



Wilfried
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for European Studies

Rethinking EU Crisis Management

From Battlegroups to
a European Legion?

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Summary

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This paper discusses an idea to create a European Legion that has been put forward by Radoslaw Sikorski, MEP. This would be a new kind of EU military unit, made up of volunteers rather than national contingents contributed by the member states. The idea stems from Sikorski's desire to reform the EU's existing battlegroups, which have been operational for 15 years but have never been used, despite numerous opportunities. The paper argues that although the EU's 2007 Lisbon Treaty imposes heavy restrictions on the Union's ability to deploy military force, it does not rule out conducting operations with a volunteer force. At the same time, a volunteer-based European Legion force would have to be created initially by a group of member states outside the EU framework. These states could then make it available to the EU's Common Security and Defence Policy as, for example, a permanent battlegroup. An existing model would be the multinational Eurocorps.

Keywords CSDP – Crisis management – Battlegroups – European Legion – European Council – Eurocorps



Introduction

Since the EU's Common (formerly European) Security and Defence Policy (ESDP/CSDP) became operational in 2003, the Union has launched a total of 13 military operations within its framework. Of these, eight have been executive in character, meaning that they were authorised to use force if this had been deemed necessary to fulfil their mandate. The most recent CSDP military operation is Operation IRINI in the Mediterranean, which the EU launched on 31 March 2020 to help enforce the UN's arms embargo on Libya.

However, none of the military operations the EU has launched has utilised the Union's battlegroups. These groups, which the EU has hailed as its flagship crisis management capability, were created in 2004 on the basis of lessons learned from Operation Artemis—the Union's first fully autonomous military operation, which was deployed to the Democratic Republic of the Congo. The battlegroups are brigade-sized (approximately 1,500 troops) high-readiness force packages, which the EU should in principle be able to deploy to a crisis zone at 15 days' notice and to sustain for 30 days without rotations.¹ There have been multiple opportunities to use the battlegroups since the first ones entered standby in 2005.² But whenever the EU has intervened in a crisis, it has opted to deploy ad hoc CSDP operations—which have had to be assembled from scratch, a time-consuming process. This has led some countries to question the rationale behind the battlegroups' continued existence, arguing that the EU should 'use them or lose them'.³

There are two main reasons why the battlegroups have not been used. First, the burden for using them would not be shared evenly. If a battlegroup were to be deployed, most of the costs would have to be covered by the member states participating in the battlegroup that happened to be on stand-by at the time. This is because the basic principle for financing EU military operations is 'costs lie where they fall': each participating country pays for its own contribution. Given that the cost of deploying a battlegroup and sustaining it in the theatre can be substantial, the lack of burden sharing has deterred some countries in the past from supporting

¹ EEAS, 'EU Battlegroups', Factsheet, 171009_18 (9 October 2017).

² The EU has discussed deploying battlegroups at various times, including to the Democratic Republic of the Congo in 2006, to Chad in 2007, again to the Democratic Republic of the Congo in 2008, to Libya in 2011, to Mali in 2013 and to the Central African Republic in 2013.

³ Netherlands, Senate, 'EU Battlegroups: Use Them or Lose Them', Discussion paper (16 July 2014).



the deployment of battlegroups in which they were participants.⁴ Second, not all countries contributing to EU battlegroups have an equal interest in intervening in every crisis. To put this differently, due to various geopolitical, historical and cultural factors, Central and Eastern European countries tend to have less interest in intervening in sub-Saharan Africa than France does. Thus, a Central and Eastern European battlegroup is less likely than one led by France to be used to address a crisis in that region. In other words, for the battlegroups to be used, the ‘right’ kind of crisis has to align with the ‘right’ kind of battlegroup on stand-by.

To solve these problems, Radoslaw Sikorski, MEP has proposed the creation of a volunteer-based European Legion. Sikorski believes that such a force, modelled partially after the French Foreign Legion, would be more deployable than battlegroups. This paper discusses the idea of a European Legion and provides suggestions on how it could be taken forward. The paper’s starting point is that the proposed European Legion should be created within the framework of the EU—unlike France’s European Intervention Initiative (EI2), which was created outside this framework. Although it comes with heavy restrictions, the EU framework is preferable because Sikorski’s proposal is partly driven by a desire to inject new dynamism into EU crisis management. The paper argues that although the Treaty on European Union (TEU) heavily restricts the ways in which the Union can use and deploy military force, an EU volunteer force could be created without treaty change, provided that it was initially created outside the Union framework by a group of member states.

