



Tasks of the Finnish Defence Forces – where are You Going?

**PRACTICE-ORIENTED
ARTICLE**

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ABSTRACT

The Finnish Defence Forces (FDF) are tasked with the military defence of Finland, supporting other public authorities, both providing international assistance and participating in international activities, and participation in international military crisis management. The Act on the Making of Decisions Concerning the Provision of and Request for International Assistance is essential for the execution of the third of these tasks. This Act has been amended following the lessons learned from the evacuation operation in Afghanistan – but is it still necessary to understand the FDF's provision of international assistance and participation in joint operations and other international activities as an independent task? Should these functions, rather, be seen as means to an end in their own right, and be integrated appropriately into the FDF's remaining tasks?

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One of the principal tasks of the Finnish Defence Forces (FDF) is the provision of assistance through direct participation in international operations. The FDF may provide assistance falling within its mandate to another State, to the European Union, or to an international organization, and may participate in other international operations falling within the purposes and principles of the Charter of the United Nations and to other rules of international law. As of 1 July 2017, an amendment to the Act on the Defence Forces¹ concerning the provision and receipt of international assistance has broadened the international functions of the FDF. It is also significant that the amendment empowers the FDF to use military force when providing international assistance (Parliamentary Constitutional Law Committee, 2016b, p. 2).

This article will begin with a consideration of the legal aspects of decision-making before continuing to a consideration of its practical execution before addressing the lessons learned and the government's reaction to shortcomings identified in the Act on the Making of Decisions Concerning the Provision of and Request for International Assistance ("International Assistance Act"). It ends with suggestions on how to understand the FDF's task structure in the medium term and, particularly, in situation where Finland is a member of NATO.

The first objective is to analyse the functioning of decision-making through a real-life case study, the evacuation operation at Kabul Airport in August 2021, and to recognize the lessons learned. The second is to explain the key legislative amendments proposed to the International Assistance Act and ask whether Finland's accession to NATO obliges us to reconsider the task structure of the FDF.

DECISION-MAKING BY LAW

Decisions on the participation of the Finnish Defence Forces in the provision of international assistance and on the receipt of such assistance are primarily made in accordance with the International Assistance Act.² If the conditions laid down in this Act are not met, then the Ministry of Defence decides on the provision and request of assistance falling within the mandate of the FDF after consulting the Ministry for Foreign Affairs. Parliament participates in this decision-making when the circumstances involve the use of military force. Some deviations from the usual order of decision-making are permitted in matters of urgency (Parliamentary Defence Committee, 2017, p.4; Parliamentary Constitutional Law Committee, 2016b, pp. 2–3).

DECISION-MAKING POWER OF THE FINNISH GOVERNMENT AND PRESIDENT OF THE REPUBLIC

Section 1, subsection 1 of the International Assistance Act defines the decision-making power of top-level national government in providing and receiving international assistance. The scope of such decision-making primarily includes circumstances in which the EU solidarity clause and the mutual assistance clause have been invoked. Invoking these clauses is considered so important politically that it is appropriate to decide on providing or requesting assistance at the highest level of national government. The same applies to decision-making when providing or requesting assistance involving significant military resources. Military resources will be deemed substantial, depending on the quantity or type of equipment, or on the significant political factors or aspects of national capability associated with its use. Cases of assistance that may involve military force such as the use of firepower by military aircraft and warships will also be decided by top-level national government. The scope of this decision-making process finally addresses the perspective of foreign and security policy, and situations in which the goals of assistance may be notably far-reaching or important in principle. Collective support under Article 51 of the UN Charter for the targets of an armed attack, for example, would be example of assistance with foreign and security policy implications; an assessment of the exposure of the personnel involved in providing assistance to an armed threat or to other substantial risk would count as factors serving to designate an assistance situation as

¹ The Act on the Defence Forces No. 551 of 2007, as amended by No. 1247 of 2021.

² The Act on the Making of Decisions Concerning the Provision of and Request for International Assistance No. 418 of 2017, as amended by No. 1303 of 2022.

far-reaching and important in principle. Situations such as these may arise simultaneously, and there are no geographical constraints on the decision-making power of top-level national government. In other words, assistance may also be provided outside the European Union if necessary (Parliamentary Defence Committee, 2017, pp. 2–3; Government, 2016a, pp 51–52; Parliamentary Constitutional Law Committee, 2016a, p. 3).

