

Protecting Neutrality in a Militarised EU

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A protocol to the Lisbon Treaty giving exemptions for neutral states from the EU's security and defence policy is the only effective way to retain active or military neutrality, writes Karen Devine

THE EUROPEAN Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP) are respective attempts to co-ordinate the foreign policies of 27 member states of the European Union, and to create a European military capability to realise the interests and goals of the union. Many regard the realisation of the ESDP as pushing the last piece of the EU's political union puzzle into place.

This third article on the past, present and future of neutrality will consider neutrality in relation to the present organisational security architecture (involving the UN, Nato and the EU), and assess the compatibility of both so-called "active" and "military" concepts of neutrality (discussed in the previous article) with the ESDP provisions in the Lisbon Treaty.

There is a spectrum of military activity from "low intensity" associated with humanitarian relief and peacekeeping, to "medium intensity" associated with peace-support and peace-enforcement operations, up to the "high intensity" of war. The public opinion of active neutrality is clear in limiting the military scope of Irish forces to peacekeeping only, with a minority expressing a specific organisational preference for UN peacekeeping over EU peacekeeping.

The UN was established by the victorious Allies of the second World War on October 24th, 1945, to replace the unsuccessful League of Nations (1919-1946). The strengths of this intergovernmental organisation lie in its almost universal membership, its recognised code of conduct in the UN Charter, and the willingness of the international community to respect and apply its decisions.

Peacekeeping and observer forces were not envisaged in the charter, but were developed subsequently to support its principles.

UN membership in 1955 was the answer to Ireland's search for an international role and UN peacekeeping was the source of renewed purpose for the Army after the end of the second World War. Ireland, along with other neutral states such as Sweden, was a very active, "good" UN member and had a role in easing tensions between the Cold War blocs in the UN. Ireland's postcolonial character, independence and impartiality were invaluable to successful and effective UN peacekeeping.

In the public mind, neutrality became intertwined with active UN membership and UN peacekeeping, as many of the values associated with neutrality were expressed through these contributions to international security. UN membership and peacekeeping satisfied the motive of honour and goal of identity and community for the Irish State and its people, which helps explain the expressed preference for UN peacekeeping in the active concept of Irish neutrality.

Since the end of the Cold War, the UN has extended its remit to include intervention in the internal affairs of a state on a humanitarian basis. In the late 1980s, UN peacekeeping began trying to save so-called failed states and help with the difficult transition from civil war to civil peace. These operations involve a higher intensity of military activity beyond that of traditional peacekeeping, and open a debate on the limits placed on Ireland's military activity through the active concept of neutrality.

The UN Security Council is the only body that can authorise the use of force in cases other than self-defence. A veto by one or more security council members of a proposed mission raises a second debate over whether another organisation should intervene in "just" cases. Members of Nato used force in Kosovo in 1999 and against Iraq in 2003 without UN authorisation.

Some see the Irish Government's so-called triple lock, under which Defence Force involvement overseas must be approved by the Cabinet, the Oireachtas and operate under a UN mandate, as a hindrance to involvement in just missions without a UN mandate. They cite the EU mission to Macedonia in 2003 as an example. Others see the EU and Nato as regional, interests-based economic and military organisations that are inappropriate to sanction the use of force compared with the legitimacy of the UN's global authority.

Thus, primacy should be afforded to the UN and its peacekeeping operations, and political will should prioritise the necessary reform of the UN and its security council.

A further issue of concern is states' politically motivated withholding of their financial dues to the UN, which hinders the financing of UN peacekeeping operations, and arguably led to Kofi Annan's call for peacekeeping operations to be undertaken by regional organisations.

Some consider the EU and Nato, with the requisite political will and military assets, as appropriate bodies to undertake regional peacekeeping. Others see a lack of impartiality associated with regional organisations and a destabilising presence of a regionally dominating power as hampering the legitimacy and operational ability of regional peacekeeping.

The core purpose behind the creation of Nato in 1949 was collective defence, embodied in article V of the North Atlantic Treaty, which ensures that an attack against any of the Nato members would be treated as an attack on all member states, with an obligation to assist the attacked party.

Ireland was not invited to join Nato in 1949 and is not a member. Different worldviews and concepts of security divide those who argue for and against Irish membership.

