

Commentary on the Draft ‘Assurances’ re Lisbon concerning Security and Defence

[The text of the ‘assurances’ is in italics].

“The Union’s action on the international scene is guided by the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.”

But the Lisbon Treaty does not stipulate that an EU military intervention requires a UN mandate.

“The Union’s common security and defence policy is an integral part of the common foreign and security policy and provides the Union with an operational capacity to undertake missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. It does not prejudice the specific character of the security and defence policy of Ireland.”

Again, a vague reference to the principles of the UN Charter is more or less meaningless. And Ireland’s security and defence policies are certainly impacted (see below).

“The Lisbon Treaty does not affect or prejudice Ireland’s traditional policy of military neutrality.”

Only because Ireland defines that policy in exceptionally narrow terms. According to successive Irish governments, Ireland’s military neutrality is characterized by “non-membership of military alliances”.^{1[1]} In the first place, formal membership of a military alliance may not be the only measure of neutrality (or the lack of it): for example, Ireland did not join a formal military alliance when it granted US troops transit facilities through Shannon airport, but did this mean that Ireland had remained neutral vis-à-vis the conflict in Iraq? Second, the notion of a formal military alliance is itself routinely reduced to participation (or non-participation) in a mutual defence pact, whereas participation in what are clearly military structures and interventions at EU level would strike most people as participation in some sort of military alliance (or, at the very least, a joint military undertaking). For many people, neutrality represents something other than the narrow, negative concept which the Irish government claims to espouse.^{2[2]} Rather, it is an active engagement in the affairs of the world, promoting, for example, in a fairly even-handed way, the peaceful resolution of disputes and generally pursuing a foreign policy that is not militarily aggressive. And such a stance is, arguably, made more difficult when Ireland is seen to be so closely allied to the military objectives of powers such as the US in Iraq or of France in Chad. Thus, present trends, including as codified in Lisbon, would seem to undermine Irish capacity for ‘active neutrality’.

^{1[1]} *Ireland and the Partnership for Peace: an Explanatory Guide*, quoted in Maguire, J. (2002) *Defending Peace: Ireland’s Role in a Changing Europe*, Cork University Press, p. 126.

^{2[2]} Devine, K.M. (2006) ‘The Myth of “the Myth of Irish Neutrality”’: Deconstructing Concepts of Irish Neutrality using International Relations Theories’, *Irish Studies in International Affairs* 17.

“It will be for Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality, to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory. Any decision to move to a common defence will require a unanimous decision of the European Council. It would be a matter for the Member States, including Ireland, to decide, in accordance with the provisions of the Treaty of Lisbon and with their respective constitutional requirements, whether or not to adopt a common defence.”

This ‘assurance’ is designed to counter interpretations of two Lisbon articles that seemed to clearly edge the Union closer to a common defence. Article 28A.7 states that “If a member state is the victim of armed aggression on its territory, the other member states shall have towards it an obligation of aid and assistance by all means in their power, in accordance with Article 51 of the United Nations Charter.” Article 188R (Title VII) of the Treaty (the so-called ‘Solidarity Clause’) also discusses common (or collective) defence:

- “The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to
- prevent the terrorist threat in the territory of the Member States;
 - protect democratic institutions and the civilian population from any terrorist attack;
 - assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack ...
 - [or] in the event of a natural or man-made disaster”.

The Robert Schuman Foundation described this, not unreasonably, as “a vital step towards the development of European defence”.^{3[3]} There is certainly a tension here: the text of the Treaty says that states will be obliged to aid each other “by all means in their power”, but the ‘assurance’ says that Ireland will itself “determine the nature of aid or assistance” to be extended to a member state under attack. So is the ‘assurance’ saying that the Treaty does not mean what it seems to mean? In the event of a dispute arising – e.g., Ireland choosing not to militarily assist another member state under attack but being challenged by other states that it was thereby not aiding and assisting by all means in its power – will the text of the Treaty or the ‘assurance’ take precedence? The Treaty would surely trump the ‘assurance’.

“Nothing in this Section affects or prejudices the position or policy of any other Member State on security and defence.”

Indeed. Which means, for example, that the aggressive policies (such as a commitment to the ‘first use’ of nuclear weapons) of those EU members that are also NATO members are not constrained by the Treaty.

^{3[3]} Fondation Robert Schuman (2007) ‘The Lisbon Treaty and the European Union’s External Action’, fact sheet number 10, www.robert-schuman.eu, December.

“It is also a matter for each Member State to decide, in accordance with the provisions of the Lisbon Treaty and any domestic legal requirements, whether to participate in permanent structured co-operation or the European Defence Agency.”

Let's start with 'permanent structured cooperation' (PSC). States who wish to 'do their own thing' in relation to military affairs may do so under the Treaty's provisions for PSC. Articles 28A.6 and 28E, as well as a specific protocol on the issue, provide for sub-sets of EU countries (including those who wish to undertake actions consistent with their NATO membership) to pursue their own agendas for military integration and cooperation at European Union Military Staff (EUMS) level (at which Irish army officers participate), without necessarily involving all other Member States. Crucially, there is provision to “establish permanent structured cooperation within the Union framework” (article 28A.6, emphasis added), and this can be undertaken on the basis of a qualified majority vote within the EU Council.

