

Europe, where do you go?

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Abstract

The Russian-Ukrainian conflict, which started in 2014 after the annexation of Crimea to the Russian Federation, and re-flamed in February 2022 with the “special military operation” in the Donbas, shows the weaknesses and shortcomings of the European Union: the east-west enlargement, the lack of an autonomous foreign policy, the absence of a European defense and security ownership and the dependence on NATO. This short article aims to shed light on the major problems of the European Union in the context of the Ukrainian crisis.

Key words: European Union, NATO, Russia, Ukraine, Defense and Security.

The Russia-Ukraine conflict brings back the weaknesses and unresolved problems of the European Union (EU). First, the decision-making process, which requires the consensus of all member states¹, based on the principles of public international law – this is an excessively democratic principle, as certain decisions could be taken by a simple or qualified majority. The second problem derives from the lack of a real and autonomous foreign policy of the Union. Finally, there is the problem of European defense

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1. Consensus means a proposal will only be adopted if all member states are in agreement. Formal voting does not take place, the member states deliberate until they reach general agreement.

which relies on the North Atlantic Treaty Organization (NATO), an alliance dominated by the United States.

After the collapse of the Berlin Wall and the dissolution of the Soviet Union, we have witnessed the progressive Eastwards enlargement of Western institutions². From a certain point of view, the enlargement of the European Union can be seen as a bridgehead for NATO, under the close link between the two organizations. The defense of EU members is *de facto* granted under the NATO umbrella, even if the memberships to the two organizations are formally distinct³.

Collective defense is provided in the founding treaty of the Alliance⁴. Art. 5 of the *Charter* commits member states to protect each other. Indeed, collective defense means that an attack against one ally is considered an attack against all allies. NATO has taken collective defense measures on several occasions, including in response to the annexation of Crimea to the Russian Federation (2014) and the “special military operation” in the Donbas (February 2022)⁵. In response to the Ukrainian crisis, the Alliance fostered the eastern flank by increasing its presence and deployed multinational battlegroups in the region in deterrence and defense roles.

Notwithstanding, assistance to a member of the Alliance is not automatic, and the wording of Art. 5 leaves room for allies to determine which form of assistance they deem necessary in the particular circumstances – it is not necessarily military assistance. All NATO decisions are made by consensus, after discussion and consultation among member countries; this is a key principle of the working mechanisms of the Alliance enshrined in Art. 4 of the founding treaty. Indeed, NATO is not just a military

2. Cf. M. MARSILI, *The Russian Influence Strategy in Its Contested Neighbourhood*, in H. MÖLDER, V. SAZONOV, A. CHOCHIA, T. KERIKMÄE (eds.), *The Russian Federation in Global Information Warfare. Influence Operations in Europe and Its Neighborhood*, Springer, Cham 2021, p. 150.

3. Cf. M. MARSILI, *Towards A Strategic EU-NATO Security Partnership in Africa*, in «Proelium», 8 (4), 2020, pp. 202-203.

4. Cf. *North Atlantic Treaty*, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

5. Cf. NATO, *Collective defence and Article 5*, last updated September 20, 2022, https://www.nato.int/cps/en/natohq/topics_110496.htm.

alliance; it has also a political dimension. The principal forum for political consultation is the North Atlantic Council (NAC). The NATO Parliamentary Assembly (NATO PA) established in 1955, serves as the consultative interparliamentary body. The NATO PA consists of 269 delegates from the 30 NATO member countries⁶, plus delegates from 11 associate countries, 4 Mediterranean associate countries, 8 parliamentary observer delegations, representatives from the European Parliament; and inter-parliamentary assemblies⁷. In this political body, albeit consultative, participate the national parliamentarians of NATO member states, most of which are members of the European Union, and representatives from the European Parliament. Security and defense are topics that, regardless of strictly military issues, concern political decision-makers at the strategic level. Ultimately, it is a process that, in some way, deals with representative democracy and the rule of law.

Like NATO, the EU pursues a foreign policy in its own right based on consensus based on the Common Security and Defence Policy (CSDP) structure which should evolve to form a full defense arm for the EU that can implement the EU mutual defense clause outlined in Art. 42(7) and 222 of the Treaty on the European Union (TEU)⁸ and the Treaty on the Functioning of the European Union (TFEU)⁹.

