

Shaping european and global security with military means:

Unlock EU's potential to act within the framework of the Common Security and Defense Policy

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I. Introduction

Even before February 24 of this year, the global security situation was fragile. Questions of geopolitical distribution of power demanded for response, while spheres of influence were subtly being expanded – not as in the Cold War era in the US-Soviet confrontation, but now with regard to China in a tripolar relationship. The Russian war of aggression severely intensifies the problems. The 21st century political system competition is being openly fought out: repressive autocracy versus liberal democracy with the european continent as the arena. Thus, the EU is invoked more urgently than ever to position itself internationally as a security policy actor. The Treaty of Lisbon has provided the legal framework for security policy action: The provisions on the Common Security and Defense Policy in Articles 42 to 46 of the Treaty of the EU (TEU) are the reason why the term *Security and Defense Union* has been used ever since. On this basis, european legal scholars characterize the EU as a collective security system. Consequently, politicians derive a responsibility of the EU for peace and international security that goes beyond the historical idea of unifying the european states. How may and how should the EU live up to this expectation? The answer to this question has obviously also a military dimension. With my contribution to the conference, I would like to clarify the military capabilities of the EU to shape european and global security in the short term as well as in the long term. The focus will be on military missions. These missions are one of the most important components of the current discussion about EU's defense claim, recently adjusted to the protection of territorial integrity of member states and partners. I will proceed by first presenting the current Security and Defense Union (II.). It is to be characterized by its legal bases for military missions (II.1.), its related strategy (II.2.) and its implementation (II.3.). Recognizing the status quo, the future Security and Defense Union can be predicted (III.). I will link the development scenarios once again to the categories legal bases (III.1.), strategy (III.2.) and implementation (III.3.). This will allow a comparison between EU's existent capabilities and its potential. Finally, three conclusions may be drawn (IV.).

II. The current Security and Defense Union

Identifying the potential requires knowledge of the initial state. Therefore, as a first step, the characteristics of the current Security and Defense Union are to be identified.

1. Legal bases

EU law contains two bases for military missions. They can be found within the provisions on the Common Security and Defense Policy – namely in Article 42 para. 1 in conjunction with Article 43 para. 1 TEU on the one hand and in Article 42 para. 7 TEU on the other hand.

a) External crisis management vs. self-defense

Both legal bases need to be strictly differentiated from one and another, first, because they provide for different purposes of military missions. The first legal basis of Article 42 para. 1 in conjunction with Article 43 para. 1 TEU holds for external crisis management; specifically, it covers military missions for disarmament, humanitarian purposes, military advice and assistance as well as conflict prevention and crisis management. In contrast, the second legal basis of Article 42 para. 7 TEU allows military missions for self-defense, i.e. to defend against an armed attack on a member state.

b) Union authority vs. member states authority

The second reason for the necessity to differ between the two legal bases for military missions lies in the distribution of authorities between the EU and the member states. The EU is assigned solely the authority for military missions of external crisis management, i.e. those according to Article 42 para. 1 in conjunction with Article 43 para. 1 TEU. Such military missions can be enacted by the EU itself, prepared by its institutions and carried out with its resources. In contrast, the authority for military missions for the purpose of self-defense remains with the member states. Such military missions can be deployed in accordance with Article 42 para. 7 TEU at the request of a member state being the victim of an armed attack. Self-defense is subsequently organized by the member states. A decision of the EU is not required and centralized action by the EU does not take place. Therefore, the EU cannot be classified as an alliance or – remaining within the categories of international law – as a system of collective self-defense. This distinguishes it from the NATO, which, in accordance with its founding purpose, is authorized to defend its member states.

2. Strategy

The *Global Strategy 2016* and the *Strategic Compass 2022* are forming the strategic framework for executing the Common Security and Defense Policy. Both documents set out guidelines with regard to the question, in which situations the aforementioned legal framework should be applied. Building on the fundamental principles of state sovereignty and territorial integrity, the concept of strategic autonomy is introduced. It envisages in general terms a stronger EU and specifically also militarily resilience and robustness. Several far-reaching events – all preceding the war in Ukraine, which is just the most urgent impetus for action – led to this: due to Brexit the UK as a crucial military power left the EU, Russian aggression escalated earlier by the illegal annexation of Crimea, Donald Trump’s presidency temporarily weakened transatlantic relations, and the withdrawal of western military forces from Afghanistan revealed the dependency of European states on US resources particularly in the context of evacuating nationals. As a result of these experiences, the EU identified security risks and outlined priorities for the coming years. Geographically, the focus is laid on the own continent. Military missions are seen as an important instrument of action to be used in accordance with international law.

