



EU Security, Collective Self-Defence, and Solidarity

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INTRODUCTION

Self-defence is a central concept in war theory and international criminal law, but how is it relevant in EU law? Security questions and war are seemingly far from the traditional area of free movement in EU law. Yet the Russian full scale invasion of Ukraine in 2022 and the current security situation in Europe have put the question of self-defence and security matters more generally high on the agenda. Interestingly, the current regulation of self-defence in war has a clear historical dimension. Indeed, already Immanuel Kant, born 300 years ago (1724), distinguished between just and unjust wars (Ripstein, 2021).

The purpose of this chapter is to discuss the EU's rules on collective self-defence in light of international law's rules on self-defence, as well as its history. I will examine whether the EU has its own collective self-defence mechanisms for the member states by discussing the solidarity clause in Article 222 Treaty of the Functioning of the European Union

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(TFEU), as well as the mutual assistance provision 42 (7) Treaty of the European Union (TEU). I will also discuss how the Kantian legacy has shaped the rules of self-defence in the UN Charter and how it can help us understand the limits of using self-defence in EU law. Furthermore, I will briefly compare self-defence in war situations with the rules on self-defence in criminal law (as it generally stands in criminal law theory). Subsequently, the chapter discusses the role and capacity of the EU when it comes to the issue of collective self-defence and briefly examines the relationship between NATO and the EU. The chapter ends with some thoughts for the future regarding how we should understand the use of collective self-defence at the EU level.

JUST WAR AND SELF-DEFENCE

Before discussing the role of the EU, it is important to understand the legal and political framework of war theory and self-defence. In contemporary international law, the premises for using force are strongly grounded in the Kantian tradition. For example, force is only allowed by states to remedy a wrong, i.e. to repel an attack or uphold an important right held by a state (Ripstein, 2021). Immanuel Kant's monumental writings on *The Perpetual Peace* from 1795 and *The Doctrine of Right* from 1797 are important in shaping the rules about when self-defence may be used by states and for how the laws of war look today (Ripstein, 2021; Herlin-Karnell & Rossi, 2021). The Kantian legacy is relevant on many levels within EU law. After all, the EU was created as a peace project, partly based on the idea that trade favours peace. Moreover, in international law, there is a general ban on the use of force, except when used in self-defence which is largely Kantian. On the international level, Article 2 (4) of the UN Charter clarifies that countries in their international relations must refrain from the threat or use of violence. Article 51 of the UN Charter, which declares that states have the right to use force in self-defence, is ultimately a question of balancing between, on the one hand, the UN Security Council's prerogative right to deal with matters of international peace and security and, on the other hand, the state's interest in being able to act when the Security Council is unable to do so. The UN Charter thus allows states to depart from the prohibition of using force in two specific circumstances: the Security Council's authorisation to restore international peace (Article 42) and self-defence (Article 51).

Furthermore, any use of force must be justified in the light of the axioms of proportionality and necessity (Kretzmer, 2013). The question that is interesting for us to discuss is whether the EU has its own regime on self-defence and, if so under what circumstances it can be used. Self-defence is of course a central issue national criminal law. More specifically, in criminal law, the theoretical provisions of criminal law on self-defence fall within the competence of the individual member state and are not a matter for the EU although the EU has some competence to legislate in the field of criminal law in accordance with Article 83 TFEU. Nevertheless, if EU member states were to be subjected to an attack, the question of self-defence is also a question of solidarity and survival of the EU. This raises the question of collective self-defence. Although member states have retained their sovereign right to decide on security policy decisions, the EU also has provisions similar to NATO's rules on collective self-defence (Kretzmer, 2013), namely Articles 222 TFEU and Article 42(7) TEU which are based on the concepts of solidarity and reciprocity as well as assistance.

