

BUILDING A COMMON DEFENCE IN A FEDERAL UNION: WHAT CAN EUROPE LEARN FROM THE U.S. EXPERIENCE?

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INTRODUCTION

The security environment of the European Union has changed radically in the past few years and has contributed to resurrect an idea that seemed to be condemned to oblivion, that of European integration in the field of defence. In the past year, the Member States of the European Union have been showing a willingness to relaunch cooperation and even integration in the field of defence at a pace that has no equal in the history of the European project. The prospect of starting a Permanent Structured Cooperation among those Member States willing to deepen their defence integration is becoming a concrete possibility. Nonetheless, the opposition to the idea of a true “European Army” remains widespread.

Starting from the conviction that there is no credible alternative for European defence than to become a federal competence of the European Union, this paper explores what lessons Europe can learn from the history of the United States in the development of a federal defence. It first focuses on the history and the challenges of the concept of “dual army” as core feature of the US defence framework since its creation. The dynamics between the state militias and the federal army are presented throughout the wars the US took part into, including the American civil war.

Then, the paper focuses on key lessons that the US history can teach Europeans willing to develop a European common defence. The US experience shows to Europe that a one-step leap from national armies to a single federal army is hardly possible and that a dual army system, consisting of a federal army dedicated mainly to external operations and national armies mainly dedicated to territorial defence in the strict sense, is more realistic for large continental federal states in formation, certainly at the beginning of their development. For a federal army to emerge, a single European Operational Headquarter and General Staff in charge of all federal defence operations and missions is an essential step. A European military academy is crucial to develop a common European military approach and strategy built around the particular strengths and weaknesses of the European defense system and the geopolitical position of the European Union as a whole. It is also essential for forming European high ranking military personnel with a European strategic thinking and with the skills to command multinational forces. Last but not least, standardization of equipment is vital to enable national military personnel to work together as well as to develop a defence industry and R&D projects that can rely on a Europe-wide market. ■

1. THE CURRENT DEBATE ON EU DEFENCE: THE INITIATIVES FOR THE PERMANENT STRUCTURED COOPERATION AND THE OPPOSITION TO A SINGLE EUROPEAN ARMY

In the past year the debate on the need to equip the European Union with independent defence capabilities has received extraordinary impulse for two reasons. Firstly, a relentless flow of migrants coming from areas of political or economic crisis, and the terrorist attacks targeting a number of European countries, have raised awareness on the need for a common European response and a European external defence policy. Secondly, there is a new issue of historical importance on the agenda, involving the change in American foreign policy towards Europe. Statements from former U.S. President Barack Obama, whom accused Europeans of behaving like “free riders” during the 2011 Libyan intervention, were already a clear sign for Europe to provide for its own defence¹. The new U.S. President Donald Trump has been even more explicit. After labelling Brexit as a great thing and predicting that other countries will follow Great Britain's example, soon after his election he defined NATO an obsolete institution, and said that its costs cannot mainly keep weighing down on the U.S.².

This American turn in foreign policy, which is endorsed by both Democratic and Republican administrations, recalls Nixon's decision to suspend convertibility of the dollar into gold in August 1971. With that measure, Nixon acknowledged that the U.S. were no longer able to guarantee monetary and financial order in the world on their own. Today the U.S. are saying that they are no longer willing and able to guarantee politico-military order in the world on their own. But what is more, for the first time since the end of the Second World War, the new American government is saying that they are indifferent, perhaps hostile, to

developments in the European unification process. From a political point of view this has a greater impact than Nixon's decision, because it could mark the end of an era, one based on the Bretton Woods multilateralism which has shaped international relations for over 70 years.

Confronted with these challenges, in the past year the European Union has made unprecedented progress in the field of defence integration. The prospect of setting-up a Permanent Structured Cooperation among the European Union member states willing to progress on military integration is becoming a concrete possibility. While there seems to be a strong determination by the French and German governments (supported by the European Commission and the European Parliament) to deepen defence cooperation and proceed with a Permanent Structured Cooperation, some governments remain reluctant and there is general lack of consensus on the goal of a single European army.

This paper considers a possible innovative approach to this issue by examining other federal union experiences, particularly that of the U.S.

In Europe, for well-established nation states on the path to federation, it is difficult to imagine the replacement of 27³ national armies with one *single* European army. The concept of *common* defence rather than *single* defence is certainly more appropriate for Europe. As the U.S. are the only federation to have given an original response to the issue of common defence, it is useful for reference as regards the establishment of a European defence system. ■

1 Jeffrey Goldberg, *The Obama Doctrine*, The Atlantic, April 2016.

2 Donald Trump: ‘Brexit will be a great thing . . . you were so smart’, The Times, 16 January 2017.

3 I am assuming the United Kingdom will leave the European Union as a result of the referendum in June 2016 and the triggering by the British government of Art.50 of the Treaty of the European Union in March 2017

2. COMMON DEFENCE DURING US UNIFICATION: THE LEAD-UP TO THE “DUAL ARMY”

As Kenneth Wheare recalls in his work *Federal Government*⁴, from its inception and still today - at least formally - the U.S. has two armies: the National Guard (set up by each state) and the federal army⁵. The thirteen founding colonies of the U.S. did not want to entirely give up their military power to the federal executive power, a situation which lasted as long as the U.S. federal structure remained unaltered, i.e. until the consolidation of power of the federal level over the state governments at the beginning of the 20th century.