The rest of the paper is divided into three main sections. The first outlines Sikorski’s European Legion idea in more detail. The second provides suggestions on how such a force might be organised under the Lisbon Treaty. The third section discusses possible next steps and concludes the paper.

A European Legion?

In November 2019 Sikorski proposed adding to the European Parliament’s annual report on the CSDP a new paragraph on reforming the EU’s battlegroup concept. The proposed paragraph states that the Parliament

⁴ See, e.g., N. Nováky, ‘From EUFOR to EUMAM: The European Union in the Central African Republic’, *European Foreign Affairs Review* 21/1 (2016).



[c]onsiders it necessary to reform the EU battlegroup concept so as to create an EU military unit *based on volunteers* coming from the Member States or associate countries, which would *be at the disposal of the European Council and financed from the EU defence budget*, complementing national military forces and compatible with NATO, *in the frame of the mandate stemming from the relevant Treaty provisions* (emphasis added).⁵

The idea, in other words, is to create a new kind of military instrument for the EU.

Sikorski elaborated on the idea later in an interview. He stated that the further development of European defence cooperation needed to start with drawing conclusions from existing initiatives that had failed—such as the battlegroups.⁶ According to him, the battlegroups have failed because the EU has never been able to use them, even though the participating countries have invested considerable financial resources in these groups. More specifically, Sikorski believes that the battlegroups should be reformed by changing the way they are put together. At the moment battlegroups are assembled from national contingents contributed by the participating countries. Sikorski holds that they should instead be assembled from volunteers from EU member states and associated third countries. The European Legion's voluntary character would make it politically easier for the member states to use it than the existing battlegroups. For Sikorski the Legion could be a brigade-sized force (like the battlegroups) that was trained by the French Foreign Legion. It should be financed from common EU funds, and it should report to the European Council and the High Representative of the Union for Foreign Affairs and Security Policy (currently former Spanish Foreign Minister Josep Borrell). With regard to the types of operation that the Legion would conduct, Sikorski contends that it could be used, for example, to support Frontex, the European Border and Coast Guard Agency.

Elaboration

The idea of turning the battlegroups into a volunteer-based European Legion is new and ambitious. Although the proposal was not included in the final report on the implementation of the CSDP that the European Parliament adopted in January

⁵ European Parliament, *Amendments 1–326*, Draft report, Implementation of the common security and defence policy – annual report, 2019/2135(INI) (12 November 2020), 139.

⁶ A. Widzyk, 'Radosław Sikorski: Stwórzmy europejski legion ochotników', *Deutsche Welle*, 19 November 2019.



2020,⁷ it represents a fresh start and a departure from conventional thinking. It should be developed further. This requires answering a set of questions regarding how the European Legion would be structured and how it would fit into the EU's existing legal framework. If the aim is to create it without treaty change, the following questions arise:

1. What is the European Legion's legal basis in the Lisbon Treaty?
2. What kinds of task could it perform?
3. Who would decide on its deployment and how?
4. What kind of command structure would it have?
5. How would it be financed?
6. Is there political interest in developing it?

Legal basis

The legal basis for the European Legion would be Article 42 TEU, which deals with the CSDP. This article provides the EU with an operational capacity to use military and civilian assets. Article 42(3) states that the 'Member States shall make civilian and military capabilities available to the Union' for the implementation of the CSDP. It also notes that those member states 'which together establish multinational forces may also make them available' to the CSDP. This means that all military capabilities that the EU might use need to be contributed intergovernmentally by the member states, either individually or collectively. This creates a problem for the European Legion: how is an EU volunteer force compatible with the Lisbon Treaty's requirement that all military capabilities used to implement the CSDP need to be contributed by the member states?

As Article 42(3) points out, a group of member states can create a multinational force outside the CSDP framework and then make it available to the CSDP. An existing model would be the multinational European Corps (Eurocorps), the nucleus of which is a Franco-German brigade established in 1987. Eurocorps is an intergovernmental force available to both the EU and NATO, one to which any EU member state can contribute. In the past Eurocorps has been used, *inter alia*, to contribute elements to EU battlegroups.⁸ Thus, like Eurocorps, the European

⁷ European Parliament, 'Resolution of 15 January 2020 on the implementation of the common security and defence policy – annual report', 2019/2135(INI) (15 January 2020).

