntlet, the entry into force of the clause might tend to a greater fragmentation of International Law.

7. CONCLUSION

First, the success of the clause is going to be based on a swift collaboration between the Council and the Commission, and their dependent bodies. The well-functioning of the clause might set a precedent for other regional bodies¹. A failure can be deemed if no action is pertained and only scholastic papers discuss the potential impact.

Second, article 9.2 of the Decision reads “where appropriate, this Decision may be revised. In such cases, and in accordance with article 223(3) TFEU, the Council shall be assisted by the Political and Security Committee and the Standing Committee on Operational Cooperation on Internal Security”. The responsibility falls mainly in the hands of the Council, which make us think that if in the passing of the Decision it was necessary the joint participation of the Commission and the High Representative, at least to maintain the same operation given the relevance of the matters in question, moreover, in the phase activation, it could be feasible to add the citizens’

¹ ECOWAS in Africa has proven a capital partner of the United Nations in conflict’s resolution, and could happily adopt the clause.

initiative¹ taking into account that the clause is to guarantee the security and civil protection of the citizens of the EU.

Finally, as for the terrorist question, this is a matter elusive to a quick solution as the past has taught us, only throughout transversal cooperation mechanism established in the body of the United Nations' Charter and secondary instruments that can begin to subside.

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¹ For instance, the campaign " One million signatures for a solidary Europe " annulled by the Commission for incompetency currently under revision by the Court of Justice As. T-450/12 Anagnostakis vs. Commission

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