

Auferre, trucidare, rapere, falsis nominibus imperium, atque, ubi solitudinem faciunt, pacem appellant.

(To plunder, massacre, usurp under false titles, they call it empire, and where they make a desert, they call it peace).

Publius Cornelius Tacitus (referring to his father-in-law Cnaeus Julius Agricola)

One of the possibilities that are emerging for ending the war in Ukraine, provided certain conditions are met that today still seem distant, is the freezing of the front line (or another line to be agreed) and a deployment of forces - evidently neither Ukrainian nor Russian - to ensure stability and the absence of hostilities at least while negotiations for an eventual formal peace treaty are underway.

The nationality of the forces in question is a matter of debate, and we only know for now that they will not be American (as President Trump has emphatically stated) and that they could be European, which would obviously be desirable for Ukraine, but whose probability is unpredictable judging by the contradictory and time-varying statements of Putin and Trump, the latter said to be interpreting the former, and those of the indefatigable Minister Lavrov, always ready to "clarify" concepts. Naturally, the modalities of deployment, the precise entity and nationality of the forces, and other details that we will see later, will in turn be the subject of negotiation, but we can allow ourselves some lucubration on this, as there are limitations in several aspects that should be identified, as well as advantages and disadvantages depending on the agreed modality.

One of the first limitations is that they cannot be NATO forces: the first ally, the United States, has already declared its refusal to participate, and it is hard to imagine a NATO force of any size without an American component. Moreover, one of the justifications Putin has repeatedly put forward for the iniquitous invasion has been the famous "*not a single inch*", referring to the fact that, in his view and contrary to a (non-existent) promise, NATO has been moving eastwards since the dissolution of the USSR, to the point of compromising its security. However, false or not, it would therefore be unthinkable for Putin to admit NATO forces, even in a peacekeeping or peace enforcing role.

Interestingly, a hypothetical European (non-NATO) force does not seem to have raised much opposition, despite the fact that of the 27 EU member states, no less than 23 are

Allies, and at least two of the remaining four (Malta and Cyprus) are militarily insignificant, and that a certain Europe-NATO identification could therefore be objected to by Russia (Lavrov has already done so), which fortunately has been rejected by Trump.

But the problem is not so much in that than in the fact that the European Union or Europe (more on this dichotomy later) does not at the moment have the military capability deemed necessary for this operation, which is eminently land-based but not only, and which is expected to be a major one. It probably does in terms of strength, since in addition to its national forces there are a considerable number of multinational units, starting with Eurocorps (1993) which includes the Army Corps Headquarters, the Franco-German Brigade and assigned German, Belgian, Spanish, French, French and Luxembourg forces at divisional level or below; the UK-Netherlands amphibious force, or UKNLAF (1972); the Spanish-Italian amphibious force SIAF, with Portuguese and Greek contributions (1998); the Franco-Spanish-Italian-Portuguese naval force EUROMARFOR (1995); the Multinational Land Force (Italy, Hungary and Slovenia); the *EU Battle Deployment Capacity* (2022) which replaces more effectively (deployment in less than 10 days) the six or seven *EU BattleGroups* (2007) that existed until the Russian invasion compelled to increase commitment and effectiveness; and a series of bi- or tri-national forces or arrangements that structure the forces of European nations at the multinational level.

All these forces enjoy a higher level of commitment than strictly national forces. But the number of available units is not everything: *assets and capabilities* are essential to effectively command these forces, which are well trained and equipped but dispersed and lacking certain collective elements that are indispensable to their operation.

The problem is not new. The Treaty on European Union (TEU) entered into force in 2009 taking over the tasks and missions, including mutual defence, of the Western European Union (WEU), which had been decided in the Treaty of Amsterdam (1999), rendering the WEU obsolete, and whose dissolution was completed in 2011.

The EU's mutual defence was not entirely satisfactorily concluded because of excessive faith in NATO as protector, but that is a different matter. The mutual defence clause, Art 42.7 TEU, was watered down with certain additions by the UK and Denmark for the benefit

of NATO, but the former is no longer a member, and the latter has renounced the text it imposed, a renunciation due precisely to the Russian invasion of Ukraine.