The EU's Mutual Defence Clause was introduced by Art. 42(7) of the Treaty on European Union as amended by the Treaty of Lisbon approved in 2007 and in force since 2009¹⁰. The mutual defense clause states that «if an EU country is the victim of armed aggression on its territory, the other EU countries have an obliga-

6. Cf. NATO PARLIAMENTARY ASSEMBLY, *How we work. Assembly Membership and Rules of Procedure*, n.d., <https://www.nato-pa.int/content/how-we-work>.

7. The Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE).

8. Cf. EUROPEAN UNION, *Treaty on European Union (Consolidated Version)*, *Treaty of Maastricht*, February 7, 1992, OJ C 325/5 of December 24, 2002.

9. Cf. EUROPEAN UNION, *Consolidated version of the Treaty on the Functioning of the European Union*, October 26, 2012, OJ L 326/47-326/390 of October 26, 2012.

10. Cf. EUROPEAN UNION, *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, December 13, 2007, OJ 2007/C 306/01 of December 13, 2007, pp. 1-271.

tion to aid and assist it by all means in their power»¹¹. This clause provides that if a Member State is the victim of armed aggression on its territory, the other Member States have an obligation to aid and assist it by all the means in their power, under Art. 51 of the *Charter of the United Nations*¹². This obligation of mutual defense is binding on all Member States. However, it does not affect the neutrality of certain Member States and is consistent with the commitments of countries that are NATO members¹³, despite Art. 42(2) of TEU also specifying that NATO shall be the main forum for the implementation of collective self-defense for EU member states that are also NATO members.

Even if the Lisbon Treaty gives greater coherence and visibility to the Common Foreign and Security Policy (CFSP) and creates the CSDP¹⁴, the establishment of a Common European Defence remains a long-term goal¹⁵. The EU decision-making process by consensus¹⁶, the NATO-EU relationship, and the lack of a real EU autonomous foreign policy, make such a goal difficult to achieve. Critics point out constraints and shortcomings of the EU Foreign and Security Policy¹⁷, arguing that are among the main structural problems of the Union¹⁸. The EU has not created a “for-

11. This clause is supplemented by the solidarity clause (Art. 222 of the TFEU), which provides that Member States are obliged to act jointly where one of them is the victim of a terrorist attack or a natural or man-made disaster.

12. Cf. UNITED NATIONS, *Charter of the United Nations*, October 24, 1945, 1 UNTS XVI.

13. After the application of Sweden and Finland to NATO in 2022, there are only four non-NATO states in the EU: Austria, Ireland, Cyprus and Malta. Iceland and Norway are NATO members but have opted to remain outside of the EU.

14. The Common Security and Defence Policy, formerly the European Security and Defence Policy (ESDP) and referred to as CSDP in the Treaty of Lisbon, is an integral part of the CFSP. The CSDP covers all areas of foreign policy and all matters relating to the EU security and includes the gradual establishment of a common defence policy.

15. Cf. M. MARSILI, *Towards A Strategic EU-NATO Security Partnership in Africa*, cit., p. 201.

16. Consensual decision-making in the European Council is based on the TEU and the TFEU.

17. Cf. R. ALCARO, *The Constraints on the EU Foreign and Security Policy*, Joint Brief No. 1 (May 2021), <https://www.jointproject.eu/2021/05/01/the-constraints-on-the-eu-foreign-security-policy/>.

18. Cf. J. TECHAU, *The Five Structural Problems of EU Foreign Policy*, in *Security Politics in Asia and Europe*, Panorama: Insights into Asian and European Affairs 02/2009, Konrad-Adenauer-Stiftung, Singapore 2010, pp. 73-86.

eign ministry” as a separate institution, instead of the High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP), the chief coordinator and representative of the CFSP. The position was originally introduced in 1997 by the Treaty of Amsterdam¹⁹ as the High Representative of the Common Foreign and Security Policy, and re-branded by the Lisbon Treaty, which establishes its current title and powers.

All this is reflected in the current Ukrainian crisis, which sees an indirect intervention of NATO and the EU through indirect military assistance, *i.e.* the supply of armaments to the government of Kyiv. Since the beginning of the conflict, the member countries of the union have been divided over the supply of heavy weapons²⁰. The supply of military aid rests on the decision of each Member State, and the Union as whole funds and coordinates military assistance through the European Peace Facility²¹, a CFSP off-budget instrument established in March 2021 by the Council and based on Art. 30(1) and 41(2) of the TEU²².