THE EU DEFENCE CLAUSES

According to Article 222 TFEU, in short, the Union and its member states shall “act jointly in a spirit of solidarity if a Member State is the victim of a terrorist attack or is affected by a natural or man-made disaster”. Article 222 TFEU is mainly aimed at terrorist attacks and other man-made disasters. However, the line between a terrorist attack and other security situations similar to war is not crystal clear. Furthermore, Article 42 (7) TEU, which is more intergovernmental as this provision excludes the jurisdiction of the Court of Justice of the EU (CJEU), states that if a member state is subjected to an armed attack on its territory, the other member states are obliged to provide the member state with support and assistance. Thus, Article 42 (7) TEU expressly states that member states' national security and defence policies must be respected. Having said this, however, there is a far-reaching duty of solidarity as a duty of loyalty within the EU for the member states both horizontally and vertically, which makes the issue of national identity somewhat complex. For example, it can be argued that no EU member state is non-aligned or totally neutral, as EU membership as such means that the member state in question must show its alliance with the EU in the event of a potential attack. In short, there are two types of collective self-defence in EU

law. One type is based on solidarity, that is to say, that other member states within the Union must help in the event of terrorist attacks and other security matters, which takes place within the framework of the jurisdiction of the CJEU, in accordance with Article 222 TFEU. The second type of solidarity is based on more of a NATO-like cooperation on military assistance within the framework of the EU's external relations on a common security and foreign policy (compare Article 5 NATO) (Herlin-Karnell, 2021). This type of self-defence falls in principle outside the jurisdiction of the CJEU. It seems unclear whether self-defence can also be applied in the case of several member states who claim they use self-defence in solidarity with other member states.

THE LEGACY OF KANT AND THE QUESTION OF FORCE

As mentioned above, within international law, the premises for using violence are firmly rooted in the Kantian tradition, which bans the use of force unless it is used in self-defence and is deemed proportionate. Specifically, Kant saw war as barbaric and therefore he only accepted the use of force if it was in self-defence (Ripstein, 2021). Kant generally ruled out preventive violence but believed that it could be used in certain circumstances (Ripstein, 2021). For example, he argued that pre-emptive force may be morally right in defensive wars if early fighting is less costly to both sides. According to the philosopher and jurist Arthur Ripstein, Kant also linked the idea of preventive war to the idea of breach of contract, that is, an enemy who is breaching the established laws of war and, for example, kills soldiers who wave a white flag (Ripstein, 2021). In this way, just war is also a matter of applying fair rules of the game. Yet he stressed, for example, that soldiers must not attack civilians or falsely raise a white flag. In other words, Kant meant that a state that conducts a defensive war is not applied in a vacuum or immunised from the scope of the law of war. Instead, self-defence is a natural right to protect oneself which is based on the need for law to bring about peace. Interestingly, Kant linked this to concerns about colonialism, excluding general invasions of countries. Kant believed that general preventive force could lead to increased colonisation where dominant states adopted other states. War is never to secure new rights, but the central thing is to secure peace with the role of law. Otherwise, according to this reasoning, there is a risk that states see all other nations as potential threats, and therefore preventive war cannot be legitimate. However, the line between defence and prevention is not

easy to draw. Michael Walzer, who is a well-known proponent of just war, has argued in his classic book, for example, that preventive use of force is justified if three conditions are present, namely: that there is an obvious intention to harm another state, that there is some active preparation for an attack, that there is a risk to a state's territorial integrity or political independence if no measures are taken (Walzer, 1977).

While proportionality is extremely important in constitutional law matters (Barak, 2012), in just war theory, proportionality is not measured solely in the number of civilian deaths but is both forward-looking and backward-looking with respect to the risk of an attack in the given case (Meisels, 2018). Proportionality means that the destructiveness of the war must not be excessive with regard to the relevant benefit that the war will achieve. In the legal context, proportionality is an overarching concept that includes damage in the form of violating the territorial integrity of another state, damage to infrastructure, and effects on third parties as a result of a military attack. But only a legitimate war (that is, where the aims are legitimate) can pass the proportionality test and thus count as a just war (Meisels, 2018). Walzer has argued that a just war must be legitimised twice; *jus ad bellum* (whether a state's decision to use force is justified) and *jus in bello* (how justly the war is fought) (Walzer, 1977). This very question of *ad bellum* and *jus in bello* is interesting. For example, Kant argued that the reason for that distinction is that even if one side in a war is waging a defensive war, both sides in the war can still violate the rules *in bello*. The *in-bello* norms governing the conduct of war are restrictions on the use of defensive force since national defence is the only legitimate reason for waging war. Arthur Ripstein (2021) has argued that "the norms apply to both sides of a war because both sides are wrong to violate them, even if one side was already wrong by going to war at all".