Mutual defence, crucial as it is, however, is not everything. The WEU had taken on, and the EU therefore inherited, the so-called Petersberg Tasks (Petersberg Declaration, 1992). These include:

- Humanitarian and rescue tasks
- Peacekeeping tasks
- Tasks of combat forces in crisis management including peace enforcement

Differentiating between the three, particularly the last two, can be difficult, but is important in the present context.

- The first are aimed at assisting populations in crisis due to natural disasters, conflicts or humanitarian crises. They usually involve the delivery of aid, evacuation of civilians and medical assistance. This is clearly not the case.
- Peacekeeping tasks aim to stabilise regions in conflict or post-war reconstruction. They involve monitoring peace agreements, protecting civilian populations and supporting the rebuilding of institutions. The underlying assumption is that peace has been signed, but there are disagreements or insurgents.
- The tasks of combat forces in crisis management may involve direct combat to stabilise a region in crisis, and if the conflict remains active could include forcing the contenders to reach peace.

Given Europe's interpretation that the intervention of its forces would only be in the event that a ceasefire or similar agreement, however precarious, is first reached through diplomatic channels, it seems that the second type of tasks is the most appropriate. There is one drawback, however: the implication is that the intervening forces must be neutral. This is easy to ensure when a European force carries out such a task in some remote place in Africa, for example, but it is difficult to be impartial when a power has invaded a weaker neighbour without provocation of any kind, all within the same Europe that those forces are supposed to defend - very important in view of the threat that the aggressor, having whetted its appetite, will continue to expand its "sphere of influence" across Europe. Not to mention the fact that such serious clashes, if not properly resolved, could

result in guerrilla warfare. Let us remember that the word "guerrilla" (small war) was bequeathed to the world by the Spanish language during the perfectly comparable occasion of Napoleonic France's unprovoked invasion of our homeland and the subsequent unsatisfactory, because they were imposed, peace agreements.

On the other hand, forcing the contenders to make peace as envisaged in the third scenario seems beyond the reach not of any European forces that can be mustered, but of virtually any force. Russia and Ukraine are fighting a major war, the first major war of the 21st century, and their bellicosity and combat experience are hardly matched by other forces.

It can therefore be speculated that the hypothetical European force would fall under the second scenario, although it should be prepared, if not to enforce peace, at least to engage in combat under the third scenario to stabilise an area.

But whatever the Petersberg variant in the minds of those responsible for bringing WEU responsibilities into the EU, the EU realised from the outset of this process that it did not possess sufficient means to carry out these three tasks, which at that optimistic time were seen as most, if not all, of the military missions it might be forced to perform.

This led the EU to initiate an extensive exchange of letters between NATO's Secretary General (at the time Lord Robertson, conveying the decisions of the North Atlantic Council, NAC) and the EU's High Representative for Foreign Affairs and Security Policy (who, at the time, and not coincidentally, was a former NATO Secretary General, Javier Solana). This correspondence, which included commitments, took the name of Berlin Plus Agreements.

The focal point of these exchanges was a letter sent by Lord Robertson to Javier Solana on 13 December 2002, conveying the NAC decision of the same day, which, among other details, set out the EU's use of NATO planning capabilities, as well as the role of DSACEUR (Second-in-Command of Allied Command Europe, always a European officer) as potentially responsible for non-NATO European operations.