The former see alliances as a necessary response to perceived security threats; as a way to increase political power in order to protect alliance members' economic and political interests; and Irish membership as fulfilling a moral duty to contribute to regional defence.

The latter maintain, firstly, that alliances create global insecurity, leading to arms races and proxy wars in third countries and, secondly, that the Irish military contribution to the alliance would be so negligible that the State's contribution to international security would be better realised through retaining neutrality and using independence and impartiality to the benefit of peacekeeping.

Nato's two major post-cold war security initiatives are the Combined Joint Task Force (CJTF) concept and the Partnership for Peace (PfP) programme. The former includes out-of-area missions, either "peace support operations" with non-Nato members or article V missions by alliance members to meet the political aims of Nato.

In January 1994, Nato decided to develop the Combined Joint Task Force (CJTF) concept to allow the EU to borrow Nato assets for EU operations. This arrangement is known as Berlin Plus.

PfP, conceived in 1994, allows non-members of Nato to train with Nato forces to take part in a CJTF. PfP is also used as a stepping-stone for eastern European applicant states to prepare for full Nato membership.

Some are suspicious of Nato's political motives in adopting a peacekeeping role and see it as a cynical effort to remain relevant in the post-cold war era. They would also question whether Nato, with its emphasis on high-intensity training for war and history of power-politics, is capable of effective and legitimate peacekeeping. Others focus on the changed nature of peacekeeping operations and view Nato's high-intensity operations experience as needed and welcomed.

The 1997 Amsterdam Treaty provided for EU involvement in peacekeeping and peace-enforcement through the so-called Petersberg Tasks, the list of military and security priorities, first formulated by the Western European Union (WEU) in 1992 and subsequently incorporated in the ESDP.

Nato is an inherent part of these operations, as is the development of ESDP, called the Common Security and Defence Policy in the Lisbon Treaty. Ireland co-operates with Nato through PfP to train for engagement in the EU's Petersberg Tasks and to achieve inter-operability of its forces for participation in Nato-led peacekeeping operations. Ireland also offers peacekeeping expertise to other partners.

Ireland has taken part in Nato peacekeeping operations in Bosnia and Herzegovina (Sfor, 1997-2002), Kosovo (Kfor, 1999) and Afghanistan (ISAF, 2002).

The EU has two military force concepts: a European Rapid Reaction Force (ERRF) conceived in May 1999 and consisting of 60,000 troops to be deployed within 60 days, sustainable for at least a year; and a Battlegroups concept conceived in 2004, consisting of 1,500-2,200 troops deployed within 15 days, sustainable for up to four months.

The Government pledged 850 soldiers to the ERRF and a 200-strong light infantry group to the Nordic Battlegroup. Like Nato's CJTF, each is based on the concept that pre-designated national forces will be brought together when necessary to respond to a crisis.

Civilian ESDP went operational in January 2003 with a relatively unchallenging debut in the EU Police Mission (EUPM) in Bosnia and Herzegovina, in which members of the Garda Siochana participated. The first military ESDP operation outside of Europe without the use of the Berlin Plus formula was launched in June 2003 through Operation Artemis in the Democratic Republic of Congo.

Leaving the organisational preferences issue aside, these types of EU civilian and military crisis management missions are functionally compatible with the limited spectrum of military activity inherent in active neutrality.

At present, the EU's military capacity is limited to peace enforcement through the Nice Treaty's definition of the Petersberg Tasks; however, a broader EU agenda beyond the tasks is envisaged in the 2003 European Security Strategy (ESS), and in 2004, the council of the EU decided that the use of force is permissible in cases of state failure.

The Lisbon Treaty extends the military spectrum of the EU through the creation of a new EU military alliance with an automatic mutual defence guarantee, additional high-intensity Petersberg Tasks, and a new mechanism of permanent, structured co-operation that allows a so-called Defence G6 of larger states to engage in high-intensity military operations, up to (and not precluding) war.

Defence G6 is a French initiative that sees the six largest EU states devoting 2 per cent of GDP to defence; establishing a common procurement market for defence equipment; further developing the battlegroup concept (each comprising 10,000 troops); and launching major defence infrastructure projects, such as space and intelligence technology, and missile defence.

This maximalist ESDP and hard security role arguably changes the nature of EU peacekeeping and may subject the EU to the same anti-alliance arguments levelled at Nato.