In Russia's war against Ukraine, Russia has violated both *jus ad bellum* and *jus in bello*. Russia invoked self-defence, but it was based on lies (Allison, 2023), which means that the war is not considered legitimate according to the theory of a just war. Based on this theory, it is the attacking state that is judged, not how "fairly" the attacked state responds. However, the principle of proportionality applies in general. The legacy of Kant is thus that modern international law places great emphasis on the fact that the use of force against other states is only considered acceptable in self-defence. A further condition from Kant is that the assessment of

proportionality is central, and that self-defence must not be abused. There is an ethical dimension here, and barbarism must not occur (Ripstein, 2021).

ON THE IMMINENCE CRITERIA AND SELF-DEFENCE

What then does the concept of “imminent” attack mean when applied in a complex EU security law context within a Union law constitutional structure? Within the framework of the laws of war, the question of the difference between self-defence and preventive self-defence is also interesting because it raises the question of what demands are being made. On the one hand, and unlike criminal responses, the idea of pre-emptive violence reflects a planned military operation that represents the convergence of intelligence gathering that law enforcement has been tracking. On the other hand, self-defence in criminal law usually requires a decision to be made on the spot and this type of preventive strategy would, in most cases, fall outside what is meant by self-defence in criminal law, with the exception of (for example) the legal debate on battered women which also covers non “imminent” situations (Herlin-Karnell, 2021). Here we seem to be facing risk regulation and emergency regulation, which raises the question of whether there can ever be sufficient knowledge in these matters. Prevention regulates events in the future.

Nevertheless, it remains unclear whether the assessment of self-defence for states should and can have the same overriding criteria as an individual in a criminal context. The question seems inescapably linked to the idea of what is meant by prevention and preventive measures. Thus, we may ask what exactly is meant by “preventive” self-defence. Examples of preventive measures at the EU level, beyond martial law, are most obvious in the fight against terrorism, combating the financing of terrorism, legislation against money laundering, and measures to fight organised crime. Prevention in this regard is perceived as more effective in maintaining peace than waiting for an attack. Likewise, in the well-known Nicaragua case, non-state actors were responsible for an armed attack, but a line was drawn between state-sponsored terrorism and non-state-sponsored terrorism (ICJ, 1986). In this legal case, the International Court of Justice ruled that it was wrong for the USA to interfere in the internal affairs of other states and that states do not have the right to support, e.g. rebellion in another state or seek to control the course of events by means of arms to separatists. In the Nicaragua case, the International Court of

Justice held that self-defence must be proportionate and thus not excessive. However, the court held that non-state actors can sometimes be treated as a state.

COLLECTIVE SELF-DEFENCE AND EU SOLIDARITY

As seen above, I have argued that the EU has its own provisions on self-defence. But it is needed to ask whether each of the various member states using armed force in a self-defence situation has such a right, or whether only the territory of the attacking state is essential to assert self-defence. It is clear from a legal perspective (for example in NATO Article 5) that the right to self-defence only applies to the state that is attacked, or from the territory of that state. In criminal law theory (in most countries), self-defence applies to a broader category of people who are present at the time when the crime is committed, for example, a person can remedy an attack on a friend who is standing next to him. States cannot be “present” in the same way as individuals, and it does not matter if it is the neighbouring state or an ally from afar who comes to the rescue. What added value does collective self-defence have in the EU when NATO already has similar provisions and when most EU member states are members of NATO? How can they both complement each other and what should EU cooperation look like when it comes to self-defence? Could the EU function as effectively as NATO, a quasi-NATO (Herlin-Karnell, 2022)? The idea of solidarity seems to apply between states in terms of collective self-defence at the EU level, unlike NATO which is a cooperation between different states. As previously mentioned, the Union and its member states shall under Article 222 of the TFEU act jointly in a spirit of solidarity. The article is designed as a constitutional obligation to help other EU states in a spirit of solidarity (however, exactly what this means is not clear). Similarly, Article 42(7) TEU can send a strong political signal that the EU stands united in the face of a common threat to its territory and society, especially as it implies a common European response in internal and external border security domains where NATO cannot take action (such as when France invoked both the solidarity and mutual aid provisions in 2015 after the terrorist attacks in Paris).