The European Peace Facility is an instrument aimed «to preserve peace, prevent conflicts and strengthen international security». The link to the CFSP and not to the CSDP highlights the constraints and shortcomings of the Union in terms of security, defense, and foreign policy. We can conclude that the Ukrainian crisis is the benchmark of such limits, which have been known for some time. Since it was created by the Maastricht Treaty in 1993,

19. Cf. EUROPEAN UNION: COUNCIL OF THE EUROPEAN UNION, *Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts*, November 10, 1997.

20. Cf. M. MARSILI, *Inside and Beyond the Russo-Ukrainian War: The Pitfalls of the European Union*, in «Newsletter of the Academy of Yuste», n. 16, 2022, pp. 14-16; T. GLEN, *Declaration of the Baltic states on Leopard tanks. The Germans are calling to make a move*, in «Dnipro Today», January 21, 2023, <https://www.dniprotoday.com/en/news/rzeszow-volodymyr-zelensky-met-with-andrzej-duda-good-to-see-you-247>.

21. Cf. M. MARSILI, *Inside and Beyond the Russo-Ukrainian War: The Pitfalls of the European Union*, *cit.*, p. 13.

22. Cf. COUNCIL OF THE EUROPEAN UNION/EUROPEAN COUNCIL, *Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528*, Document 32021D0509, ST/5212/2021/INIT, OJ L 102, March 24, 2021, pp. 14-62.

the EU is facing difficulties in addressing and settling crises²³. So far, despite its claim to be a “global actor”, the Union was not able to solve neither to prevent the conflicts that took place on its borders after the dissolution of the Soviet Union²⁴.

The government of Kyiv is committed to acquiring full membership in the EU and NATO to get security and protection from the Russian threat²⁵, but the accession of Ukraine to the Western institution is perceived by Russia as a major geopolitical defeat, a catastrophe, while the Kremlin is looking for an opportunity for a re-integration²⁶. In Ukraine is taking place a confrontation between Russia and the West, with the first trying to re-establish its sphere of influence, and the second to expand it far beyond its statutory boundaries. The definition of the territories to which Art. 5 applies, as per Art. 6 as revised in October 1951, includes European and North American territories, Turkey, the Mediterranean Sea, the North Atlantic area, and north of the Tropic of Cancer.

Conclusions

The Union and its member states – almost all are members of the Alliance – seem to pursue U.S. political-military goals, *i.e.* the dual eastward enlargement²⁷, rather than a European policy. The Russian-Ukrainian conflict brings to light some well-known prob-

23. Cf. M. MARSILI, *European Border Conflicts: Failures and Inabilities of EU Foreign and Security Policy*, Encontro Ciência 2019, Lisbon Congress Centre, Lisboa, Portugal 2019, doi: <https://doi.org/10.5281/zenodo.2875748>.

24. Cf. M. MARSILI, *The Birth of a (Fake?) Nation at the Aftermath of the Decomposition of USSR. The Unsolved Issue of Post-Soviet ‘Frozen Conflicts’*, in «Proelium», 7 (10), 2016, pp. 161-178.

25. Cf. B. LIPPERT, *The EU’s Next Eastward Enlargement Will Be Complicated and Expensive*, in «SWP Comment», No. 46, Stiftung Wissenschaft und Politik, Berlin 2022, p. 7, doi: 10.18449/2022C46.

26. Cf. M. MARSILI, *The Russian Influence Strategy in Its Contested Neighbourhood*, cit., pp. 150, 163-164; ID., *Inside and Beyond the Russo-Ukrainian War: The Pitfalls of the European Union*, cit., p. 14.

27. Cf. R. DANNREUTHER, *Eastward enlargement: NATO and the EU*, in «Forsvarsstudier», 1, 1997, <http://hdl.handle.net/11250/99491>.

lems: NATO cannibalizes the EU military expenditure²⁸ and frustrates the legitimate aspirations of a European defense and security ownership, thus amplifying shortcomings and weaknesses of the foreign and security policy of the Union.

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28. Cf. NATO, *Defence Expenditures of NATO Countries (2014-2022)*, June 27, 2022, https://www.nato.int/cps/en/natohq/news_197050.htm; A. GENCTURK, *Greece will not provide Ukraine with Leopard 2 tanks: Premier*, January 31, 2023, in «Anadolu Agency», <https://www.aa.com.tr/en/politics/greece-will-not-provide-ukraine-with-leopard-2-tanks-premier/2802701>.