3. Implementation

The EU is implementing its strategy with a number of measures. First, the *Permanent Structured Cooperation* (PESCO) was established in December 2017. This strives for military cooperation between the member states on the long run. It aims to change capabilities for the better. For one thing, joint defense projects are carried out. One to be mentioned is the improvement of military mobility; this project is intended to ensure the unhindered movement of resources within the entire territory of the EU. In addition, PESCO promotes joint work on innovations. It is regarded as necessary to address the threat posed by cyber and AI-based attacks as well as hybrid warfare. PESCO is complemented by the *Coordinated Annual Review on Defense*. This screening procedure is meant to identify capability gaps, which in turn can be addressed through PESCO projects. Joint undertakings receive financial funding by the *European Defense Fund*. At the beginning of 2020, the European Commission embedded the *Directorate General Defense and Space*. In March 2021, the *European Peace Facility* was established. This special fund serves as an efficient financing instrument for inter alia military missions, which are no longer dependent on ad hoc financing.

III. The future Security and Defense Union

Based on the presented initial state, I would like to outline development scenarios for a future Security and Defense Union. In doing so, I will consider the challenges that each perspective is facing. These need to be taken into account, when predicting the future Security and Defense Union.

1. Legal bases

Regarding the legal bases for military missions, two development scenarios may be brought into focus.

a) Union authority for self-defense

A first development scenario is to assign the EU the authority for military missions for self-defense. This means expanding the Union authorities beyond external crisis management. The EU may then deploy military missions for defending a member state under attack. The member states have considered this to be feasible in future. They have therefore enshrined a development clause in Article 42 para. 2 TEU. According to its wording, this clause is designed to enable a common defense. By applying this provision, it would become possible to pursue self-defense in favor of a member state under attack within the framework of Article 42 para. 1 in conjunction with Article 43 para. 1 TEU.

This development scenario seems to correspond with the current political spirit stating defense of territorial integrity as the primacy of military action. However, it faces two hurdles. The first one is to be seen in the traditional neutrality or rather non-alliance policy of several member states including Ireland, Malta, Austria and Cyprus. They have so far refused to promise automatic military assistance in advance to a state under attack. Finland and Sweden used to belong to this group as well, but recently renounced their decision to remain non-aligned. The application for NATO membership is the obvious action. However more noteworthy is that the probability to apply Article 42 para. 2 TEU increases and the extension of Union authority in favor of military missions for self-defense is more likely than ever. The second important hurdle to assign the authority for military missions for self-defense to the EU is the fact that the western security and defense architecture is defined by the NATO. The conviction is that EU's military capabilities may develop only in accordance and under acceptance of NATO's predominance. This means that a stronger Security and Defense Union correlates with strengthening NATO's european pillar. The conditions for this

are compatibility of capabilities and solid routine coordination. While rivalry between the NATO and the EU is less feared these days, the concept of strategic partnership is gaining support. In this respect, public opinion especially in the eastern member states and Denmark is changing. They traditionally focused on the NATO and were reluctant to support a stronger Security and Defense Union. Prevalently, it was feared that strengthening the EU militarily would in turn weaken the NATO. This view is diminishing. Increasingly, the value of a NATO strengthened by the EU is recognized. In particular, close cooperation between the NATO and the EU could tackle the problem of strategic simultaneity: Releasing NATO resources on the European continent enables the organization to emphasize other regions and thereby shape Western security and defense architecture in general.

b) Military missions by majority decision

A second development scenario for the future Security and Defense Union is the adjustment of the decision-making procedure for deploying a military mission. Under current law, the unanimity principle applies. In accordance with Article 42 para. 4 TEU the decision of a military mission requires consent of all member states. It is being discussed whether this consensus requirement should be replaced by a majority decision, assuming that thereby EU's military functionality and ability to react would be increased.