NATO’s Article 5 has not been used often; it was invoked after the attacks of 11 September 2001 (NATO, 2023). However, it has had, it may be assumed, a considerable preventive effect as far as NATO is concerned. The inclusion of a similar article in the EU treaty can be

assumed to have a similar purpose, where the signal is that all member states support each other. As previously mentioned, the idea of self-defence is central to the UN Charter and international law. In this context, it is interesting to look at the doctrine of just war in political theory, which plays an important role in the debate about how the laws of war should be designed. The use of force in self-defence is an important means of preventing and punishing violations of international law, and to respect national sovereignty. The question concerns how to balance the right or duty to protect individuals against the rights and independence of states. The UN Security Council has the primary responsibility and obligation to maintain international peace and that obligation limits the right to self-defence and involves a shift from unilateralism to multilateralism in *jus ad bellum* (i.e. what happens before war) considerations (Kretzmer, 2013).

Specifically, when can self-defence be used? The idea of preventive war, of course, is to avert imminent harm or injury before it occurs. The question concerns the possibility of justified prevention in exceptional circumstances. In this context, David Luban (2018) and others have called for more reliable intelligence to allow some form of pre-emptive force to justify the use of Article 51 of the UN Charter on self-defence. This is about decision-making in emergency situations, where risk regulation and emergency-led decision-making are central. It also raises the question of whether there can ever be clarity on these issues. The issue of self-defence and the degree of risk assessment to be applied was up for consideration as early as the early 1840s. In the classic Caroline case, the criterion of necessity was considered to mean: “instant, overwhelming, leaving no choice of means and no moment of deliberation” (Caroline Case, 1841). Since the concept of self-defence (even broadly interpreted) is considered to be the only legitimate basis for using force against another state, it is sometimes considered that this would exclude the use of preventive force.

For example, preventive violence is sometimes considered morally justifiable if preventive measures are less costly to both sides in terms of protecting civilians. Imagine, for example, that there is an army just outside State A’s border. Of course, State A does not have to wait until State B’s army crosses the country’s border to defend itself. A problem when discussing whether an attack will take place, however, is the so-called preventive risk assessment. How can we know when another state will attack? The provisions concerning the doctrine of just war look

different here compared to criminal law in its traditional meaning (Herlin-Karnell, 2021). How does criminal law (general criminal law theory in most jurisdictions) view the circumstances that must exist for an individual to have the right to use self-defence? As previously mentioned, an attack must be imminent in the sense that if a person, for example, comes running with a knife towards you, only then can you protect yourself with deadly violence.

Certain excessive violence is tolerated if someone “could hardly come to his senses” even in national criminal law but also proportionality is central here (Ashworth, 2003). Furthermore, there are certain exceptions, for example regarding “battered women” where a woman who has been abused for a long time by her husband can use some self-defence even when the attack is not imminent (e.g. when the man is asleep) (see McColgan, 1993). She describes how in some cases self-defence can be considered justified even when it takes place in a preventive manner. Within the laws of war, there is thus not as strict an assessment of self-defence as in self-defence in criminal law, and these are thus similar to the women’s rights provisions in this part. For example, certain preventive operations and so-called preventive strikes may be compatible with the principle of proportionality, if these are strictly necessary. Furthermore, it is also considered that a certain degree of accidental civil losses (“collateral damage”) is compatible with proportionality. This is of course highly repulsive, but unfortunately reflects the realities of war. Although the self-defence of states at war is often likened to the law of self-defence of the individual in criminal law, there are some differences. EU law partially addresses this through the solidarity mentioned in Article 222 TFEU, i.e. there is a duty of solidarity for other states within the EU to help even if the attack was carried out by private actors, such as in the case of a terrorist attack.