2.1 STATE MILITIA VS. PERMANENT FEDERAL ARMY: THE POLITICAL AND CULTURAL ROOTS OF THE AMERICAN DUAL ARMY

Two works are particularly useful for our understanding of how U.S. defence came into being, and what the main stages were. One is a book by Lawrence Cress entitled *Citizens in Arms*⁶, which discusses the political and cultural context leading to the dual army, prior to the War of Independence and until 1812. The second is *For the Common Defence* by Millett, Maslowski & Feis, on 400 years of American military history⁷.

Cress recalls how the elites in the thirteen American colonies were politically aware of the debate taking place in 17th and 18th century Britain, which had showed the opposition between those in favour of a county militia-based defence and those in favour of a single permanent army. He refers to two texts of reference by the founding fathers of the U.S. federation and state representatives who took part in the debate on common defence with opposite views on the subject.

The first is James Harrington's work, *The Commonwealth of Oceana*⁸, released during the brief republican period in British history. The second is Adam Smith's *Wealth of Nations*⁹.

Harrington's institutional vision involved separating legislative, executive and judiciary powers. However, this was not meant to be a merely formal type of balance. He argues that the executive power, for example, had to be counter-balanced by a specific type of army, composed of land owners who performed military service at their own expense. This army would provide an essential national public good out of the land-owners' own interest: to defend the people from external forces and from the risk of government's tyranny. A balance of power between popular (county) militias and the (central) executive would ensure defence of each other's freedom. Harrington compared this system to the Roman Republic, which had also been based on land ownership and “volunteer” military service granted by landowners.

Adam Smith supported a different view¹⁰. He looked at defence in relation to the expenses that society must bear for military maintenance at the various development stages of society itself. Beginning from the primitive societal stage of men as hunters – when “all men are both warriors and hunters”, he observed that all men are equally equipped and trained to gather food and at the same time defend their community. The community need not bear any costs to sustain their men. In the next more developed societal stage – the agricultural phase – trade and division of labour are still underdeveloped, with each family earning a living from their own activities. As agriculture was the main type of activity men were also able to dig trenches, fortify and fence camps, therefore they could easily become soldiers and if the military campaign began towards the end of sowing season, and ended before harvesting, their community needed not bear any costs – or if any, a minimal amount - to support them. The situation changed radically when following this “progress in warfare and in the art of war”, it became impossible for those enrolling in the army to continue

4 Kenneth C. Wheare, *Federal government*, Oxford University Press, London, second edition, 1951.

5 For example, the Florida constitution, art. IV, sec. 1, reads as follows: “the supreme executive power shall be vested in a governor, who shall be commander-in-chief of all military forces of the state not in active service of the United States”, and the California constitution, art. V, sec. 7, reads as follows: “The Governor is commander in chief of a militia that shall be provided by statute. The Governor may call it forth to execute the law”.

6 Lawrence Delbert Cress, *Citizens in Arms (The Army and the Militia in American Society to the War of 1812)*, The University of North Carolina Press, Chapel Hill, 1982. As reflected by the general American political thought on the War of Independence, Cress' work especially attempts to highlight the ‘republican’ spirit of the American Revolution in a strict sense, rather than the federal aspects of US common defense.

7 Allan R. Millett, Peter Maslowski, William B. Feis, *For the Common Defense: A Military History of the United States from 1607 to 2012*, Free Press, New York, 2012, 3rd Edition.

8 James Harrington, *La Repubblica di Oceana*, Turin, UTET, 2004 (Italian version). The work was initially published in 1656. The name Oceana refers to England. The constitutional frameworks of Carolina, New Jersey and Pennsylvania were also inspired by Harrington influence. (*La Repubblica di Oceana*, p. LXVIII).

9 Adam Smith, *The Wealth of nations*. The work was first published in 1776.

10 Adam Smith, *La ricchezza delle nazioni*, op. cit., pp. 855-73.

supporting themselves. Moreover, technological innovations in military equipment, training and organisation demanded a new full-time profession, which differed from civil professions. For this reason, Smith believed that permanent armies are crucial in advanced countries, and that they should be made up of professional soldiers, paid by the state.

The different views of Harrington and Smith sum up well the two opposing views between the advocates of state sovereignty and that of a federal government. This debate, which started in the War of Independence period, influenced American defence policy for the next century and a half, determining an approach to defence which was prevalently based on state militia and a less numerically strong permanent federal army.