The conditions under which assistance will be provided and received, and the nature of the assistance rendered, will vary. This will also affect the timing and content of the decision. For practical purposes, the process would often involve expressing a preliminary position on international assistance at a joint meeting of the Ministerial Committee on Foreign and Security Policy and the President of the Republic (TP-UTVA). Section 25, subsection 3 of the Government Rules of Procedure³ provides that the Ministerial Committee on Foreign and Security Policy should prepare important aspects of foreign and security policy, other matters concerning Finland's relations with other States, and important matters concerning overall national defence. Thereafter the relevant ministry initiates a draft of the decision criteria concerning the international assistance. The actual decision to provide or request assistance will be made by a plenary session of government on the presentation of the ministry concerned. For example, deployment of an FDF unit abroad is against section 16 of the Government Rules of Procedure, a matter belonging to the Ministry of Defence (Government, 2016a, p. 53).

If providing or requesting assistance is a matter of international concern, directly touching on foreign and security policy matters, then the decision will be taken by the President of the Republic following a proposal from the government. The decision-making of the President of the Republic referred to in section 2, subsection 1 of the International Assistance Act falls within the scope of section 58, subsection 2 of the Constitution of Finland.⁴ If the president decides against the government's proposal, then the matter returns to the government for revision. In such cases, the government has the option of submitting a report to Parliament on the issue of providing or requesting international assistance. The matter will then be resolved in accordance with the position adopted by Parliament on the report if the government so proposes (Parliamentary Constitutional Law Committee, 2016a, p. 4).

There is also a reference to the constitution in section 2, subsection 1 of the International Assistance Act. This reference is intended to serve as a reminder of the division of powers in top-level national government. Section 93, subsection 1 of the Constitution of Finland provides that Finland's foreign policy should be directed by the President of the Republic in cooperation with the government. Section 93, subsection 2 further provides that the government be responsible for preparations necessary for the execution of decisions made in the EU, and decides on the concomitant Finnish measures, unless the decision requires the approval of Parliament. The government's competence covers the entire scope of the EU and all matters and fields of policy subject to decisions taken within the EU. This continues to apply should any matter be considered to involve important foreign policy considerations: decision-making power lies with the government in circumstances concerning assistance based on the EU solidarity clause with important foreign and security policy implications, for example. When formulating a position on major EU foreign and security policy matters, the government is nevertheless required to cooperate closely with the President of the Republic (Parliamentary Foreign Affairs Committee, 2017, pp. 4–5; Parliamentary Constitutional Law Committee, 2016a, p. 3; Parliamentary Constitutional Law Committee, 2006, p. 4; Government, 1998, pp. 146–147).

The Ministry of Defence may take preparatory and contingency measures related to providing or receiving assistance after a joint meeting of the TP-UTVA has engaged in preparatory discussion of the matter, meaning before any definitive decision is taken by the government or by the President of the Republic. Preparatory consideration will be particularly necessary in circumstances in which providing or receiving assistance would involve significant military resources. "Preparatory and contingency measures" refers in this context to all kinds of proactive measures necessary before the making of any decision on the provision or request of assistance, i.e. the procurement of necessary materiel, the recruitment of personnel, the commencement of training, and the arrangement of the maintenance and transport involved in assistance operations.

³ The Government Rules of Procedure No. 262 of 2003, as amended by No. 130 of 2022.

⁴ The Constitution of Finland No. 731 of 1999, as amended by No. 817 of 2018.

Preparation will also include measures such as sending special intelligence and spearhead units to the theatre of operations. After all, it will be important to receive a current security situation assessment in support of decision-making related to providing and requesting assistance. Naturally, the provision in section 2, subsection 2 of the International Assistance Act related to preparatory and preparedness measures does not affect the normal preparedness of the defence administration in international situations, such as exercise activities (Government, 2016a, p. 55).

