

EUROPE IN THE GLOBAL CONTEXT

The European Union and the Security of Europeans

The path to the Europe of defence through Differentiated Integration

Mariola Urrea



Exterior view of the new NATO headquarters

'By 2025 we need a fully-fledged European Defence Union. We need it. And NATO wants it'

State of the Union Speech by the President of the European Commission
13 September 2017

Challenges to security require awareness among European society of a reality already augured by multiple threats, such as international terrorism, pandemics, cyberwar, climate change, and external interference. A common denominator to all these threats is the complexity of the phenomena driving them, clearly complicating how States can tackle them. Indeed, dealing with these challenges requires, first of all, rethinking the traditional legal frameworks used to date and, secondly, promoting strong supranational cooperation. Neither of these two formulae are easily implemented if differences in approach among the Member States and in the European Union itself continue to grow, as a result of support for populist political forces whose response to problems is a retreat to nationalism.

Nevertheless, Europeans are gradually, though reluctantly, accepting the importance of taking responsibility for our own security and establishing a European pillar in the Atlantic Alliance, aspiring to a degree of autonomy. Such a need has become clearer after seeing the threat of international terrorism materialise on European soil, without our American ally treating it, or giving it the same importance, as the threat to their own. This rising awareness was helped by first listening to President Obama, with his impeccable diplomacy, and later President Trump, less amiably but equally forcefully, inviting us to make a greater commitment to NATO.

From this standpoint, Europeans can no longer avoid an urgent debate, given the instability of our environment, on the need to take our own defence and security more seriously.

‘During the European Parliament election campaign, how often have we heard candidates discuss this issue? How many proposals on the issue were presented during the ‘Spitzenkandidaten’ debate on 15 May in the European Parliament building? Neither the security of Europeans or defence issues have merited the attention of the people responsible for legislating on the matter over the next five years.

The European Union committed to revitalising a partially blocked project: differentiated integration as a method and security and defence as a new competence

The desire to relaunch European integration in the area of security: the demand imposed by an unstable and interdependent world

Construction of the European Union has in recent years shown signs of political and legal blockage, partly due to a degree of integration ‘fatigue’. Indeed, although the European integration process was initially considered irreversible and irrevocable for its Member States, such a premise is clearly indefensible. This is true in terms of its intended irreversibility in the degree of integration (given the multiple clauses allowing certain States to opt-out of their integration commitments) and in the irrevocable commitment to continuity among EU Member States, as shown by Brexit and the activation of the right to withdrawal in Article 50 of the Treaty on European Union (TEU). Both trends are clear examples of the European Union’s difficulty in obtaining a further commitment to European integration among the Member States.

Nevertheless, particularly after the deep economic crisis it has experienced, the EU has not given up on recovering the strength of its political project by exploring opportunities for new areas of integration. This drive to share new areas of competence has an external explanation, in a certain ‘federalising’ effect which, according to conventional wisdom, is caused by Brexit, Russian assertiveness and the unpredictable Donald Trump. Nor can we ignore the European Union’s internal need to counteract the political agenda of all the populist parties that have arisen with a clearly anti-European agenda in the Member States.

These parties' attraction is founded on illusory proposals of national retreat, but they align themselves with initiatives that patently contradict the foundations on which the Union was built, namely, liberal democracy, rule of law and freedoms and rights.

In this context, the most committed States have identified the issues of security and defence, among other fields, as potential motors for integration to provide an urgent boost to the European project. Only in this way, they claim, can the EU face its threats, tackle the challenges to its security and (if it achieves the 'strategic autonomy' proposed by the European Union Global Strategy) finally strengthen its military capabilities to become a more credible and influential world actor. In short, possibly contrary to all expectations, defence has become the new (and virtually only) motor for European integration.

Differentiated integration as a response to a more diverse Union: different expressions of a method included in the treaties

The difficulties weighing down the European project in recent years are attributable to more than just a more unsettled context or the scars left by the economic crisis in some Member States. The number of States in the European Union today and their diversity of positions hinder any progress in European construction. In this context, one can reasonably imagine the political discussions on the future of the Union, stretching back decades, revolving around the most appropriate means of boosting integration dynamics in an environment of profound diversity. Thus the classic method of integration, based on mandatory adoption of commitments by all States, is not always useful. The challenge has been to introduce the necessary flexibility that allows States to advance in the integration process, thereby preventing the will of a minority blocking the will of the majority. At the same time, this minority has to be offered the choice of opting out of integration commitments, without this implying recognition of their powers to impede the rest of the countries from advancing. To achieve this, the European Union has frequently called on a variety of instruments to relax State commitments, thus avoiding the inevitable blockage to the classic integration method.

Among the different integration mechanisms available to the Union, both within and beyond the treaties, mention should be made of those based on opposing positions. We refer here, firstly, to enhanced cooperation and its derivatives (permanent structured cooperation) as an option available to those seeking greater levels of integration, using the procedure established in treaties; and, secondly, to opt-out clauses, instruments that guarantee avoidance of commitments adopted in the treaty framework.