SECURITY ISSUES WITHIN THE EU AND THE EXTERNAL DIMENSION

Within the EU’s external relations, the EU is often described as a strategic and important security actor. The EU is an autonomous international legal entity with the EU external action service as its face to the outside world. Internally, however, the Union consists of 27 different member states with both common and individual national rules, all of which must comply with the EU’s duty of loyalty, both within the Union and in

its external relations. According to some scholars (Leino-Sandberg & Ojanen, 2022), however, it could be asked why there is no further integration in defence matters within the EU. The issue is political, and the member states have been vigilant in giving the CJEU the power to decide foreign policy issues. It has also not been so popular in all member states as NATO was considered a better alternative, although French President Emmanuel Macron pushed the issue of deeper EU cooperation in security matters.

The EU's relationship with NATO has been described as two mutually complementary organisations. Engelbrekt (2024), for example, argues that the European security order is at stake and that the relationship between the EU and NATO is as important now as it was during the Cold War. Indeed, the Russian invasion of Ukraine has significantly threatened peace in the EU's neighbourhood (Kaunert & De Deau Periera, 2023). Further, Engelbrekt argues that the way to a more robust security order is to preserve the cooperation between the EU and NATO and maintain the transatlantic link to be able to act against Russia's aggressions. This is of course dependent on the political reality, such as a possible regime change in Russia as well as the outcome of the presidential election in the USA in 2024 and how much focus is shifted from the war in Ukraine due to the war between Israel and Hamas since 7 October 2023. In any case, the EU is an important global actor.

The EU has the capacity to act, primarily through its extensive economic sanctions that are sometimes classified as hybrid warfare (European Council, 2024). Furthermore, the EU has an extensive sanctions programme and, for example, at the time of writing at the end of 2023, has adopted eleven sanctions packages against Russia. The Commission's website is instructive and states that in response to Putin's unprovoked and unjustified military aggression against Ukraine, the EU has imposed exceptional sanctions to reduce the Kremlin's ability to finance the war (European Commission, 2024). In addition to significant sanctions packages, the EU also has various military engagements managed by the European External Action Service (EEAS) that relate to defence and peacekeeping operations. Moreover, the EEAS states that in order to become a stronger global partner, the EU must define the type of security and defence actor the Union wants to be (EEAS, 2023). In short, the EU must be able to take care of its security interests and bear its share of the responsibility as a global actor when it comes to the world situation in the wider sense. The EU also works with conflict prevention to

strengthen international security, and the EEAS is responsible for various crisis management, using civilian and military resources. Furthermore, the EU is keen to show commitment to deepening cooperation with third countries, which concerns everything from new trade rules and climate agreements to security cooperation (EEAS, 2023).

In addition, security issues in the EU context are also closely connected with measures in the area of “freedom, security, and justice”. In particular, the measures to combat terrorism in the EU have had a revolutionary impact on the member states, partly because new legislation was adopted with a very short deadline to incorporate the measures into national legislation, and partly because it was no longer considered sufficient to deal with the threat of terrorism through the ordinary criminal law. The EU’s main tactic in the war against terrorist financing is mainly through the criminal law framework. The EU also has an extensive system of restrictive measures by means of administrative law which has often been criticised for being excessively harsh without sufficient guarantees of legal certainty (Herlin-Karnell, 2012). The EU’s security mission follows from the ambitions set out in the Treaty of Lisbon, among other things, the EU must “endeavour to ensure a high level of security”, according to Article 67 TFEU. There are thus no watertight barriers between internal and external security in the EU. The external dimension of security in the EU context (the Common Foreign and Security Policy) is also very central to the EU’s security ambitions and concerns the EU’s security vis-à-vis third countries. The constant response to security problems from border control and migration management to counter-terrorism strategies means that the EU is currently very active in this area and largely follows the norms of international law (Bakardjieva Engelbrekt et al., 2024). Although the EU’s dependence on security is often used as a justification for the EU’s presence in a current issue, the security aspect still plays an important role in the EU’s security agenda. It also confirms a precautionary approach in the fight against crime and terrorism, which favours prevention (Herlin-Karnell, 2012).