MATTERS TO BE DECIDED BY THE MINISTRY OF DEFENCE

According to section 1, subsection 2 of the International Assistance Act, separate provisions will be issued on decision-making concerning the provision of and request for international assistance other than on the basis of the EU solidarity or assistance clauses, when significant military resources or the use of military force are involved, or when the matter has important foreign and security policy implications, or is far-reaching and important in principle. There are provisions governing decision-making in minor matters of this kind concerning the provision and receipt of international assistance in section 12, subsection 3 and in section 4a of the Act on the Defence Forces. Based on these statutory provisions and on section 2, subsection 3 of the International Assistance Act, the Ministry of Defence may decide in practice on such matters as a minor enlargement or reduction of an assistance decision already made by the government, or on any other minor modification (Government, 2016a, p. 56; Government, 2016b, p. 49).

Section 12, subsection 3 of the Act on the Defence Forces provides that decisions on the participation of the FDF in providing international assistance to another State, to the EU or to an international organization, or in support of another Finnish public authority, are taken by the Ministry of Defence after consulting the Ministry for Foreign Affairs. However, the FDF may not be ordered to provide assistance without applying the decision-making procedure laid down in the International Assistance Act unless the matter otherwise falls within the competence of the Chief of Defence of the Defence Forces. This opaque regulation probably seeks to ensure a last-resort right of the Chief of Defence to impose military orders (Government, 2016a, p. 56; Government, 2016b, p. 49). For example, this interpretation would empower the Chief of Defence of the FDF to order a Finnish assistance force deployed abroad by a decision of the government to return to Finland in circumstances where it is more urgently needed for the military defence of Finland.

Section 4a of the Act on the Defence Forces authorizes the Ministry of Defence to request assistance falling within the mandate of the Defence Forces from another State, from the EU, or from an international organization, having regard to the objectives and principles of the UN Charter and to the rules of international law. The Ministry for Foreign Affairs must also be consulted before a decision is taken in such cases. The reference to the UN Charter seeks to emphasize that operations in the territory of another State must, in principle, be based on a mandate from the UN Security Council or on a request from or consent of the State concerned. From Finland's point of view, the rules of international law include a requirement to respect treaties on the demilitarization and neutrality of the Åland Islands (Government, 2016b, pp. 45, 49).

PARTICIPATION OF PARLIAMENT IN DECISION-MAKING

With respect to the participation of Parliament in decision-making, section 3 of the International Assistance Act requires the government to consult the Parliamentary Foreign Affairs Committee before making a decision on providing or requesting assistance if the assistance may include the use of military force. If a decision concerns a particularly demanding situation, then the government must consult Parliament by submitting a report before making the decision. This means that no consultation with Parliament is necessary for assistance that does not involve the use of military force. Section 3 of the International Assistance Act follows the practice of the Constitutional Law Committee of Parliament, whereby a decision to provide assistance that includes the use of military force requires a procedure allowing for parliamentary influence (Parliamentary Constitutional Law Committee, 2016a, p. 4).

The reference in the provision to a “particularly demanding” situation as a condition for the application of the reporting procedure leaves some room for interpretation. The crucial factor in this respect is the actual nature of the assistance. At a minimum, the provision of assistance should be considered particularly demanding when assistance involving the use of military force is held to involve significant risks under the circumstances of the theatre of operations. Further, the reporting procedure is always necessary when the provision or request for assistance involves the use of military force on the basis of the EU mutual assistance clause, or if the assistance is considered to involve the possibility of the use of military force with weaponry heavier than a soldier’s personal firearm. A decision on the order of parliamentary consultation must assess the overall circumstances and consider the objectives, tasks, and manner of implementing the operation. The provision governing the reporting procedure must in any case be interpreted and applied in a broader, rather than narrower, way. The rights of Parliament to information under sections 47 and 97 of the Constitution of Finland must also be emphasized with regard to assistance that does not involve the use of military force (Parliamentary Defence Committee, 2017, p. 5; Parliamentary Foreign Affairs Committee, 2017, pp. 7–8; Parliamentary Constitutional Law Committee, 2016a, p. 5; Government, 2016a, p. 56).

PROCEDURE IN URGENT CIRCUMSTANCES

Providing and requesting assistance generally requires a decision on the part of the President of the Republic or of the government. While top-level national government is well placed as such to meet at short notice for the purpose of making decisions, there should also be legislation covering circumstances in which it is not possible to hold a government plenary session or a presentation to the President of the Republic without delay. Section 4, subsection 1 of the International Assistance Act affords a ministry the competence to act in urgent situations of this kind.