⁸ Eurocorps, 'European Battle Group' (2018).



Legion could start as a voluntary force outside the EU. It would likely require a framework structure (much like the Franco-German brigade in Eurocorps) around which additional elements and volunteers could be added. Other member states and associate countries could then commit to making a certain number of volunteers available to the Legion. However, individual participants would have to volunteer at the national level and be seconded by their respective countries. This is because the EU as such cannot legally command military forces on its own, which means that—unless the TEU is changed—the European Legion would have to be a multinational intergovernmental unit rather than an EU one. Once created, the European Legion could be made available to the CSDP (e.g. as a permanent battlegroup).

To give additional political impetus to the European Legion, it could be turned into a project within the framework of Permanent Structured Cooperation (PESCO). Launched in 2017, PESCO is a voluntary but legally binding framework for project-based defence capability development. Those member states that participate in PESCO agree to abide by 20 binding commitments, which range from increasing national defence budgets to boosting the speed of national decision-making when it comes to participating in EU operations. So far, participating countries have launched 47 different projects within the framework. They have done this, in part, because some of the projects qualify for additional funding from the planned European Defence Fund (EDF). The European Legion would not qualify for such funding because the Lisbon Treaty allows the EDF, as an EU budget instrument, to fund only joint research on, prototype development for and the acquisition of defence-related equipment and technology. However, as a PESCO project, the Legion would be subject to the legally binding commitments, which would add value both practically and symbolically. Practically speaking, the regular reviews of the extent to which participating countries are continuing to abide by their PESCO commitments would make it more difficult for them to renege or free-ride. Symbolically, developing the Legion within the framework of the PESCO commitments, rather than as a non-PESCO CSDP tool, would signal a higher level of seriousness to the outside world.

Tasks

Operational CSDP activities can be conducted only outside the EU's borders. According to Article 42(1), the EU may use civilian and military assets 'on missions outside the Union for peace-keeping, conflict prevention and strengthening international security' in accordance with the principles of the UN Charter. This



rather vague description of the CSDP's parameters is made more specific in Article 43(1), which lists the types of task for which the EU can use civilian and military means (i.e. the Petersberg Tasks). These include 'joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation.' Article 43(1) also specifies that all Petersberg Tasks 'may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.'

A European Legion force made available to the CSDP would therefore be legally permitted to carry out everything from non-executive military capacity building at the lower end of the intensity scale to full-on executive peacemaking at the higher end. Most executive CSDP military operations launched since 2003 have fallen somewhere in the middle of this scale, focusing especially on activities such as conflict prevention and peacekeeping. The Legion could also be deployed to support Frontex, but given the restrictions imposed by the Lisbon Treaty, the theatres of such deployments (if conducted via the CSDP) would have to be situated outside the Union's borders.

Decision-making

The Lisbon Treaty imposes significant restrictions on the types of decision-making process that the EU can apply when deciding on the deployment of military operations. Even if the European Legion were to be created initially outside the CSDP and made available to it afterwards, the Legion could be deployed only by unanimous decision of the national ministers in the EU Council. Article 42(4) states that initiating a CSDP military operation 'shall be adopted by the Council acting unanimously' on a proposal from the High Representative or an initiative from a member state. Without a treaty change, there is no way around this. Although Article 48(7) states that in certain policy areas or for certain issues, 'the European Council may adopt a decision authorizing the Council to act by a qualified majority', it immediately adds that this 'shall not apply to decisions with military implications or those in the area of defence'. The Lisbon Treaty therefore does not permit QMV to be extended to issues relating to the use of force.

Furthermore, under the Lisbon Treaty it would not be possible to place the European Legion at the disposal of the European Council—at least not directly. The reason for this is that the institution with executive power in CSDP matters is the EU Council. More precisely, it is usually the Foreign Affairs Council, which consists of EU foreign and sometimes defence ministers, that formally legislates



on CSDP issues. The European Council of EU heads of state and government, however, does not have a formal role in the CSDP decision-making process. The part it does play is outlined in Article 15(1), which states that the European Council ‘shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof.’ It also stipulates that the European Council ‘shall not exercise legislative functions.’ However, the European Council can set priorities for the CSDP by, for example, tasking the High Representative with presenting proposals on possible EU military action to the Foreign Affairs Council—something that the European Council has done in the past.⁹ This is an issue that the broader CSDP machinery would have to take into account and start working on. The tasking would almost certainly lead to action because the European Council’s taskings and requests carry enormous weight—it is the highest political level in the EU.