This development scenario also faces two hurdles. The first argument to stick to the unanimity rule lays in the protection of the most important principle of international law, the prohibition of the use of force. It is argued that if the EU intends to act within this sensitive area and with reference to international peace, the decision to do so may ground on the support of all member states. Presumably, the principle of unanimity inheres a disciplining effect as it obliges agreement among member states with different strategic cultures. On the other hand, reference is made to restrictions due to national law of the member states. Some constitutions provide for parliamentary participation in the case of military missions. Such rights of co-determination must remain effective. They may not be overridden by a majority decision at the Union level as they ensure the public acceptance of military missions.

2. Strategy

With the *Global Strategy 2016* and the *Strategic Compass 2022*, the EU set up its strategic framework. It is planned to continuously evaluate the guidelines. An adjustment and update of both documents is envisaged for 2025. This suggests the development of an own strategic culture for the future Security and Defense Union. The challenge is not only to solve primary security issues in accordance with European and international law, but also to define the relationship with the NATO and to deal with the specific reservations made by several member states in line with their political traditions and constitutions. The experiences made by European military forces in Libya, Mali and Afghanistan however activated a public opinion-forming process questioning conventional perceptions. The strategy of the future Security and Defense Union may follow up for the purposes of a common approach.

3. Implementation

The future Security and Defense Union will also distinguish itself by implementing its strategy through further measures. The most important project is the *Rapid Reaction Force*. This is a multinational intervention force for military missions. It is to be established by 2025 and is meant to be ready for deployment at short notice. In addition, the focus will be on broadening the expertise required in the context of military missions by engaging 200 military specialists.

IV. Conclusions

I would like to draw three conclusions and put them up for discussion. The first relates to the current, the second to the future Security and Defense Union. My third conclusion is more abstract and associated with an idealistic claim to the EU.

1. *The status quo of the Security and Defense Union is remarkable in many respects:* It could be suggested that the current Security and Defense Union is already a noteworthy peacekeeping force. This follows from its legal framework assigning the EU the authority for military missions for external crisis management. The EU is capable to undertake action for this purpose as resources have been expanded and capabilities have been improved over the past six years. Within this specific area of security policy, EU's standing in parallel to the NATO is undisputed. Military missions obviously remain subject to case-by-case decisions. However, one may assume a high probability for agreement among the member states. This is derived from EU's recent unification momentum,

which is likely to converge different strategic cultures and valorize the commonly designed framework.

2. *The status quo of the Security and Defense Union is remarkable, but no longer up-to-date:* The security demands placed on the EU have shifted. The experiences of European military forces in the recent past lead to the certainty that strengthening the Security and Defense Union is of mutual interest. With an expansion of Union authority and majority voting, there are two ways to increase EU's functionality and resilience. What is more, a militarily robust Security and Defense Union may act more persuasive in diplomatic affairs. Diplomacy may as ever give precedence but at the same time, the EU may stipulate that the most important security interests may be defended.

3. *The status quo of the Security and Defense Union commits the EU to be an actor in international law:* The EU considers itself as a legal community. This traditional self-image has ever since advocated a rule-based world order. There is thus a strict commitment to international law. The international legal system is compared to national legal systems more amenable to change. This is because it is also formed by state practice and released legal convictions. Reinterpretation and amendment of norms may therefore result from the dialogue between states and international organizations. The EU must be aware of this. The ability to influence international law must be kept present especially when it comes to military action. In this regard, the responsibility to protect international peace by maintaining the legal order applies. This idealistic claim is pressing: The narrative of the war of liberation used in the context of Russian aggression incorrectly asserts humanitarian intervention as an exception to the prohibition of the use of force. Along with this, the core principle of territorial integrity has been called into question. International law is therefore crucially dependent on being stabilized by international law subjects such as the EU. Various forms and forums of action are available for this purpose. It is not a matter of enforcing values and moral. Rather, it is a matter of preserving the binding norms on which the international community has agreed to secure peace. EU's potential to shape European and global security must surely be seen in this crucial task.

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