For the Common Defence highlights also the problems which the federal executive and the U.S military system had to deal with during its formation and, in time, make decisions on: army model, size of federal armed forces, unified General Staff to plan and command military operations, army reserve forces, training for officers; elaboration of a military strategy, training of armed forces, standardizing armaments. Only the first two elements were agreed upon from the beginning of the formation of the U.S. military system, when choosing between a single and a dual army (in favour of the latter) and deciding the size of the federal army (in favour of a relative small force). Shaping the other elements of the U.S. military system took over 150 years. Due to a longwithstanding hostility by the states for both permanent armies and federal executive power, the colonial tradition of the citizen-soldier (who would only take part in training for part of the year) was maintained in parallel with the formation of a small-sized federal army for indeed 150 years. In this way the United States created a peculiar framework among existing federal unions: a dual army, a state one and a federal one, the former based on the citizen-soldier model at state level, the latter on the professional soldier model, at federal level.

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The ratio of forces at the disposal of the federal army and forces at the disposal of the state militias significantly changed over time. During war times, the former prevailed and during peace time the latter did. For instance, at the end of the XIX century, the federal army represented only ten percent of the total armed forces (federal plus state level)¹¹.

2.2 COMMON DEFENCE IN THE HAMILTONIAN PHASE: ORIGINS AND CONSOLIDATION OF THE DUAL ARMY

During the War of Independence¹², each colony had its own militia, made up of citizen-soldiers placed on local defence duty on a part-time basis. The First Continental Congress (1774-75) rejected the idea of the militia scaling up to a national armed force, as it feared its potential transformation into a permanent army¹³. It was not until the Second Continental Congress (from June 1775) that the creation of a continental army presided by George Washington was decided. However, this was based on soldiers enlisted only for one year, for fear it would also turn into a permanent army. Washington did not have full control over his army: his officials

were nominated by the Congress, which often took responsibility for conducting military operations. The co-existence of a continental military force which integrated state militias therefore gave the premise for the dual army. The continental army was made up of so-called *regulars* who were motivated to enrol by the prospect of victory looting, or by the promise of extra land to be conquered in battle. The mobilization of state militias

which were part of the continental army was difficult, as people deemed fit could avoid enlistment by paying a fee, or by having someone replace them, a custom which lasted until the outbreak of the Civil War almost one century later.

This situation had affected not only the duration of the recruitment process, but also the size of the army itself, which at that time was never larger than 16-17.000. It also affected training: a reserve force was missing, which caused a problem every time military operations required an increase in personnel, from both the army of regulars, and the one with public militia regulars¹⁴.

11 AA.VV., *For the Common Defence*, op. cit., p. 231-35.

12 Millett, Maslowski and Feis' work touches on the beginning of the War of Independence in 1765, when the British Parliament approved the Stamp Act, a law which ordered North-American colonies to pay a tax on every printed page, legal document, newspaper and all other publications, which led to the first armed citizen revolts from the colonies.

13 This concern has affected to various extents relations between civil and military power for over 150 years (James Madison, Alexander Hamilton, John Jay, *The Federalist Papers*, Penguin Books, Londra, 1987). There was a heavy clash in the United Kingdom too, which the US founding fathers were aware of, both those in favour of militias and those in favour of a permanent army presided by a monarch (See John G. A. Pocock, *Il momento macchiavelliano - La "repubblica" nel pensiero politico anglosassone* -, Il Mulino, Bologna, 1975) (Italian version).

14 Up until the beginning of the 1900s, the issue with the staff reserve had been a problem for all federal military policy.

For instance, the continental army for 1776 had to be formed again from scratch, as soon as the 1775 army had come to the end of its term. Only when the British government had begun to send additional forces to put an end to the American Revolution, that the Continental Congress asked each colony to contribute to the continental troops by sending regiments - the size of which had to be in proportion to each population – and he extended “army time” to a 3-year period, or “for the duration of the war” to avoid logistical and organisational difficulties.

Towards the end of the war (1781-82) began the most critical phase of the continental army. The Congress was suffering from a financial crisis and was unable to pay the enrolled regulars and further *ad-hoc* volunteers who made up 50% of Washington's entire military force (the rest was made up of militias whom were provided for by the states). The Congress was unable to resist opposition to the establishment of a levy for the army. First of all, he attempted to overcome financial difficulties by issuing banknotes – those known as “*continentals*”, that soon lost value – and by taking loans from France, which had contributed generously on the military front. France provided essential contributions towards the triumph of the Americans in the revolution. During the Battle of Yorktown (1781), in Virginia, crucial for the outcome of the War of Independence, English troops, made up of 8.000 men, were attacked by Washington's troops, which had 5.700 men in the continental army, 3.100 in state militias and 7.000 french soldiers. Moreover the French navy played a highly important role in blocking a British naval intervention to support its army in Yorktown¹⁵.

In 1783 the Congress disbanded the army, returning the militias to the colonies and discharging the regulars. Having been denied the war booty they had been promised, the regulars provoked a series of incidents forcing the Congress to reconsider the problem of an army for the Confederation, which on the other hand reinforced civil society's suspicion towards a permanent military structure. Such incidents had amounted to an alleged coup attempt, organised by officers complaining about the lack of post-war financial subsidies, the creation of military associations the aim of which was unspecified, and military mutiny¹⁶.