As is commonly known, the enhanced cooperation clause was included in the treaties by the Amsterdam reform, although its current legal regulation is the result of subsequent amendments in the Nice and Lisbon reforms. It represents the first expression within the treaties of a differentiated integration method for countries who want to advance but have not been able to via the ordinary method. Its aim is to provide a last resort through the option of attempting to advance, in the framework of EU competences and institutions, in accordance with procedures established in the treaties for this purpose and as long as

regulatory requirements are met. This desire for integration does not affect those who do not want to, or cannot, take part. The treaty itself also includes a procedure to allow States to join the process when they want, even if they were initially left out. To date, enhanced cooperation has been used to approve a European framework for divorce and establish the European Public Prosecutor's Office.

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With regard to opt-out clauses, these are legal formulas that free States from adopting new obligations for integration if they do not want to, despite this veering considerably from the original concept of the European project. Opt-out clauses have been used in social policy, which the United Kingdom did not initially join; the third phase of the Economic and Monetary Union, which the United Kingdom, Denmark (and also Sweden) opted out of; the Area of Freedom, Security and Justice, which has exceptions for the United Kingdom, Ireland and Denmark; and even the Charter of Fundamental Rights of the European Union, which has also allowed modifications for the United Kingdom and Poland.

Differentiated integration is, in all the manifestations included in the treaties, the narrative that best explains the present and can organise the future of such a large (in terms of numbers of States) and diverse (in terms of approaches to integration) supranational organisation as the European Union. Only through differentiated integration can the European Union's demands in terms of defence be approached, more so if the major presence of anti-European political groups in its institutions is strengthened as a consequence of the European Parliamentary elections. We will discuss this below.

The European Union and the drive towards the Europe of Defence: Europeans' security in European hands

The European Union and strategic autonomy: a mandate of the European Union Global Strategy

The European Union was not created with the aim of designing a common security and defence system. However, this has never stopped the European Union from stressing, from very early on and for a variety of reasons, the importance of considering such issues. The EU's position on the matter has been largely conditioned by differing concepts of security and defence among the Member States. Hence it had to define a legal and political framework whereby the diversity of approaches was compatible with the need for the EU and States to assume greater responsibility for their own security.

To do this, the European Union Global Strategy already notes that ensuring ‘an appropriate level of ambition and strategic autonomy is important for Europe’s ability to promote peace and security within and beyond its borders’. But, what does the Global Strategy mean when it refers to the idea of ‘strategic autonomy’ as a key element to guaranteeing security? Although the text does not propose a definition, Member States have interpreted this idea in two different ways. In the first interpretation, the European Union will achieve the strategic autonomy mentioned in the Global Strategy once it gains certain military capabilities. According to the second interpretation, the European Union will achieve strategic autonomy once it gains a capacity to define its position in a conflict independently from that of its allies or defence structures such as NATO.

In relation to this latter interpretation, it is interesting that the Lisbon reform already contained instruments and mechanisms for action belonging to the TEU and the TFEU (Treaty on the Functioning of the European Union), whereby the EU could, under conditions agreed on by the States which will be described below, establish the autonomy it needs to ensure its security within and beyond its borders.

The EU’s mutual assistance clause: a European defence mechanism in the event of attack

The mutual assistance clause, included in the reform of the Treaty of Lisbon (Article 42.7 of the TEU), states that if a Member State is the victim of armed aggression on its territory, the other Member States must aid and assist by all the means in their power. The legal regulation included two qualifications that determine the application of this clause and make it compatible with the varying sensibilities expressed by different Member States on the issue. The first qualification, required to make the clause accepted by neutral States in the EU, notes that the clause should be understood to ‘not prejudice the specific character of the security and defence policy of certain Member States’. The second qualification helped allay the concerns of EU States that are NATO members, as it states ‘commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation’ (Art. 42.7, paragraph 2 TEU).

The final wording of the clause in question produced major doctrinal doubts as to its scope in practice. However, the Daesh terrorist attack on 13 November 2015 in Paris ended any hope that this instrument might become simple political rhetoric. Now is not the time to analyse the legal objections when the aforementioned mechanism was implemented, through a meeting of the EU’s Foreign Affairs Council (instead of the European Council), in response to a terrorist attack (as the justification of an armed attack), and the use of force was adopted (with the desired protection from United Nations Security Council Resolution 2249). It is, however, more relevant to limit analysis to the scope and consequences implied by the use of this mechanism by a European Union Member State in relation to the mechanisms established by NATO. This will help us define the scope in terms of EU strategic autonomy represented by the mutual assistance clause and, subsequently, the

subordinate or complementary relation of this mechanism to other mutual defence mechanisms considered by NATO.

