

Panos Koutrakos. *The EU Common Security and Defence Policy*. Oxford: Oxford University Press, 2013. Pp. 318. £ 75. ISBN: 9780199692729.

The European Union has gone through a profound development as an international crisis management actor. It was only in 2003 that the common security and defence policy became operational. Since then, the EU has conducted more than 25 civilian and military crisis management missions in many parts of the world. These missions are carried out in the name of the EU whose international legal personality has been formally recognized by the Treaty of Lisbon (Article 47 TEU). At the same time, the EU depends on capable and willing Member States to launch and to carry out an operation under the auspices of its common security and defence policy. The development of the EU as a military actor is remarkable in the light of the EU's historical evolution. In the 1950s, it started as a peace project that was based on economic integration. To prevent the emergence of a new war on the European continent, Robert Schuman proposed linking the coal and steel industries of France and Germany together 'within the framework of an organization open to the participation of the other countries of Europe'.¹ Attempts to create a European army within the European Defence Community failed in 1954. Today, Europe has moved away from being merely a civilian power. When confronted with its inability adequately to respond to the Balkan crisis in its neighbourhood in the 1990s, the Cologne European Council of 1999 marked the birth of the EU's common security and defence policy.² A process was put in motion that equipped the EU with the legal capacity and the civilian and military means to engage in 'missions outside the Union for peace-keeping, conflict prevention and strengthening international security' (Article 42(1) TEU). Civilian and military means may be used by the EU to fulfil the so-called Petersberg tasks, that 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) TEU). In political statements such as the European Security Strategy the EU has expressed great ambitions as a global security actor and has spoken of its responsibility to contribute to international security.³

The literature on the EU's common security and defence policy from a political science and international relations perspective is extensive.⁴ Although the legal implications of the EU's role as a crisis management actor and as an international security provider have been addressed before,⁵ *The EU Common Security and Defence Policy* offers the first comprehensive analytical overview of the legal framework for this policy field under the current Treaty of Lisbon structure.

Panos Koutrakos' study of the common security and defence policy starts with an examination of the historic developments that led to the inclusion of a detailed set of provisions on the common security and defence policy in the Treaty on European Union. By paying special attention to the importance of the language used in reports, policy documents, and old Treaty versions, Koutrakos starts to spin some of the underlying threads that will be visible throughout the book. These include the links between foreign policy and other policy areas; the connection between security and economic considerations; as well as the political aspects of security.

¹ R. Schuman, The Schuman Declaration, 9 May 1950, available at: <http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/> (last accessed 15 Oct. 2013).

² Cologne European Council, Presidency Conclusions, 3 and 4 June 1999, Annex III, 'European Council Declaration on Strengthening the Common European Policy on Security and Defence'.

³ European Council, 'A Secure Europe in a Better World: European Security Strategy', Brussels, 12 Dec. 2003, available at: www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf (last accessed 15 Oct. 2013).

⁴ See, e.g., S. Biscop and R.G. Whitman (eds), *The Routledge Handbook of European Security* (2013); X. Kurowska and F. Breuer (eds), *Explaining the EU's Common Security and Defence Policy: Theory in Action* (2012).

⁵ S. Blockmans (ed.), *The European Union and Crisis Management: Policy and Legal Aspects* (2008); M. Trybus and N.D. White (eds), *European Security Law* (2007).

The second chapter sets out the legal framework governing the common security and defence policy, and in particular focuses on the common foreign and security policy of which the former is an integral part (Article 42(1) TEU). Although the Treaty of Lisbon formally abolished the pillar structure of the EU, the common foreign and security policy (CFSP) and with it the common security and defence policy (CSDP) is still subject to special procedures, instruments, and institutional settings, including the European Council and its permanent President, the High Representative of the Union for Foreign Affairs and Security Policy and the European External Action Service. The special place of the CFSP in the European architecture is highlighted by a discussion of the nature of the EU's competence in CFSP matters which Koutrakos sees as falling outside the traditional competence categories of exclusive, shared, supporting, coordinating, and supplementing competence (at 27).

Following the analysis of the broader constitutional framework of the CFSP, Chapter 3 turns to the peculiarities of the common security and defence policy under which European civilian and military crisis management missions are launched and conducted. Here Koutrakos not only describes the complicated administrative structures, planning process, and financing of CSDP missions, but he also focuses on novelties introduced by the Treaty of Lisbon, such as the mutual assistance clause, the solidarity clause, and elements of flexibility that allow a group of Member States to carry out CSDP operations. By looking at the legal obligations that are imposed on Member States within the common security and defence policy, Koutrakos highlights some of the key problems underlying the legal CSDP framework. On the one hand Member States are under a general loyalty obligation to support the EU's external and security policy; they are obliged to consult in order to facilitate a common European approach on any foreign and security matter, and they are legally bound by specific CFSP instruments with which CSDP missions are launched (at 61–63). On the other hand, Member States are viewed as the central players in the CSDP. According to Koutrakos the ever more developed legal framework of the CSDP under the Treaty of Lisbon shows that EU institutions as well as European Member States acknowledge the importance of legal rules and procedures for the effective functioning of the CSDP. At the same time, the Treaty changes highlight the political dimension behind European security and defence matters. As a result, Koutrakos suggests that the CSDP legal framework represents a paradox within the European legal order (at 78).