However, a problem that arises with overly preventive measures is that the individual’s rights—which are, among other things, enshrined in the Charter of Rights and the European Convention for the Protection of Human Rights—are set aside (e.g. Bossung, 2012). As mentioned above, the concepts of security and defence issues span many intertwined areas of EU law. This goes back to the terrorist attacks on the USA on 11 September 2001, and subsequently other terrorist attacks

in Europe, where rapid solutions across member states' borders were needed to combat terrorism (Bossung, 2012). The ordinary criminal law was often overridden to justify longer periods of detention. In addition, measures were often adopted in the context of administrative law proceedings with a lack of procedural guarantees. Interestingly, the EU anti-terrorist directive—which was adopted in 2017—utilises mainly the criminal law framework, and not the administrative one (European Parliament & Council, 2017). This could mean that countries cannot deviate from their obligations to ensure a fair trial and that they must be guaranteed proportionality in the restrictions on the individual's rights that are made. In order to understand these issues, it is important to look at the EU's other regulations of these issues. A recurring question within the EU has been whether the fight against terrorism should be seen as a criminal law project at all. It should be known that the majority of EU countries have used administrative procedures, which are partly faster and partly provide lower rights protection for the individual and limited possibility of judicial review, with longer detention times, etc. The term terrorist crime has always been extremely difficult to define and there has been no clear international definition (European Parliament & Council, 2017). The EU has been quite innovative in trying to provide a definition although it remains broad and relatively vague. Central is that the terrorist crime has as its purpose to instil serious fear in a population or to, for example, seriously destabilise or destroy the basic political, constitutional, economic, or social structures of a country or an international organisation. Furthermore, it is criminalised to encourage terrorist crimes, as well as to provide training for terrorists. The question of national security is, according to Article 4 TEU, a national competence. However, it is the case that almost all security issues these days have a cross-border impact. Furthermore, the EU does not have any specific regulation for a state of emergency concerning war and terrorism. This is instead a matter for the member states.

Furthermore, a security threat to a member state of the EU means a security threat to all member states of the Union, as there is an extensive duty of solidarity within EU law. With the internal crises that the rule of law crisis in the EU has brought about and that have been extensively debated in this book series, the EU is facing a series of challenges, not least in the shadow of the Russian war in Ukraine. More specifically, Poland and Hungary have violated EU values and the rule of law for a long time. However, Poland changed its government in late 2023 and it

remains to be seen whether the new government can repair democracy in a satisfactory manner. Although the EU does not have an army despite a long-standing debate on this issue, the EU's security problems seem to boil down to the use of force in the fight against terrorism as well as security threats including war and peacekeeping. The Eurobarometer (2022) survey shows that the vast majority of EU citizens (81 per cent) are in favour of a common defence and security policy, with at least two-thirds in each country supporting this (EU Monitor, 2023). It also states that around 93 per cent agree that the countries should act together to defend the EU's territory, while 85 per cent believe that defence cooperation should be expanded at the EU level (Eurobarometer, 2022).

In conclusion, the solidarity mechanism under Article 222 TFEU can cover many situations, from terrorist attacks to other man-made disasters including war. Leino-Sandberg and Ojanen (2022) recommend that the EU's security cooperation be deepened. The question concerns the idea of solidarity in a wider sense. The European Court of Justice has emphasised the principle of solidarity, enshrined in Article 2 of the EU Treaty, which in itself is one of the fundamental principles of EU law. This is a dynamic area, and the breadth of the solidarity mechanism has not yet been tested under Article 222 TFEU. In addition, solidarity as a constitutional issue in EU law could perhaps be framed as a loyalty issue.

SANCTIONS AS COLLECTIVE SELF-DEFENCE AND ON BROADER ISSUES EU-NATO

Sanctions are important in EU law as a way of "hybrid warfare" (Kaunert & Zwolski, 2015) or collective self-defence. Sanctions can be used as a countermeasure to divert an imminent threat, i.e. in self-defence. The EU has so far adopted 14 sanction packages against Russia (European Commission, 2024). After 24 February 2022, in response to Russia's military aggression against Ukraine, the EU massively expanded the sanctions. It added a significant number of individuals and organisations to the sanctions list and adopted unprecedented measures with the aim of weakening Russia's economic base, depriving it of critical technologies and markets, and significantly curtailing its ability to wage war.