Under this provision, the ministry thus afforded such competence may decide to provide or request assistance if the decision cannot be made with sufficient dispatch in exceptionally urgent and serious circumstances involving a provision of assistance or request for assistance between Finland and the EU or its other member States, or between Finland and other Nordic countries. Such circumstances may include events that have suddenly come to the attention of the State security authorities, where malign actors are about to achieve their intended objective and it would not be possible for the government to meet without delay. Use of the urgent procedure referred to in the provision is limited to States with which Finland has a well-established and close relationship. The decision of the ministry will be made in practice by the Minister, as it is not possible to delegate decision-making powers of such significance to a civil servant at the ministry (Government, 2016a, p. 57).

The only matters that can generally be decided at ministerial level concern assistance based on the EU solidarity and mutual assistance clauses, and assistance involving significant military resources. Any such assistance that was also, in principle, a far-reaching issue of importance in an individual case could, nevertheless, not be approved by ministerial decision. Moreover, the competence to issue urgent decisions would not empower a ministry to decide on assistance involving significant military resources if such support was simultaneously assessed as significant in foreign and security policy terms (Parliamentary Constitutional Law Committee, 2017 pp. 2–3; Parliamentary Constitutional Law Committee, 2002, pp. 2).

Section 4, subsection 2 of the International Assistance Act provides that the government and the President of the Republic must be notified without delay of any ministerial decision to provide or request assistance. The government or the President of the Republic then decides to continue or terminate the assistance in accordance with the normal decision-making procedure laid down in section 2. A withdrawal or suspension of assistance would mean the expiry of any commitments made on behalf of Finland (Government, 2016a, p. 59).

Section 5 of the International Assistance Act governs the procedure in the event of an emergency requiring military force. Under subsection 1 of the provision, a decision shall be made in such circumstances by a governmental plenary session on the presentation of the ministry concerned, or by the President of the Republic on a proposal of the government. This means that the power of decision remains in the same hands as in non-urgent circumstances.

On the other hand, Parliament does not participate in making the decision in accordance with the general rule of section 3, and instead the government need only report on the matter to the Foreign Affairs Committee of Parliament before making the decision. The simplest form of this report may be confined to information on the proposed decision. The report to the Foreign Affairs Committee on this question may also be delivered orally by the Minister in a particularly urgent situation. The matter must be referred to Parliament immediately after the decision has been taken (Parliamentary Foreign Affairs Committee, 2017, p. 9; Parliamentary Constitutional Law Committee, 2017, p. 3).

Application of section 5 of the International Assistance Act is limited to exceptionally urgent and serious situations, and to the assistance essential to combat a terror attack directly threatening the life or health of a large number of people, or an imminent serious danger to national security. Examples of assistance situations involving military force and requiring the accelerated decision-making procedure might be an aircraft hijacked by terrorists entering Finnish airspace en route for critical infrastructure such as a nuclear power plant, underwater operations in Finland's neighbouring regions, or an operation to evacuate Finnish citizens from a crisis region. The time window for an effective response in such circumstances can be very short – (Parliamentary Constitutional Law Committee, 2017, p. 6; Parliamentary Defence Committee, 2017, p. 4).

Where assistance has been provided in the form of significant military resources, circumstances can easily develop so that military force is also used to implement the assistance. The transition to assistance involving the use of military force may occur so rapidly that there is insufficient time for a decision authorizing the use of new force to be made. It is therefore recommended that decisions concerning urgent assistance involving military resources should be taken in accordance with the section 5 procedure so that preparations can be made for any escalation in the situation. It is important to ensure that the competencies, legal status, and self-preservation aspects of Finnish troops or individual service personnel such as pilots or ship commanders providing assistance are defined with optimal clarity in urgent situations (Parliamentary Foreign Affairs Committee, 2017, p. 10). The decision-making process concerning the provision and receipt of international assistance is shown in full in Figure 1.