The following chapters are then used to shed more light on the peculiarities and the limits of the CSDP legal framework, and in particular address the importance of non-legal considerations and economic underpinnings. Chapter 4 is dedicated to the broader policy context of the common security and defence policy. By analysing the key political documents underpinning the CSDP, Koutrakos speaks in favour of a unique European security model (at 90). For him, the European approach to security is characterized not only by a broad approach aimed at tackling a wide range of threats such as terrorism, regional conflicts, state failure, organized crime, and weapons of mass destruction, but also by a growing understanding of the connections between the internal and external dimensions of security (at 83). In addition, the EU's regional approach to security in its enlargement policy as well as its global ambitions, which can be characterized through a language of responsibility, are referred to in order to describe its distinct features. In this context, Koutrakos again demonstrates the limitations of the legal underpinnings of the common security and defence policy when he argues that the EU uses the language of responsibility in political documents not in a strictly legal but rather in a soft, moral sense (at 88). At the same time he argues for an 'increasingly politicized legal landscape' in which legal actors are influenced by political documents which he demonstrates when analysing the *ECOWAS* case (at 80, 231–244).⁶

⁶ Case C-91/05, *Commission of the European Communities v. Council of the European Union* [2008] ECR I-3651.

The ECOWAS case in essence is concerned with the delimitation of the EU's security and defence policy on the one hand and development cooperation on the other. It highlights an underlying problem of the EU's external relations in general – namely the unclear division of EU competences that can have a security dimension. Koutrakos visualizes this problem in Chapter 8, not only by focusing on development cooperation but also by looking at the external dimension of the area of freedom, security, and justice. Koutrakos shows that due to the unique procedural and institutional setting of the CSDP the choice of legal basis is indeed of practical importance and can lead to turf wars between the Union institutions. This in turn, he argues, negatively impacts on the effectiveness of the common security and defence policy (at 247). In consequence, he regards the need for coherence between the EU's external policies as one of the main challenges, not only from a legal but also from a political perspective (at 100).

The economic and political constraints on the EU's common security and defence policy become particularly visible when Koutrakos turns to European military crisis management operations. In the light of the current financial crisis, he argues that European Member States appear to be unwilling to commit troops for EU missions (at 130). He contrasts the current, rather gloomy state of the EU's CSDP in practice with the great ambitions for European security and defence in 2003 when the European Security Strategy was adopted in a time of economic prosperity in Europe (at 81–82, 130).

In Chapters 5 and 6 Koutrakos offers practical insights into the common security and defence policy by outlining the EU's individual civilian and military crisis management missions that have been completed or are still ongoing. Chapter 7 complements the overview of the common security and defence policy by focusing on the negotiation and conclusion of international agreements regulating the participation of third states in specific CSDP missions; status of force and status of mission agreements; agreements on security procedures for the exchange of classified information; framework participation agreements; and transfer agreements.

The final chapter turns to the economic and practical foundations of the common security and defence policy, and pays special attention to the development of military capabilities in the EU and the legal implications of the CSDP for European Member States' domestic defence industries. Koutrakos not only looks at judgments of the Court of Justice of the EU and the approach of the Commission on defence procurement but also turns to the role of the European Defence Agency and cooperation between member states outside the EU framework, such as the Organization for Joint Armament Cooperation (OCCAR). Especially in the armament sphere which links questions of security and defence to the internal market, Koutrakos sees the benefits of legal rules.

Overall, Koutrakos uses the metaphor of a 'difficult child' to describe the common security and defence policy (at 232). He links the CSDP's problematic nature to its gradual development which has been subject to many set-backs. Now that the Treaty of Lisbon has introduced an ever more detailed set of provisions, he points out that the common security and defence policy still stands out in the constitutional framework of the EU. Koutrakos argues that although the CSDP forms an integral part of the common foreign and security policy, it has acquired a certain degree of autonomy and a unique *esprit de corps*, due to its special procedures and institutional settings (at 283). Especially in its process-based approach he sees some of the CSDPs strongest weaknesses. The unclear delimitation of the EU's external competences creates turf wars and has the potential of dragging the Court of Justice into 'deeply politicized disputes' (at 284).

The EU Common Security and Defence Policy offers a clearly structured and comprehensive overview of the current state of affairs of the CSDP. It manages to set out the legal framework underlying this highly sensitive policy field. Especially Koutrakos' reflections on the CSDP in practice when he is looking at the individual European crisis management missions that have been conducted within the last decade and his critical reflection on the development of military crisis management capabilities help one to understand the political as well as economic constraints on the CSDP in practice. He provides further food for thought when he asks whether legal rules

and legal obligations imposed on the European Member States are beneficial in encouraging political solidarity. After all, the EU is dependant on capable and willing Member States to fulfil its ambitions as a regional and global security provider. *The EU Common Security and Defence Policy* provides a useful guide to the law and its limitations underpinning the common security and defence policy.

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