"We are now in a position to give the EU ready access to the collective assets and capabilities of the Alliance for operations in which the Alliance as a whole is not engaged militarily. To that end, we have today taken the following decisions::

- *NATO-EU strategic cooperation and the implementation of Berlin Plus arrangements will be confined to NATO members and those non-NATO EU members that have subscribed to the Partnership for Peace (PfP) Framework Document [...].*
- *EU access to NATO planning capabilities able to contribute to military planning for EU-led operations is now assured, effective immediately. Hence, no case-by-case authorisation is required.*
- *Within NATO, we shall identify a range of command options for EU-led operations, including further developing the role of DSACEUR to enable him to meet his European responsibilities fully and effectively [...]."*

On 18 February 2003, another letter from the NATO Secretary General to the EU High Representative transmitted a "Report on the Presumptive Availability to the EU of Pre-identified NATO Common Capabilities and Assets for Use in EU-Led Operations". This report stated that:

- *It is generally understood that assets and capabilities are both forms of support that could be made available by the Alliance for an operation led by the EU.. Assets (personnel, headquarters, headquarters elements, units, equipment, etc.) would be transferred temporarily to the control of the EU. Capabilities would be services of various kind (such as lift, information, access to communications, provision of early warning, etc.) which would be provided by the Alliance to the EU in the context of an EU-led operation but which would not be transferred to the EU.*
- *A presumption of availability should be understood to mean a high degree of probability that the assets and capabilities that had been pre-identified would be made available when they were requested by the EU. Although the transfer of assets and provision of capabilities would require a case-by-case decision by the North Atlantic Council, pre-identification as presumptively available would establish a strong form of engagement or commitment. The fact that a particular element was not included in the list of assets and capabilities pre-identified as presumptively available would in no way prejudice a subsequent decision on whether it might be made available in a crisis.*

An annex to this letter listed pre-identified NATO assets and capabilities, including: SHAPE (Supreme Headquarters Allied Powers Europe), SACLANT HQ (Supreme Allied Command Atlantic), regional commands, STRIKFLTANT (Naval Combat Force), CJTF HQ (Combined Joint Task Forces), plus a significant number of second- and third-level headquarters, logistics, ISTAR (Intelligence, Surveillance, Target Acquisition and Reconnaissance), etc.

It is now appropriate, in the present situation and considering that the EU has still not developed in these two decades those capabilities that it found insufficient, to analyse the applicability of the Berlin Plus Agreements for a hypothetical deployment in Ukraine which, let us remember, although nominally included in the Petersberg Tasks, is of a much greater entity, complexity and severity.

Let us recall that the Petersberg Tasks that have been carried out so far have been of limited size and several of them merely training local forces: EUFOR Congo (2006); EUFOR Althea, (2004 to present), in Bosnia and Herzegovina; EUNAVFOR Somalia/Operation Atalanta (2008 to present); EUFOR Chad, (2008-2009); EUTM Mali (2013 to present); EUTM Somalia (2010 to present). The comparison with a potential deployment for which figures as disparate but as high as 30,000 in the most optimistic case, up to 120,000 and even 300,000, are being proposed, is disheartening. But not only that: in this case it would be the interposition between two military forces (not merely insurgents or militias) that have been fighting for three years, with superlative combat capability. Moreover, it bears repeating: unlike those missions, almost all of which were in Africa, this one involves the security of Europe, for we know that Putin's ambitions do not stop at the borders of Ukraine.

There is no doubt, then, that the EU or Europe in this scenario will have no choice but to look to NATO to provide those assets and capabilities that it so clearly lacks. To this end, the following must be considered:

- All agreements include the UK, as it was an EU Member State at the time the agreements were signed, so a priori the inclusion of this very important ally does not detract from the Berlin Plus obligations.
- Access to NATO assets and capabilities is limited to Member States that are also Allies, and to PfP participants (which excludes Cyprus and other potential contributors

outside NATO and Europe, such as Japan or Australia). A possible European mission could therefore include all EU member states (except Cyprus), plus the UK and Norway.