This is not an easy debate, but it is our duty to initiate it without delay if the European Union is to preserve and maintain its capacity for action in an increasingly polarised and interdependent world.

Bearing in mind the wording of the aforementioned TEU Article 42.7 and the fact that it has only been activated once and under very particular circumstances, it is premature to rule on the relation between the European Union mechanism and that of NATO by ignoring a certain preference for applying the North Atlantic Treaty Organisation collective defence mechanism. Even more so if the attack on a Member State were a conventional aggression instead of a terrorist attack. Overall, if we consider the threats faced by Europeans, without ignoring the interests of some of our NATO partners to attend to areas of the planet other than Europe, then this conclusion needs correcting to a certain extent, approaching the relation between the EU and NATO mutual assistance clauses not so much in terms of preference of application (that of NATO over the European Union) but in terms of compatibility (with that of NATO). Thus, we can recognise a degree of autonomy of action for the European Union in questions of security and defence without rejecting how certain situations would influence the coordination of our defence in the context of applicable commitments acquired with NATO.

The Global Strategy appears to propose a similar interpretation, when it states, firstly, that 'the EU will therefore deepen cooperation with the North Atlantic Alliance in complementarity, synergy, and full respect for the institutional framework, inclusiveness and decision-making autonomy of the two', and, secondly, when it reiterates the European Union's need to consolidate its position as a security community, for which 'European security and defence efforts should enable the EU to act autonomously'.

Permanent structured cooperation of Member States: an instrument to favour European development of its military capabilities

Articles 42 and 46 of the Treaty of the European Union and the corresponding Protocol to the Treaty developing them enabled a group from the 23 Member States to report their intention to implement a differentiated integration formula in defence to the Council and the High Representative on 13 November 2017, with the aim of strengthening their defence capabilities and making them available for European Union military crisis management and conflict prevention operations. On 7 December, Portugal and Ireland joined the initiative. Finally, on 11 December 2017, the Council of the European Union approved the decision, thereby activating permanent structured cooperation (OJ L 331, of 14.12.2017; corrigendum and consolidated version published in OJ L12, of 17.01.2018).

In accordance with this decision, the 25 Member States included in the mechanism (all except Malta and Denmark) meet the highest criteria of military capability and have signed related commitments to each other to carry out the most demanding missions and contribute to meeting the EU's level of ambition. As detailed in the Preamble to the Council Decision, States participating in this permanent structured cooperation agree to adopt all measures aimed at strengthening two pillars. The first pillar is operational and involves strengthening the military capabilities of participating Member States through multinational forces, the aim being to provide full, harmonised land, air and sea capabilities. The second is strictly linked to capabilities and involves a commitment to defence industry projects to cover identified deficiencies in materiel that have diminished the European Union's capacity for action on the ground. As explained at the time by the European Council, this involves capabilities relating to remotely piloted aircraft systems, in-flight refuelling, satellite communications and cyber defence.

To ensure that both pillars are truly strengthened, a list has been drawn up of 17 projects, with each State free to choose which to join. Spain is taking part in 12 of these projects. They will be carried out in two phases (2018-2020 and 2021-2025) and in stages. All this will enable the European Union to develop its capabilities with the maximum degree of interoperability and homogeneity which, when possible, should be used to support the European Union, NATO, the United Nations and other multinational initiatives.

By way of conclusion

The European Union faced the elections on 26 May 2019 in a particularly difficult situation, as noted above, both internally (an integration process threatened by those who aspire to penetrate European institutions with the intention of implementing an anti-European agenda) and externally (a more interdependent world in which disruptive actors introduce an element of instability that is difficult to administer through the current world order).

In this complex political reality, the new European Parliament (2019-2024) will have to manage an open, profound debate on the European construction project, in which security and defence will play a major role. Europeans can no longer put off an agreement on the security we want, the security we need and the security we are prepared to pay for. Only in this way will we be able to discuss calmly the resources we can commit to guaranteeing it. This is not an easy debate, but it is our duty to initiate it without delay if the European Union is to preserve and maintain its capacity for action in an increasingly polarised and interdependent world.

In the Global Strategy for the European Union's Foreign and Security Policy, the EU expressed its intention of adopting a pragmatic yet principled position in the field of foreign action, which would permit realistic assessment of the strategic environment in which it has to operate, without renouncing the promotion of a better world through values such as peace, security, prosperity, democracy and a lawfully-based world order in which to coordinate the defence of our interests. Achieving this requires, above all, providing Europe with greater levels of strategic autonomy in security and defence. Only in this way can the

EU increase its credibility and influence as a world actor. We shall see if it manages to do so.



Mariola Urrea

Mariola Urrea is professor of Public International Law at La Rioja University, where she headed the European Documentation Center. Her main fields of study are the EU integration model, the institutional system and decision-making process, the Security and Defense Policy and the participation of the Autonomous Communities in the European integration process