In April 1783 the Congress delegated Alexander Hamilton to present a report on the restructuring of the army. With the British example and Washington's advice in mind Hamilton presented four proposals. These included: forming a national army, forming a national militia within each state militias, providing factories and warehouses for military forces, and establishing a military academy. All proposals were rejected by the Congress.

Slowly it became clear that colonial protection was persistently weak, as they began to expand west-wards and as the Shays' Rebellion¹⁷ broke out in 1786 against the economic crisis and the lack of military re-distribution following the war. The rebellion was crushed only thanks to ad hoc troops.

The Philadelphia Convention aimed at discussing the common defence issue in the frame of the new Constitutions. When the issue was discussed, an attempt was made at giving equal balance in power in military matters to the states and the federal executive, so that the latter could provide for a common defence. With the federal union, the new Constitution kept the *War Department* as it had been established by the Confederation, and split military power between the President, the Congress, the federal governments and the states. In particular, the Constitution conferred to the Congress the power to decide on the size of the federal army, introduce levies, and enter into loans in order to finance the army. The financial allocations were however decided for a two-year period.

In 1791 with the approval of the Second Amendment each state was given the power to establish its own militia¹⁸. The Bill of Rights, (the first ten amendments to the U.S. Constitution prompted by the call from several states for greater constitutional protections for state rights and individual liberties) formalised the dual military structure the U.S holds still today. In other words: “although the influence of the federal system on military policy faded by the end of the twentieth century, national-state-local relations have defined much of defense policy for the preceding three centuries. While the Constitution defines what the national government can do, the Bill of Rights tells the national government what it cannot do, and one prohibition is that the national government cannot monopolize military power.

15 Various Authors, *For the Common Defence*, op. cit., p. 70).

16 The first case was the Newburgh Conspiracy promoted by officials who had taken part in the war and that would have accessed a compensation following the conflict with the British. The second case was the Society of Cincinnati, which consisted of a philanthropic fund, the aims of which were unspecified. Fears were only dialled down the moment George Washington (followed by Alexander Hamilton) took charge. The third case was a mutiny in April 1783, during which soldiers were let go without being paid and who then marched towards Princeton, where a meeting of the Congress was taking place).

17 The farmers revolt in Massachusetts, led by Daniel Shays to protest against debts and excessive tariffs. In that case the local state militia did not intervene and the revolt had to be blocked by ad-hoc enrolled volunteers (Various Authors., *For the Common Defence*, op. cit., pp. 77-81).

18 The Second Amendment includes the right to ‘own and carry weapons’ and is the reason why US arms control is extremely complicated particularly when fatalities occur.

The Second Amendment permits other levels of government, like a state or county, to form military forces to meet local emergencies."¹⁹

In 1792 the Congress passed the *Calling Forth Act* and the *Uniform Militia Act*. The first act conferred upon the President, with approval from the Congress and then the states, through the Senate the power to enrol the state militia for no longer than a three-month period throughout the year, and only within U.S. borders. The second act establishes the principle of universal military service for white men, with a series of exemptions, which states had the power to grant. States were given the freedom to adopt dispositions, given that non-compliance could not result in sanctions by the government. These measures, which remained in force until the 20th century, were therefore little more than a recommendation²⁰. In 1794 however, the *Naval Act* was approved, establishing a U.S. naval force.

2.3 COMMON DEFENCE FROM JEFFERSON UNTIL THE CIVIL WAR: A STRONGER FEDERAL LEVEL AND A SINGLE COMMAND OVER THE FEDERAL ARMY

Ironically the most important contributions to reinforcing federal army forces came from Thomas Jefferson and "Jeffersonian" presidents that followed him, usually all more politically in favour of states' power over the federal government. The first measure Jefferson adopted in 1802²¹, which reinstated a proposal by Hamilton, was to create the Academy at West Point, in order to train the leadership of the U.S. army and conduct studies on military strategy. The second measure was to further increase the potential of the navy, by limiting army expansion. During the Jeffersonian period however, a strong clash took place with the Federalist Party (which had been the driving integrationist force in the early years of the formation of the U.S.), as the party was suspected of having monarchical tendencies. The conflict reached its peak with the outbreak of the war between the U.S and Great Britain in 1812-1814. The Federalist Party had at the time voted against the war and was highly reticent in responding to the federal government's requests to provide financial aid and state militia troops. The state of New England, the

stronghold of the Federalist Party, sent logistical and military support to the British troops. U.S. victory over Great Britain marked the end of the war and of the Federalist Party itself.

After the war, during which the army had lacked necessary centralized support, John Calhoun Secretary of the Federation's Secretary of War, promoted three initiatives. The first one was to consolidate the General Staff of the army, which the Congress had created thirty years after the Philadelphia Convention. Calhoun suggested to reinforce it (in 1818) by establishing central offices at the federal level for administration, supply and storage management, as part of the peace process and to mitigate logistical difficulties encountered during the war. Those measures remained in place until the 20th century. The second initiative (in 1821) was to nominate a single commander for military operations and in charge of a defence staff who had to interface with different operating military officers. The third proposal was to adopt the notion of "expandable army". During a truce the federal army had to keep a complete organisational structure of regiments with full ranks of General and Defence Staff but with a minimal amount of soldiers, which would however be increased at a time of need. This was to avoid logistical and organisational problems encountered in previous conflicts, as this structure was to seamlessly manage three times the amount of troops available.