Command structure

The EU already has a tried and tested structure in place for commanding military operations. This structure could be used as it is for commanding deployments of the European Legion. At the political–strategic level, the EU Council is responsible for setting the overall aims, objectives and mandate of EU military operations. Article 43(2) states that the Council ‘shall adopt decisions’ related to the Petersberg Tasks, ‘defining their objectives and scope and the general conditions for their implementation’. However, the day-to-day political control and strategic direction of EU military operations are taken care of by the Political and Security Committee, a preparatory body in the Council responsible for both the CSDP and the Common Foreign and Security Policy. The Political and Security Committee consists of ambassador-level diplomats from each member state. It usually has the authority to amend the relevant planning documents for CSDP military operations and to appoint the top military commanders.

At the military–strategic level, the European Legion could adopt the EU battlegroups’ existing command structure. This means that a deployment of the Legion would be commanded by the EU’s Military Planning and Conduct Capability (MPCC), a permanent command and control structure within the EU Military Staff. The MPCC was established in 2017 to improve the speed, efficiency and effectiveness of the EU’s military crisis management activities. Initially, it was made responsible only for the operational planning and conduct of non-executive CSDP

⁹ See, e.g., European Council, ‘Conclusions – 19/20 December 2013’, EUCO 217/13 (20 December 2013), 24.



military operations (e.g. training operations and advisory missions). However, in 2018 the Council expanded the MPCC's responsibilities by asking it to be ready 'to plan and conduct one executive military operation of the size of an EU Battlegroup'.¹⁰ The structure has since been reinforced with additional staff to enable it to fulfil this responsibility if necessary. The MPCC director, who is also the director general of the EU Military Staff, has operational command of all operations that are commanded from the structure. This means that he/she would also serve as the operation commander of any European Legion deployment.

Financing

The Lisbon Treaty also restricts the financing of CSDP military operations. Article 41(2) states that expenditures for operations 'having military or defence implications' cannot be charged to the EU budget. Instead, these costs 'shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise'. In practice, this has meant that CSDP military operations have been financed in accordance with the principle of 'costs lie where they fall'. However, in each operation, there are certain costs that cannot be allocated to any specific country, such as maintaining the HQ, providing barracks and lodging, and furnishing medical services. These are called 'common costs', and the EU has so far financed them through an off-budget instrument called the 'Athena' mechanism, to which the member states contribute in accordance with their gross national income. In the 2021–7 financial period, Athena will be merged into the planned European Peace Facility (EPF), a new off-budget instrument to which the member states will also contribute in accordance with their gross national income.

Under the Lisbon Treaty, the financing of the European Legion would have to follow the existing model for financing CSDP military operations. The Legion would therefore not be eligible for funding from the EU budget. However, approximately half of its operating costs could be covered by the EPF if the planned expansion of the costs that are considered common is approved by the member states in the EU Council. In the past, the common costs covered by the Athena mechanism have made up a relatively small share (i.e. 5%–15%) of the total cost of a CSDP operation. Former High Representative Federica Mogherini's proposal regarding the EPF would increase this share to 35%–45%. However, the member states have yet to approve this expansion, and increasing the share of common costs

¹⁰ EEAS, 'The Military Planning and Conduct Capability (MPCC)' (November 2018).



even further would also require the member states' approval.¹¹ If this increase goes through, it could make it easier for some EU countries to cover the costs of having their own citizens volunteer to serve in the Legion because they would not have to shoulder the entire financial burden themselves.

Political interest

In addition to the legal questions explored above, there is one final question that those wishing to create a European Legion need to answer: Is there political interest in the key EU member states in establishing such a structure? The answer depends on the answers that can be given to two related questions: (1) Do the EU's main military powers believe that a European Legion would add something of value? And (2) does it fit into the EU's current strategic agenda?