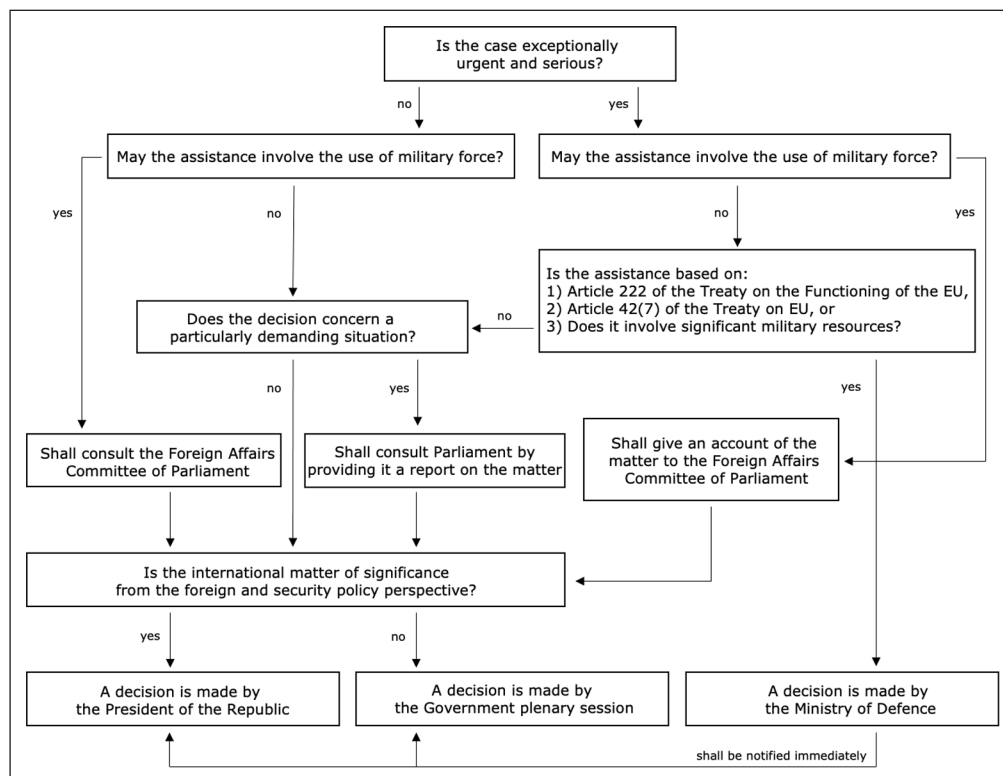


Figure 1 Decision-making concerning the provision and receipt of international assistance.

DECISION-MAKING IN PRACTICE: DEPLOYMENT OF FDF UNIT TO KABUL AIRPORT

After encircling Kabul in mid-August 2021, the Taliban took almost complete control of Afghanistan. Taliban fighters in Kabul controlled checkpoints in the city, including all routes to the international airport (Ministry of Defence, 2022, p. 34). Following the rapid military advance of the Taliban and the end of commercial flights from Kabul, the decision was made to evacuate staff from the Finnish embassy in Afghanistan. The evacuees eventually included not only the ten posted embassy staff but individuals hired locally by the mission and their families (173 people), those hired locally by the EU and NATO (80 people), and those receiving consular assistance or requiring evacuation for humanitarian reasons (151 people). Finland, that is, evacuated more than 400 people. It would not have been possible to remove such a large contingent to safety in this time without the Protection Squad of the FDF and the security they provided to a team of civil servants appended to the Finnish Ministry for Foreign Affairs, working amidst the chaos of Kabul Airport (Government, 2021, p. 2; Ministry for Foreign Affairs, 2021, September 9).

The joint meeting of TP-UTVA discussed Finland's evacuation operation on Thursday 19 August 2021 (Government, 2021, August 19). The Minister for Foreign Affairs presented a government report on the deployment of the FDF unit to the Kabul Airport area in support of civil servants working on the Finnish evacuation operation to a plenary session of Parliament on the very next day, 20 August 2021 (Government, 2021). The matter was referred to the Foreign Affairs Committee of Parliament on the same day. A report from this Committee concerning the government report was tabled at the second parliamentary session of the day (Parliamentary Foreign Affairs Committee, 2021). Parliament unanimously adopted the proposal of the Foreign Affairs Committee with no objections during the third session of the day. A government plenary session proposed that the President of the Republic should order the statement of Parliament on the matter to be entered in the minutes (Parliament, 2021). The President approved this proposal (President of the Republic, 2021, 8 August). The FDF Protection Squad of some 30 people, which had already been on standby for a few days, arrived at Kabul Airport on Saturday, 21 August 2021 (Finnish Defence Forces, 2021).