Although it was not immediately implemented, this last measure became a reference for the reforms which followed.

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Around 40 years in total were needed before the federal military structure reached a satisfactory level of organisation. From then on, until the outbreak of the Civil War, no major changes took place in military policy. During this period however, events which led to the war between the Union and the Confederation took place, the most important of which being the Missouri Com-

promise and the Mexican War²². The former was a way to regulate expansion policies to keep the balance between slave states and abolitionist states unaltered: for stability reasons if a slave state were admitted into the federation,

¹⁹ Allan R. Millett, Peter Maslowski, William B. Feis, *For the Common Defence*, op. cit., p. XV.

²⁰ AA.VV., *For the Common Defence*, op. cit., p. 83.

²¹ In this situation, the Hamiltonian branch of the Federalist Party supported Jefferson.

²² Other events were the 1850 Compromise (David B. Davis, David H. Donald, *Espansione e conflitto (Gli Stati Uniti dal 1820 al 1877)*, il Mulino, Bologna, 1987, pp. 191-97) and the Kansas-Nebraska Act in 1854 (David B. Davis, David H. Donald, op. cit., pp. 200-06).

an abolitionist one had to be admitted in parallel²³. The war against Mexico for the ownership of Texas weakened that agreement. On this issue "more fundamentally, the vast territorial expansion of America's western empire precipitated the Civil War. Although historians do not agree on all the war's fundamental causes, few deny that the immediate question of whether the newly acquired land would be slave or free played a significant role in shattering the nation. Manifest Destiny had made disunity manifest."²⁴

To conclude, it is clear that if war had always led to reinforcing the executive, when it came to the Civil War no significant changes took place in relation to the balance of military power between state level and federal level. There were no significant changes in terms of size ratio between the state militias and the federal army, which counted a total of 16.000 officials and troop members. Throughout the war, as the Unionist states and the Confederate states counted a different number of inhabitants - 20 million in the former and 6 million in the latter – the former deployed up to 2 million soldiers, and the latter just under a million. After the war, the federal army became progressively smaller, counting just over 8.000 soldiers towards the end of the 1870s (less than the current size of the Bulgarian army)²⁵. However, there had been significant changes in the language: as from then on "people no longer said 'the United States are' but instead 'the United States is'²⁶.

2.4 THE UNITED STATES, ACTORS IN THE WORLD: THE FEDERAL ARMY TAKES OVER THE STATE MILITIAS

It is towards the end of the 19th century that the most significant changes in the U.S. military policy took place, and it was due to two main reasons: the technology and the industrial developments of the 19th century, which was having a significant impact on the military sector, and the military conflict with Spain over the independence of Cuba towards the end of the century.

Technological innovation had significant impacts in two different manners. First of all, compared to other moments in history, it was taking the military much longer to acquire a complete command of new technologies. Therefore, training with technology took longer and it could neither be improvised nor learned hastily on the verge of conflicts. This

meant that dismantling the military structures at the end of each conflict was no longer a convenient measure. Second, technological innovations were beginning to interrupt the isolation of the U.S. by gradually integrating them with the rest of the world. One of the best examples we could recall is the shift from sailing ships to steamships. Aside from navigating at a higher speed and the ability to withstand adverse weather conditions, steamships were able to travel for much longer distances without having to engage in regular stopovers. In short, as the size of ships began to increase, on the one hand the new navigation technique enabled more fuel storage room, allowing for transoceanic journeys with hardly any stopovers. On the other hand, the ships could also hold more passenger space, and thus more troop space. These factors allowed political and military authorities to realize that the U.S. were gradually losing their "insular" status, which until then had provided a structural protection to the U.S. security and lessen the need for a large permanent army. Finally, innovations required more and more specialized personnel for the working of steamships and of the naval weaponry, which led to a gradual reinforcement of the central military structure.

At the end of the 1800s the United States were in conflict with Spain over Cuban independence, following the victory of which they still had to come to terms with the fact that their military apparatus was not able to sustain a conflict with a European power. The first problem to be tackled was that of deployment. When the conflict broke out, given the meagerness of the federal army, the War Department had to reinforce the federal ranks by resorting to voluntary enrolment and the use of state militias. This deployment highlighted the logistical difficulties due to it being a war outside their borders, and due to the lack of training or standardisation of military equipment. Therefore, as regards the management of the state militia from the beginning of the 1900s, three measures which began to change relations between the federal executive and state governments were put in place.

In 1903 the Congress approved a first reform on the militia, known as the *Dick Act*, named after the leader of the initiative, and which included the allocation of subsidies and federal equipment, in exchange for higher federal control over the organisation and training of state militias.