With regard to the former question, now that the UK is no longer a member state, France is the EU's greatest military power. It is also the only EU country that possesses the full spectrum of military capabilities (including nuclear weapons) needed to carry out tasks ranging from peacekeeping to fighting wars. Since any new EU initiative within the operational dimension of the CSDP would have to rely heavily on French capabilities and military expertise, the support of Paris is crucial. To be approved by France, it would need to be demonstrated that the European Legion would be a valuable addition to the existing instruments in the CSDP toolbox. In the past, France has tended to oppose calls to create autonomous military capabilities for the EU that would be placed under the command of supranational institutions. Within the Union's existing legal framework, however, such a move would not even be possible without treaty change. Even if the European Legion started as a multinational high-readiness brigade outside the EU, as this paper proposes, it would still have to prove its worth to Paris. In concrete terms, this means that there would have to be some kind of guarantee that the European Legion would be significantly more deployable than the battlegroups.

As regards the second question, how the Legion would fit into the EU's current strategic agenda, it is clear that it would be challenging to find a place for such a structure in the Union's short-term agenda. There are two main reasons for this. First, since 2013 the focus of EU security and defence policy has shifted

¹¹ Council of the EU, 'Proposal of the High Representative of the Union for Foreign Affairs and Security Policy, with the support of the Commission, to the Council for a Council Decision establishing a European Peace Facility', 9736/18 (13 June 2018), 2.



from crisis management to defence industrial cooperation. Particularly since 2016 the Union has launched a set of high-profile initiatives that seek to boost the competitiveness of the European Defence Technological and Industrial Base. These include PESCO, the EDF and the Coordinated Annual Review of Defence. There has been significantly less interest in strengthening and enhancing the operational dimension of the CSDP, although the MPCC and the planned EPF seek to do so. Furthermore, the EU has also begun to suffer from a sort of crisis-management fatigue. The roots of this fatigue lie in France's growing frustration with the CSDP following what it perceived to be a failure of the other EU countries to show solidarity when it acted on behalf of Europe as a whole in Mali and in the Central African Republic in 2013. In other words, the CSDP as a crisis-management framework needs to regain some of its momentum. And while it is not a silver bullet, a new European Legion force could help with this.

Second, the COVID-19 pandemic has already rearranged the EU's strategic agenda, including in the area of security and defence. The reason for this is that the recovery of European economies will require unprecedented levels of financial stimulus, budget adjustments and other kinds of support, and these will consume a significant share of their resources. This means that the member states' resources that are available for new initiatives that do not directly support their recovery from COVID-19 are likely to diminish in the short term as countries focus on protecting the individual and the economy rather than the state as such.¹² Even before the COVID-19 pandemic reached Europe, it was clear that multiple member states were reluctant to support funding initiatives such as the EDF, the EPF and military mobility at the levels proposed by the European Commission. This unwillingness is likely to increase even further due to COVID-19: some planned initiatives may not receive any funding once the 2021–7 Multiannual Financial Framework has been agreed.¹³ Thus, in this political environment, an entirely new initiative such as the European Legion will find it challenging to get wind in its sails unless it is seen as a way to rationalise CSDP and save resources. It could do so by replacing the existing battlegroups, for example.

¹² J. Lindley-French, 'Analysis: Disease, Debt and Defence', *The Lindley-French Analysis: Speaking Truth to Power*, 2 April 2020.

¹³ See, e.g., R. Emmott, 'On Budget Eve, EU Defence Money at Risk from Coronavirus', *Reuters*, 12 May 2020.



Conclusion

The idea of creating a volunteer-based European Legion is new and ambitious. The proposal does service to the operational dimension of the CSDP by drawing attention to the challenges (e.g. the non-use of the battlegroups) with which the Union has had to cope for more than a decade. This is welcome because since 2013 the focus of EU security and defence cooperation has been shifting from crisis management to boosting the competitiveness of the European Defence Technological and Industrial Base through initiatives such as the EDF, PESCO and the Coordinated Annual Review of Defence. In comparison, the operational dimension of the CSDP has been stagnating.

This paper has provided suggestions on how the idea of a European Legion could be taken forward. It started out with the assumption that this should be done within the EU's existing legal framework (i.e. without treaty change). Although the Lisbon Treaty imposes heavy restrictions on the EU's ability to use military force and on the way it can put operations together, the treaty does not prevent the Union from having a volunteer force at its disposal. However, such a force would initially have to be created outside the EU framework by a group of willing member states, which could then make it available to the CSDP. An existing model is Eurocorps, which has also contributed elements to EU battlegroups in the past. The European Legion could therefore become a battlegroup on permanent stand-by, although one with different funding and a different recruitment base. With regard to decision-making, the EU would have to follow the existing strict rules of the Lisbon Treaty. This means that the European Legion could only be deployed by unanimous decision of the Council.



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