- The naming of the mission (whether "European" or "EU") is a political question. However, there are pros and cons to this decision that must be weighed: using the term "European" would avoid vetoes from reluctant member states (such as Hungary and Slovakia), and make it more acceptable to partners such as the UK, Norway or Turkey; while an "EU" mission would bring it more clearly into Berlin Plus, thus guaranteeing full access to NATO assets and capabilities.
- Turkey is a special case. It is a NATO ally, but the control it has exercised over the Turkish Straits goes beyond the provisions of the Montreux Convention by prohibiting the transit of any non-riparian warship for the past three years, contrary to the clear provisions of Article 19: *"In time of war, Turkey not being belligerent, warships shall enjoy complete freedom of transit and navigation through the Straits under the same conditions as those laid down in Articles 10 to 18"*. This restrictive attitude could be interpreted, in reference to a European-led operation, as a harbinger of a Turkish position not quite aligned with the rest of the participants. Moreover, the successful implementation of the naval aspects of the operation, the main objective of which would be to ensure free traffic in and out of Odessa, will certainly require not simply strict but even flexible application of the Montreux Convention, which would be in the hands of Turkey, sole administrator of the Montreux provisions.
- The EU should not simply accept whatever specific headquarters NATO offers as the preferred "asset and capability", let alone try to impose it. Any element or elements of NATO's command structure can be selected as contributions to a hypothetical EU Petersberg mission, as long as NATO "as a whole does not participate militarily", which will not be the case under the assumptions for this possible operation.

Consequently, a European operation to deploy forces to Ukraine following a peace agreement would in principle fall within the definition of Petersberg tasks, although it would undoubtedly be larger, more complex and more dangerous. In fact, it should perfectly well be a force of sufficient size to be a deterrent, or a so-called "tripwire" force, i.e. lighter but arranged in such a way that if attacked it would trigger the intervention of

other, larger forces. But, in reality, the label assigned to it is less important than the rules of engagement (ROE) that must be provided to the force along with the Operations Order, and which must be very carefully drafted, avoiding as far as possible the "national exceptions" that often plague the ROE of other operations (as was the case in operation *Artemis* in Bunia, East Congo, Oct 2012). In any case the label will have to be assigned, but as mentioned above, bearing in mind the importance of remaining nominally within Petersberg and under the EU flag because this is what provides legal cover for borrowing the necessary assets and capabilities from NATO.

Given NATO's current structure, it seems that the HQ in Brunssum, Netherlands (JFC Brunssum) would be the best candidate to be the "assets and capabilities" to plan a mission and command forces assigned by European nations (indeed, it already has responsibility for European forces currently deployed on the periphery of Ukraine). Although at the time of the Berlin Plus arrangements it was understood that SHAPE would be the preferred HQ to support the EU due to its larger size and superior planning capabilities, the profound changes in NATO's command structure over the past few years, which have made some HQs disappear, and others added to the structure, as well as the geographic and political factors surrounding the planned operation, and the fact that JFC Brunssum's top commanders are all European, recommend HQ Brunssum instead, and nothing in the Berlin Plus arrangements prohibits this choice. Moreover, it is not only planning capabilities or other services that are to be provided, but the temporary and unconditional transfer of the chosen HQ to EU control, according to the letter of 18 February 2002 quoted above.

As the operation would have a significant air component, NATO Airborne Early Warning and Control Force (NAEW&CF) support would be essential (this was one of the elements that constituted the "capabilities" identified from the outset as crucial NATO support). Support for missile targeting systems and real-time intelligence are also capabilities that can be provided.

In a nutshell:

A European operation to deploy forces to Ukraine following a peace agreement would reasonably fit within the Petersberg Tasks, albeit on a larger scale and with greater risks. The potential legal obstacles to obtaining NATO support for this are already resolved by

the Berlin Plus Agreements. It is well known that operations in which the Alliance as a whole does not participate militarily might have had a different interpretation in 2002 than they do today, because no one would have predicted that a Petersberg mission would be carried out in Europe, but the meaning of the Agreement is unambiguous: NATO, by not participating militarily, has an obligation to provide the EU/Europe with assets and capabilities appropriate to the task at hand. Among the assets whose control should be transferred, JFC Brunssum is surely at the top of the list. And among the capabilities to be provided, NAEW&CF, missile targeting and real-time intelligence are among the main elements.

And as General Eisenhower said, very aptly for the present situation: "We are going to have peace even if we have to fight for it".

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