23 Jefferson was aware of the weakness of the agreement, and in a famous letter to John Holmes, wrote: "But this momentous question, like a fire bell in the night, awakened and filled me with terror. I considered it at once as the knell of the Union. It is hushed indeed for the moment. But this is a reprieve only, not a final sentence" (Thomas Jefferson, *Writings*, The Library of America, New York, 2011, p. 1434).

24 Various Authors, *For the Common Defence*, op. cit., p. 141.

25 Charles A. Kupchan, *The End of the American Era*, Alfred A. Knopf, New York, 2002.

26 Various Authors, *For the Common Defence*, op. cit., p. 217.

What is more, the law foresaw two types of militia: the *Organized Militia (National Guard)*, with joint state-federal control, and the *Un-organized Militia* which was made up of young men aged between 18 and 45 years: both had to meet their military obligations at both state and federal level in the case of an emergency. However, only the Organized Militia was receiving contributions from the federal government, and only if the National Guard Units – which was the way the state militias were being called from then on – met federal standards and undertook training along with the federal forces. Moreover, the U.S President could now mobilise the National Guard for nine months instead of three. The Guard was still, however, only bound to U.S borders.

In 1908 the second *Militia Act* was an attempt to overcome the limitations of the Dick Act. The most important change was to get rid of time and space constraints in the deployment of the National Guard. This was approved under the condition that the Guard troops functioned as a collective unit, as opposed to individual units. In this manner, the states wanted to make sure the federal government did not enrol individual citizens, and therefore introduced compulsory military conscription. However overseas deployment was ruled out in 1912 as it was declared unconstitutional by the Justice Minister.

The *Reserve Act* of 1912 tried to establish a reserve for federal armed forces. The Reserve Act of 1912 was an attempt to limit the effects of this decision, with whom the enrolled in the federal military service had the possibility to shorten the duration of their mandate if they decided to be part of the Federal Army reserve: two years after the entry into force of this measure, the Reserve was made up of only

16 people. The act was not approved, and neither was a similar bill in 1915. Decisive steps towards reinforcement of federal armed forces were made in 1916, whilst preparing to enter World War I. The *National Defense Act*²⁷, approved on 3 June 1916, affected the structure of the federal army, which could now deploy up to 175.000 men for a 5-year period, and whose first reserve line was to be formed by the National Guard which could increase by up to 400.000 men in exchange for federal training financial support. The National Guard soldiers, however, when enrolling, had to take a double oath: to the state and to the federal government. Service overseas was unlimited in time, but the compulsory requirement for collective units, as opposed to individual citizens still held²⁸. Finally the new regulation, for the first time, conferred upon the federal government emergency powers on industry and transportation during wartime²⁹. With the *National Defense Act* of 1920 the National Guard was confirmed as first reserve force, and

“The National Guard soldiers, however, when enrolling, had to take a double oath: to the state and to the federal government.”

the federal army was only allowed to promote a second reserve line. Before obtaining its own independent reserve force, the federal army had to await the *Armed Forces Reserve Act* in 1952³⁰. From then on – two centuries after the Philadelphia Convention – the National Guard became the second-line reserve line and the armed federal forces began to increase in size, acquiring a military structure the size of a centralised state. It was what some of the Founding Fathers of the federation had feared, seeing a strong permanent military structure as a tool with the power to influence relations between the executive and the legislative powers³¹. Around two centuries after Philadelphia, Hamilton's dream began to come true, even though the kind of federal union which was coming together was not the same as what he had hoped for. ■

27 Various Authors, *For the Common Defence*, op. cit., p. 307.

28 Moreover, members of the Guard would not have received federal subsidies, unless they had provided military training at least 48 times during one year, and a two-week summer camp.

29 Various Authors, *For the Common Defence*, op. cit., pp. 295-308.

30 Various Authors, *For the Common Defence*, op. cit., p. 464.

31 This is the only way to understand the alarm raised by Eisenhower, in January 1961, when warning his successors of the power of influence of the 'industrial military complex'.

3. WHEARE'S "FEDERAL GOVERNMENT": A KEY TO UNDERSTAND COMMON DEFENCE IN A FEDERAL UNION

According to the Australian political scientist Kenneth Wheare, American history has been undoubtedly original in terms of defence³². The U.S. response to the common defence problem challenges the Weberian definition of state, as a political association with "monopoly over legitimate physical force". It shows how the U.S. gave way to a new idea of state. In the U.S the federal government does not have monopoly over the use of physical force, and Wheare's work clearly emphasizes the peculiarity of American common defence at federal level.

Wheare notes how "there were thus contemplated by the Constitution of the United States two kinds of military forces in the country, the state militia under the command of the governor, and the army of the United States". He added that "alone among the federal governments, as I have defined them, the United States tolerated this dual system"³³. Mentioning the possibility of a European federation being attempted at the time of publication of his work, Wheare wondered whether or not the U.S. current dualistic is a desirable objective: "Does not the existence of state troops lead to an assertion of state independence and, if need be, to defiance of the general government? And, to take the particular instance of the United States, does not the American Civil War itself prove that it is unwise to allow states to possess armed forces?"

"State militia was conceived as a defence tool not only against external attacks but also against other states, and against the federal government itself."