As the 'assurance' states, Ireland may choose not to participate *directly* in such initiatives (and would have no decision-making input if it chose not to so participate). But by virtue of its participation in EUMS general business, and in all the other dimensions of EU military cooperation (including financing thereof), the argument can be made that Ireland will help lay the basis for *other* states to engage in such cooperation, and that such cooperation will be *perceived* (not without justification) as an EU undertaking even if not all EU members are directly involved.

As noted above, the Lisbon Treaty makes no reference to the requirement of a UN Mandate for an EU intervention; Ireland continues to insist that its own troops would never be deployed without such a mandate, but there is nothing to prevent troops from other countries (unavoidably backed up by Irish planning and financial resources) drawing on the support of the EU infrastructure to launch such an intervention. In contrast to its lip service to the UN (rhetorically cited, but substantively absent),^{4[4]} the protocol on 'structured co-operation' declares that “a more assertive union [EU] role ... will contribute to the vitality of a renewed Atlantic Alliance [NATO].” Many commentators have concerns about enhancing the vitality of an alliance – NATO – that, amongst other regressive features, retains a commitment to the 'first use' of nuclear weapons, and which has pursued an aggressive policy, involving substantial civilian casualties, in Afghanistan.^{5[5]}

Turning to the European Defence Agency (EDA), the most relevant article in Lisbon is 28A:

“Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments, (hereinafter referred to as “the European Defence Agency”) shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying, and where

^{4[4]} Save for “a number of more or less vague formulations about acting in accordance with principles of the UN Charter and the important role of the Security Council” – Sjostedt, J. (2008) 'The Lisbon Treaty – Centralization and Neoliberalism', paper prepared for the Swedish Delegation of the European United Left and Nordic Green Left groupings at the European Parliament, p. 13.

^{5[5]} See, for example, Gall, C. and D.E. Sanger (2007), *International Herald Tribune*, 13th May.

appropriate, implementing any measure to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy and shall assist the Council in evaluating the improvement of military capabilities”.

This is the first reference to the European Defence Agency (EDA) in an EU treaty, though the EDA has been in existence since 2004. As with the issue of PSC, yes, Ireland may chose not to participate, but the fact remains that the EDA is being given formal constitutional status and member states are, at the very least, being strongly encouraged to boost military spending. This constitutes a significant militarization of the EU regardless of whether Ireland opts out or not.

“The Treaty of Lisbon does not provide for the creation of a European army or for conscription to any military formation”.

Conscription has always been a red herring in this debate. As for whether there is, or is not, a European army as such, this is much less important than whether EU forces (however labeled) undertake joint military operations and what the nature of those operations will be. The ‘assurances’ make no reference to the extension, under Lisbon, of the range of tasks that EU forces may perform; article 28B states that EU forces may be deployed on:

“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 stabilization. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories”.

The underlined text identifies key innovations in this area i.e *new* tasks EU (including Irish) forces may perform. As Tom Clonan put it, “Voting yes to the Lisbon Treaty... would commit the EU to considering a wider suite of military options than has been stated in previous treaties and summits”.^{6[6]} The concern here is that external interventions by the EU are being given a very wide legitimizing framework and agenda for potential action. For example, claiming to be assisting a third country government to combat terrorism through the provision of military advice and assistance raises fears of autocratic rulers being facilitated to suppress opposition (French troops, for example, have routinely performed this function in Chad and other African countries).

“It does not affect the right of Ireland or any other Member State to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities.”

This is, strictly speaking, true. However, as discussed above re article 28A, member states are certainly being strongly encouraged to boost their military capabilities.

^{6[6]} *Irish Times*, 28th March 2008.

“It will be a matter for Ireland or any other Member State to decide, in accordance with any domestic legal requirement, whether or not to participate in any military operation.”

This is a reference to the so-called ‘triple lock’: Irish participation in a military operation will only occur if a UN mandate is in place, and if there is governmental and Dáil approval. But, because of Ireland’s participation in general EUMS and other business, Ireland will contribute to the financing and planning of operations that may well be engaged in by other member states under the PSC provisions (see above).

The final section of the overall text of the ‘assurances’ contains the following paragraphs:

“It reiterates that the participation of contingents of the Irish Defence Forces in overseas operations, including those carried out under the European common security and defence policy requires (a) the authorisation of the operation by the Security Council of the General Assembly of the United Nations, (b) the agreement of the Irish Government, and (c) the approval of Dáil Éireann, in accordance with Irish law.

Ireland notes that nothing obliges it to participate in permanent structured co-operation as provided for in the Treaty on European Union. Any decision enabling Ireland to participate will require the approval of Dáil Éireann in accordance with Irish law.

Ireland notes also that nothing obliges it to participate in the European Defence Agency, or in specific projects or programmes initiated under its auspices. Any decision to participate in such projects or programmes will be subject to national decision-making and the approval of Dáil Éireann in accordance with Irish law. Ireland declares that it will participate only in those projects and programmes that contribute to enhancing the capabilities required for participation in UN-mandated missions for peace-keeping, conflict prevention and strengthening international security, in accordance with the principles of the United Nations Charter.”

This simply repeats points already made implicitly or explicitly elsewhere. The fact remains that the EU is becoming more militarized under the Lisbon Treaty: common defence commitments are flagged, increased military spending is encouraged, the range of rationales for EU overseas operations is extended, and the PSC provisions allow for EU operations to be undertaken by sub-groups of member states with the support of all members (including Ireland). That fundamental fact is unaltered by ‘assurances’ and opt-outs of doubtful legal status. And if this is not the kind of Europe we want, then the case for voting ‘no’ remains as strong as before.