The FDF unit was tasked with protecting staff involved in the evacuation operation of the Ministry for Foreign Affairs, supporting and guiding evacuees, formulating and disseminating a situation assessment, and liaison officer functions. Consisting solely of personnel engaged by the FDF, the Force Protection Squad was able to operate within and in the immediate vicinity of Kabul Airport. There was especially close cooperation with the Norwegian troops (Ministry of Defence, 2022, p. 37). The squad remained under Finnish management throughout the operation. This was effected in practice by Defence Command's Operations Centre, and through collaboration with the Ministry for Foreign Affairs (Parliamentary Foreign Affairs Committee, 2021, p. 2). The squad was equipped with light infantry armaments, and its right to engage was based on a condition both of necessity on the use of force from the point of view of the mission and of proportionality with respect to its objectives.

Decision-making concerning the provision of international assistance was based on section 1, subsection 1, paragraphs 4–5, section 2, subsection 1, and section 3 of the International Assistance Act. Section 1 of the International Assistance Act does not specifically recognize the possibility of providing assistance in support of another Finnish public authority (in this case the Ministry for Foreign Affairs). The rescue and evacuation operation in Afghanistan nevertheless also related to requests from the European External Action Service and NATO for Finland to assist individuals hired locally by these parties (meaning assistance provided to the European Union and an international organization that falls within the scope of section 1, subsection 1 of the International Assistance Act.) As providing assistance in this case was considered an international matter of foreign and security policy significance within the meaning of section 1, subsection 1, paragraph 5 of the International Assistance Act, the decision was taken by the president under section 2, subsection 1. Parliamentary consultation was required according to the government's assessment that the operation could involve the use of military force within the meaning of section 1, subsection 1, paragraph 4 of the Act, and under particularly demanding circumstances. The minimum parliamentary consultation required in such circumstances is a formal report to Parliament, as laid down in section 3 of the International Assistance Act (Parliamentary Foreign Affairs Committee, 2021, pp. 2–3; Government, 2021, pp. 3–4).

As the first application of the International Assistance Act, the case was historic. Equally notably, this decision-making saw the passage of a government report through a plenary session of Parliament completed within a matter of hours. When the decision to send a Defence Forces unit to Kabul Airport was prepared, it became evident that the International Assistance Act had not been worded so that an international situation of significance, obliging a decision on the part of the Finnish government regard extra-territorial action, could be recognized without a request originating from outside the country (Ministry for Foreign Affairs, 2022, 2021, 13 October; Ministry of the Interior, 2022, 7 March). The FDF's evacuation operation in Afghanistan was, from a legal point of view, authorized by the requests from the European External Action Service and NATO.

The work to amend the International Assistance Act was launched in October 2021 following the lessons learned from the evacuation operation in Afghanistan. It became evident in that operation that Finnish public authorities need to be able to participate independently or to support another Finnish authority outside the territory of Finland without an external request. The proposed legal amendments solve a genuine problem. It cannot be ruled out that in the future Finland might find itself in a situation where neither any international organization such as the EU nor another State asks for assistance despite a pressing need for rescue. There could be many reasons for such inaction; serious dysfunction in the target State's political institutions would be one. Regulation, in other words, is needed for situations where responsibility for the rescue and evacuation of Finnish civilians lies with the State of Finland alone. Such regulation could be justified as a guarantee of basic rights and liberties beyond the frontier.

Additionally, the working group proposes clarification of the Act's applicability to joint operations conducted with Finland's key partners. The aim is to strengthen the prerequisites for participating more widely in joint operations motivated by shared interests. Regional surveillance conducted cooperatively by Finland and Sweden, for example, is based on a common need, and should not be understood in terms of any request or provision for international assistance. Finally, it is proposed that the restrictions on the procedure applying to urgent cases requiring military force be made less situational, and geographical restriction be removed from the urgent decision-making procedures laid down in the Act.