In the context of the recent and ongoing EU restrictive measures adopted against Russia's aggression and illegal invasion of Ukraine, the Commission proposed adding any violation of Union restrictive measures to the areas of crime laid down in Article 83(1) TFEU. The Directive was

recently adopted and makes it clear that the implementation of Union restrictive measures is not as uniform across the Union as it ought to be (European Parliament & Council, 2024). Restrictive measures are an essential tool for the promotion of the objective of the Common Foreign and Security Policy (CFSP), as set out in Article 21 TEU they are concerned with the EU's role in the wider world. These objectives include safeguarding the Union's values, maintaining international peace and security as well as consolidating and supporting democracy, the rule of law, and human rights. The ambition of promoting peace may indeed be seen as connected to the EU value of dignity. The Directive states, *inter alia*, that the implementation of sanctions and restrictive measures is not as uniform across the Union as it ought to be. The Commission states that "this creates distortions in the Single Market, as Union companies, including EU subsidiaries of foreign companies, can find means to circumvent the restrictive measures. This also creates uncertainty among operators" (European Parliament & Council, 2024).

Interestingly, the Russian war in Ukraine led to Swedish NATO membership in 2024.

In the spring of 2022, the then-Swedish government made a complete U-turn from being non-aligned to applying for membership in NATO, because of the Russian invasion of Ukraine (Åhman, 2022). Finland joined NATO in the spring of 2023, and Sweden joined on 7 March 2024 after a long application procedure that was hindered by Hungary and Turkey for almost two years (Cramér, 2022, Österdahl, 2022). Interestingly, a legislative assessment in 2016 mentions solidarity repeatedly and states that Sweden will act in solidarity with other EU states in case of armed aggression and expect other EU states to do the same if Sweden is under attack (Herlin-Karnell, 2022). As shown above, the duty of solidarity means that other EU member states can be involved in any situation in Sweden that triggers Article 222 TFEU Treaty. In conclusion, it can be stated that there is scope for developing EU cooperation in security matters.

The important question is, as usual in international matters, whether there is a political will to invest in EU security cooperation, which in turn depends on how the world situation develops. Many questions remain unanswered such as *inter alia*, if the EU needs to adopt detailed legislation that clarifies the scope for using secondary legislation that explains Articles 222 TFEU and 42(7) TEU in relation to collective self-defence

and the interaction between the EU and NATO. Or if this issue is something that the EU Court of Justice should be asked about, something that has not happened so far. Furthermore, this raises the question as to the relationship between NATO and that of the EU as a global actor, as well as of future cooperation with the USA. In the unpredictable world situation that now prevails, it is difficult to predict the future. The EU has an interesting time ahead of it as an important global actor in maintaining peace in the immediate area.

CONCLUDING REMARKS: FROM CRISIS TO SOLIDARITY?

In this chapter, I have discussed the Kantian legacy in terms of the design of the rules for security cooperation and the use of collective self-defence. It may be wise to remind ourselves of the categorical imperative that can serve as a compass in these matters, namely that states should act as they themselves wish to be treated. Kant also said that colonialisation is wrong and that larger states should not occupy smaller states or dominate them, something we see happening right now in Russia's war against Ukraine.

Various crises have long shaped the EU and will likely continue to do so. As it stands today, both the EU's security cooperation and NATO, as well as the cooperation between these two organisations, will be necessary for the security of Europe and the rest of the world. Climate change and cyber warfare attacks are other security challenges facing the EU. Moreover, the question of self-defence in EU law is very important. In light of the ongoing war in Ukraine, and the security situation in Europe, the various premises for using self-defence have gained in importance and will most likely be debated in some years to come.

The solidarity clause in the EU could be seen as a manifestation of collective self-defence. While the Lisbon Treaty refers to both mutual assistance and solidarity in cases of armed aggression and terrorist attacks respectively, the division of security cooperation and resort to collective self-defence seems at best a blurred one. It confirms a very dynamic relationship between the EU security framework and that of EU external relations amounting to a war model and where solidarity plays a key role.

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