This is an important question and it is one which is certain to need consideration in any proposal to federate existing sovereign states, say, in Europe. Should they be allowed to retain armed forces to their own distinct from the forces of the general government?"³⁴.

Before answering this question, Wheare added that in the U.S. "the argument for state troops is put in this way. They are needed to maintain internal order and to defend the state against external aggression, whether from other states, from the general government or from foreign countries. In the United States the constitution provided for these needs. It said that the state government might use its militia to preserve internal order, and that if the militia were not sufficient, its legislature or executive might call in the United States to its assistance". State militia was conceived as a defence tool not only against external attacks but also against other states, and against the federal government itself³⁵. Wheare explains the problem of coexistence of state and federal patriotism, which resulted into a pragmatic "dual army", stating that "the experience of the Civil War illustrates the fact that in a federal system where state loyalty is strong, the federal government and the state government must act with constant vigilance to avoid forcing any deep dividing issue to the point where armed resistance comes into view"³⁶.

32 Kenneth C. Wheare, *On federal government*, Oxford University Press, London, 1951.

33 Kenneth C. Wheare, *On federal government*, op. cit., p. 201.

34 Kenneth C. Wheare, *On federal government*, op. cit., pp. 201-02.

35 V. anche: Stephen I. Vladeck, *Emergency power and the Militia Acts*, *The Yale Journal Law*, 114, n. 1 (ottobre 2004) e: Charles A. Kupchan, *The End of the American Era*, op. cit., p. 251.

36 Kenneth C. Wheare, *On federal government*, op. cit., pp. 204.

4. TOWARDS A EUROPEAN COMMON DEFENCE: LEARNING FROM THE U.S. EXPERIENCE

What Wheare was observing about the U.S could also prefigure a potential structure for a European defence, particularly how the relationship between the EU and individual member states should be, as well as the most impactful steps to take towards a European defence³⁷.

The first and most important lesson Europe can learn from the U.S. experience is that it seems unthinkable to exchange 27 national armies with a single European army, especially with a single move. This turned out to be impossible for the United States, whose colonies did not share a consolidated tradition of sovereignty comparable to European nation-states. Surely it would be extremely difficult to achieve in Europe. More realistically, and certainly at the beginning, the EU should think of small-scale European military forces managed at European level and to be used for EU operations and missions, which for some time should co-exist with current national armies devoted to territorial defence in a stricter sense. In such a model, the European defence would follow a model similar to the U.S. "dual army model".

It should be noted that the European Defence Community Treaty of 1954 - the first and last serious attempt to establish a European defence system³⁸ - and the related Statute of the European Political Community which was elaborated by an *ad hoc* Assembly³⁹ on impulse by Altiero Spinelli, provided that only part of the European Defence Community members' armies were expected to be handed over to the European Political Community: the overall deployable forces for European defence would have amounted to 39.700 personnel in times of peace and 46.900 in the case of conflict, i.e. an even smaller number than that today foreseen by Eurocorps.

Most of the troops still had to be controlled by their Member States, and therefore the conceived framework was looking similar to the American military framework, with both a federal and state armies.

Today steps towards a federal defense could be taken by strengthening existing supranational ties in the military framework, potentially with the Permanent Structured Cooperation as a tool. In 2004, four of the founding countries – Belgium, France, Germany and Luxembourg – and Spain signed the Eurocorps treaty. It came into force in February 2009 and envisages for each of these countries to deploy up to 60.000 men. Its current military force was certified as NATO High Readiness Force (HRF) in 2002.

"[...] the EU should think of small-scale European military forces managed at European level and to be used for EU operations and missions, which for some time should co-exist with current national armies devoted to territorial defence in a stricter sense.[...]"

Eurocorps does not only already have a unified General Staff, even if at divisional level, with headquarters in Strasbourg, but which in early 2016 signed a letter of intent, although non-binding, with the EU's external service, to strengthen ties between the two organisations, as Eurocorps 'aspires to become a preferred military asset for the EU in the future'⁴⁰.

A decisive step towards a common EU defence could be therefore to incorporate Eurocorps in existing treaties, but in order for this to happen Italy must join this early military structure. One of the points of weakness of Eurocorps lies in the fact that the military framework is only made up of land forces. In order for it to become an entirely independent intervention force, air and naval forces should be added, supported by space infrastructure. The Galileo project will soon allow for this final step.

37 The model of a European dual army was for the first time discussed during a JEF seminar in Paris from 7-10 April 2008 (v.: Domenico Moro, The creation of a European Rapid Reaction Force by an avant-guard group of countries: a proposal, work document).

38 CED Treaty: http://www.cvce.eu/obj/trait%C3%A9_instituant_la_communaute_europeenne_de_defense_paris_27_mai_1952-fr-2af9ea94-7798-4434-867a-36c4a256d0af.html.

39 The Text of the EPC Statute project may be consulted here: http://www.cvce.eu/obj/projet_de_trait%C3%A9_portant_statut_de_la_communaute_europeenne_strasbourg_10_mars_1953-fr-807979a3-4147-427e-86b9-565a0b917d4f.html.