The drafting of the Lisbon Treaty's maximalist ESDP at the 2003 Convention on the Future of Europe was highly disputed because its unlimited military scope fatally compromises both active and military concepts of neutrality. All of the representatives of the neutral states participating in the convention objected to the proposals.

Neutrality was also a significant issue in the Irish referendum on the Lisbon Treaty, according to research conducted on behalf of the Department of Foreign Affairs.

While the Government claimed military neutrality was not affected because of the clause in the Constitution prohibiting membership of a future EU military alliance, it is worth noting that academic analysts of the treaty, and the European Civil Society groups, concluded that the treaty's ESDP provisions would put an end to states' neutrality.

A new treaty protocol outlining neutrals' ESDP exemptions is the only effective way to retain military or active neutrality. The following analysis considers the status of the elements of active neutrality vis-a-vis the Lisbon Treaty's ESDP provisions.

The primary "non-involvement in [other countries'] wars" element is compromised under article 42 TEU, which places no limits on EU military missions. The concept of using force only in cases of self-defence is eliminated, as article 42 TEU provides a capacity for pre-emptive action (as envisaged in the European Security Strategy).

Ireland may be associated with "high intensity" EU operations even if the state is not a participant.

"Non-aggression" and "peace promotion" values appear to be under threat, given that the neutrals' clauses proposed at the convention to limit the scope of EU military action and repudiate war were rejected.

The primacy of the UN and its peacekeeping is eliminated under article 42(1) TEU, as EU missions do not require a UN mandate. The neutrals' proposals for EU missions to require a UN mandate were rejected.

The inter-related neutrality characteristics of "impartiality", "anti-big-power politics" and independent decision-making amid big-power pressure are compromised under articles 4(3) TEU and 44 TEU that lift the ban on enhanced co-operation in the field of European Security and Defence Policy.

Article 42(6) TEU provides for permanent, structured co-operation in defence matters, and designates larger states to execute the "most demanding" military acts. Neutral state representatives argued that large state missions going ahead in the name of the EU in the face of objections from smaller states will have little credibility, as they would clearly show that there is no genuine common foreign policy.

These provisions, combined with article 31 TEU/235 TFEU on Constructive Abstention, make unanimity as a decision-making rule a non sequitur, while articles 236 TFEU, 24 TEU and 32 TEU, also objected to by neutral states' representatives, eliminate abstaining states' independence in action.

The "anti-militarism" value is affected by article 42(3) TEU which commits member states to increased military spending and a common arms policy within the article 45 TEU-supported European Defence Agency.

Finally, the military neutrality concept of non-membership of a military alliance is eliminated under the article 42(7) TEU mutual defence clause that effectively constitutes a new EU military alliance, and the article 188R solidarity clause.

Neutral states' representatives tried at first to eliminate these alliances, and thereafter, to make these clauses non-binding, but ultimately failed in both endeavours. The clause stating that the mutual defence guarantee will "not prejudice the specific character of the security and defence policy of certain Member States" is so vague as to be devoid of any legal effect; opt-out protocols are the only way to avoid these obligations.

The conditions under which Ireland would join the EC common defence, as laid out by politicians in Dáil Éireann over the years - i.e. once the EC had evolved into "a genuine federation or confederation, with a common foreign policy" (Garret FitzGerald, May 11th, 1982), or once there was "co-decision of the European Parliament with the Council" to exercise adequate democratic controls over ESDP (Proinsias De Rossa, November 29th, 1991) - have not been met.

While ESDP structures and capabilities are sketched in the Lisbon Treaty, the circumstances under which they will be used and against whom would be decided in the future by the European Council; in the absence of any democratic controls, ESDP is a leap too far into the unknown for many voters. Compared with the neutral traditions of Ireland, Austria, Sweden and Finland that go back decades or centuries, and are part of people's national identities, ESDP is a very recent policy conceived by a handful of elites in the absence of a European identity that is seen as necessary for its acceptance, legitimacy and success.

Henry Kissinger once observed: "No foreign policy - no matter how ingenious - has any chance of success if it is born in the minds of a few and carried in the hearts of none."

His insight illustrates the problems faced by advocates of the Lisbon Treaty's Common Security and Defence Policy that overrides, rather than accommodates, the foreign policies of neutral states.

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