RETHINKING FDF'S TASK STRUCTURE

According to the working group, "the legislation on the provision of and request for international assistance could also be applied in situations where Finland is a member country of NATO" (Ministry for Foreign Affairs, 2022, 6 June). What then are the situations – or, more specifically, the NATO task-related situations – that the new concept "joint operation" could cover? NATO's political and military tasks are outlined in the Strategic Concept. The 2022 Strategic Concept was adopted at the Madrid Summit on 29–30 June. According to this steering document, NATO's three core tasks are deterrence and defence; crisis prevention and management; and cooperative security (NATO, 2022). Given that the decisions on Finland's participation in military crisis management are taken according to the Act on Military Crisis Management,⁵ the scope of application of the International Assistance Act covers the Alliance's collective defence and the cooperative security of NATO partners.

But can joint operations within a NATO context continue to be understood as an independent task? Are they not, rather, the means by which both the FDF and NATO execute their primary task of defending Finland and its allies by military means? Should the FDF's primary task be formulated so that it covers the military defence of Finland and the collective defence of the Alliance? All other international defence cooperation would naturally form part of this task. Supporting other public authorities in turn could be opened so that all state-owned cooperative security work, domestic and international alike, would fall within its sphere. A task formulated this way would catch all other FDF's international activities than those concerning national and collective defence and international military crisis management. The thinking is illustrated in Figure 2.

⁵ The Act on Military Crisis Management No. 211 of 2006, as amended by No. 49 of 2022.

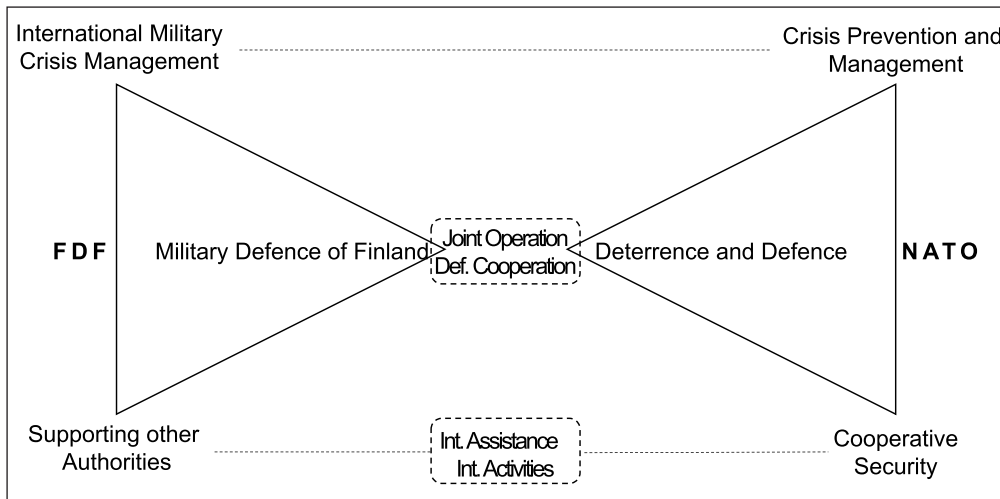


Figure 2 Thought experiment concerning FDF's tasks inspired by NATO strategic concept.

Should we continue to understand the FDF's provision of international assistance and its participation in joint operations and other international activities, then, to be an independent task? Or should these functions be seen as a means to an end, and respectively integrated into the remaining main tasks of the FDF? One of the benefits of such a task regrouping would be the possibility of collecting all decision-making and competence norms under one statute. The corresponding provisions regulating relations between the Finnish civilian public authorities and NATO should be arranged into a separate law at the same time. Such legislative differentiation, used in intelligence and crisis management, would here enable a more precise division both of scope of application and the obligations owed to the FDF and civilian public authorities. Moreover, sector-specific regulation can be amended with greater agility when the need arises. The next step, however, is for Finland and Sweden to be incorporated into NATO as full members. For its part, Finland has done everything to realize this end while waiting for the remaining ratifications.

COMPETING INTERESTS

The author has no competing interests to declare.

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