L’union fait la Force: Making the Most of the Solidarity Clause (Article 222 TFEU)

Steven Blockmans

1 Introduction

In recent decades natural and man-made disasters have increased in frequency and scale, and a further increase is expected with the aggravation of climate change. Pollution and contamination issues pose long-term threats to public health and the environment, including agriculture and the food supply. The EU’s 2010 Internal Security Strategy points out that serious and complex security threats, from armed attacks to terrorism to natural disasters to cyberattacks, can easily overwhelm the capacities of any single EU Member State. These threats have long called for improvements to EU crisis and disaster management practices in terms of efficiency and coherence: “They require both solidarity in immediate response and responsibility in prevention and preparedness with an emphasis on better risk assessment and risk management at EU level of all potential hazards.”

For the first time in its history, the EU’s constituent treaties now include a so-called ‘solidarity clause’ to address the above-mentioned concerns. Laid down in Article 222 of the Treaty on the Functioning of the European Union (TFEU), this article imposes an explicit obligation upon the Union and its Member States to 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. Although closely related, this particular strand of the ‘three-musketeer’ principle is not to be confused with the ‘mutual defence clause’, enshrined in Article 42(7) of the Treaty on European Union (TEU). Yet, like the EU constitutional paradigm of solidarity, the precise meaning of the solidarity clause has yet to be fully assessed. Arguably, ‘solidarity’ is in the eye of the beholder:


for some, solidarity is measured by how much support flows to a country in need. For others, solidarity means everyone doing their own ‘home-work’ to avoid the need for assistance in the first place. Still others believe that solidarity against today’s risks and threats is best pursued outside of EU frameworks.3

It is perhaps due to these conceptual differences that the practical implementation of the solidarity clause has lagged behind. Indeed, one can observe a certain neglect which has befallen the clause, in spite of terrorist activities (cf. the 2012 bombing of a bus with Israeli tourists in Burgas), ash clouds (cf. the fall-out from the explosion of Iceland’s Eyjafjallajokull volcano in 2010 and 2012), chemical spills (cf. 2010 red sludge spill in Hungary), forest fires (e.g. in Portugal in 2012) and pandemics (cf. outbreak of swine flu at the end of 2009) which have overwhelmed national emergency capacities since the Lisbon Treaty entered into force.4 Additionally, in the absence of any judicial interpretation derived from case law, we can only speculate about the solidarity clause’s implications for both EU institutions and Member States. However, now that solidarity in cases of emergency has been established on a solid legal basis in the TFEU, differences about its interpretation should be reconciled so as to promote the implementation of the clause. This chapter offers a guide to the origins of the solidarity clause (Section 2), a legal commentary on Article 222 TFEU (Section 3), a contextual interpretation of the Article (Section 4), an anthology of challenges for its implementation and some suggestions as to how to overcome them (Section 5). Section 6 will draw some conclusions.

2 Travaux Préparatoires

The origins of Article 222 TFEU can be traced back to the European Convention on the future for Europe. Working group VIII on defence considered two types of solidarity. The first was a ‘mutual defence clause’,5 which was intended to

---

4 In other domains too, in particular that of the single currency, intra-EU ‘solidarity’ has been tested to its core.
5 See Section 4.1 below. Although some policy-makers and academics refer to Article 42(7) TEU as the ‘mutual assistance clause’, both a textual interpretation (cf. “armed aggression”) and a contextual one (cf. the position of the clause among the specific provisions on CSDP in