40 The content is the answer to a written question from an MeP which Vice-President Mogherini gave on behalf of the European Commission (V.: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2016-001180+0+DOC+XML+V0//EN>).

The second lesson is to establish a European Operational Headquarter and General Staff in charge of limited military forces, able to manage and carry out operations labelled as “EU”, and those under mandate from the United Nations⁴¹. Indeed, so far political divergences between Member States prevented the EU from acquiring a full operational planning and conduct capacity.

As a consequence, in the case of ‘major’ or ‘executive’ military operations (‘executive’ operations are operations mandated to conduct actions in replacement of the host nation), planning (at the military strategic level) has been conducted externally through two mechanisms. The first is the option to resort to NATO planning structures (ex., Bosnia and Herzegovina mission). The second option is to resort to one of the five national headquarters (in France, Germany, Greece, Italy, and the UK) earmarked for EU *autonomous* operations. All five national HQs have been used by the EU for different operations. Both options, however, don’t give EU an autonomous military capacity. An important step toward this goal has been achieved on 8 June 2017, with the decision to establish a “military planning and conduct capability” (MPCC). As has been outlined, “the MPCC is part of a defence package that includes discussions on, *inter alia*, permanent structured cooperation (PESCO), the Coordinated Annual Review on Defence (CARD), but also the creation of a European Defence Fund in the context of the European Commission Defence Action Plan (EDAP). [...] The main limitation of the MPCC is however the limitation of its mandate to “non-executive” operations and its very limited size. Whether the MPCC is a one-off measure or a step towards something more ambitious – a permanent European Operating and Strategic Headquarter for all military operations, independent from national and NATO headquarters and planning structures – “is too early to tell, but a little taboo has been broken, furthermore in a field where advances can only be incremental and slow”⁴².

“[...] European Operational Headquarter and General Staff in charge of limited military forces, able to manage and carry out operations labelled as “EU””

“[...] today in Europe, military officers trained in 27 different armies, with 27 different strategic thinking, is a challenge to be overcome to develop a common European military approach and strategy [...]”

In the case of the U.S., indeed, we must underline an aspect which Wheare did not mention: it was not the war *per se* that led to a further reinforcement of the federal executive’s military competence, as much as the U.S.’ growing attitude to act as a global actor. The civil war was the U.S.’ most devastating conflict, but it did not lead to any substantial changes in size or structure in the federal army. A similar dynamic, in time, is likely to occur in Europe. As it was for the U.S., the evolving international landscape is what will prompt the strengthening of the EU armed forces, either by direct development of European capability and enrollment of personnel or by incorporating sections of national armies (which would assume that the EU should have already been granted the right to mobilize such forces).

The third lesson is the importance of establishing a military academy based on the West Point example. We need a “European” West Point to train officers for the European army on a common European strategic thinking. Different military approaches, during the War of Independence, by the thirteen colonies gave rise to a number of problems for George Washington when coordinating the military effort of the Continental army. Likewise, today in Europe, military officers trained in 27 different armies, with 27 different strategic thinking, is a challenge to be overcome to develop a common European military approach and strategy building on the particular strengths and weakness of the European defense system and the geopolitical position of the European Union as a whole (as opposed to different geopolitical sensitivities of the member states). Such an academy would also lead to forming European high ranking military personnel with the skills and abilities to command multinational forces.

The fourth lesson relates to the standardization of armaments, often used an objection to block any step towards a European defence system.

41 José Enrique de Ayala Marín, Un nuevo paso hacia la defensa común europea, Opex Working document, n. 79 (2015).

42 Thierry Tardy, MPCC: towards an EU military command?, EUISS, July 2017.

For over a century the U.S army did not have its own standardised weapons, and when it did come closer to achieving them, the U.S had to use French and English weapons, which were partly manufactured under license in the U.S. The standardisation issue was then overcome towards the end of World War I because, as this took place in the midst of the Industrial Revolution and with the growing importance of technology, it had become self-evident that it was not possible to take part in a modern warfare (especially on a global scale) without a re-organisation of the military industry⁴³. In Europe, standardization of equipment is a key factor for the success

“In Europe, standardization of equipment is a key factor for the success of military missions.”

of military missions. Standardisation is also instrumental to the logistic issues and ability of working together of military personnel, otherwise managed and trained in the use of different equipments and standards at national level. Last, standardisation is essential for the development of successful R&D projects in the defence field, as the increasing costs of R&D and capital investment of each military platform become justifiable only if the resulting market has a significant size, possible by combining the different requirements of member states through standardization of equipment and weaponry. ■

⁴³ We do not want to underestimate how today, compared to the XIX century and most of the XX century, technological innovation needs more standardisation of armaments, for effective cost reduction and a more efficient military. We must however point out that this was not an obstacle when signing the Eurocorps treaty.

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ABOUT THE UEF

The Union of European Federalists (UEF) is a pan-European, non-governmental political organisation dedicated to the promotion of European political unity. Throughout the past 70 years it has been a leading voice in the promotion of European unity and an early campaigner for key milestones in the development of the European Communities and the European Union.

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