

The origins and evolution of CSDP

Introduction

The constitutional life of European integration is marked by a trauma, which it suffered at birth. This was the death of the European Defence Community before it ever entered into force in 1954. As this bold and ambitious, albeit thwarted, plan was about defence in its strict sense, that is the protection of national territory, its fate was bound to have an impact on how this most sensitive of policies has been dealt with by the Member States within the evolving constitutional configuration, which has led to the adoption of the current rules at Lisbon.

To point out the place of security and defence at the core of national sovereignty is to state the obvious. As Chris Patten, former Commissioner responsible for external relations puts it, foreign and security policy 'goes right to the heart of what it means to be a nation state'.¹ And as geopolitical developments, economic exigencies, and the increasingly pervasive problems of the environment have challenged our traditional understanding of what it means to be a nation state, so has the approach of the Member States to security and defence changed over the years.

This chapter examines the development of the rules and procedures which led to the adoption of the framework governing the Common Security and Defence Policy (CSDP) of the European Union. To place the current rules within their historical context is necessary in order to appreciate both their legal and political implications as well as the dynamics underlying the emergence of these rules.

The first phase: the European Defence Community

The first episode in the history of the Union's security and defence policy is the ambitious and ultimately doomed European Defence Community (EDC). In fact, this was one of the first episodes of the history of European integration more generally, as the fateful birth of the EDC coincided with the very first steps of European integration in the form of the European Coal and Steel Community (ECSC), the various extensions of which led to the European Union.

¹ Chris Patten, *Not Quite the Diplomat* (London: Penguin Books, 2005), 156.

In essence, the EDC was about defence integration.² It originated in a proposal by the French Prime Minister René Pleven in September 1950 and led to the signing of the EDC Treaty in Paris on 27 May 1952. The Treaty was signed by the founding six Member States of European integration, namely Germany, France, Italy, Belgium, The Netherlands, and Luxembourg. After four of them had ratified it,³ it was rejected by the French Parliament on 30 August 1954.

In order to appreciate its content and significance, the EDC should be placed in its historical and political context. Only a few years after the end of the Second World War and with Germany having, in effect, no defence of its own, Europe faced the alarming possibility of life under Communist domination. The war between the communist North Korea and the United States-backed South Korea had only just started. Furthermore, the Schuman Declaration proposing the establishment of the ECSC had just been adopted. Aiming to render war in Europe an impossibility, and even though its focus was purely economic, the ECSC, established under the Treaty of Paris signed on 18 April 1951 by the founding six Member States, had a clear security underpinning: as the Schuman Declaration put it, '[t]he pooling of coal and steel production... will change the destinies of those regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims'.⁴

Therefore, the proposal for the EDC emerged against the background of considerable European and global insecurity, and economic integration among European States was identified as the appropriate means through which to lay the ghosts of the past and prevent the emergence of new ghosts. Drawing upon the ECSC model, the EDC aimed to integrate the defence of Member States. Its Article 1 sets the tone with a starkness and succinctness not often associated with European treaty-making: 'the High Contracting Parties institute among themselves a European Defense Community, supranational in character, consisting of common institutions, common armed Forces and a common budget'.⁵

Such an express acknowledgment of transfer of sovereignty from the Member States to an independent and autonomous authority is rare. By way of comparison and in order to put things in perspective, it is worth recalling the considerable

² The authoritative historical analysis of the EDC is provided in Edward Fursdon, *The European Defence Community—A History* (London: Macmillan, 1980). For a very early analysis, see Clarence C Waldon, 'Background for the European Defence Community', (1953) 68 *Political Science Quarterly* 42. See also the recent analysis in David Scannell, 'Third Time Lucky: The Pre-history of the Common Security and Defence Policy', in Anthony Arnall, Catherine Barnard, Michael Dougan, and Eleanor Spaventa (eds), *A Constitutional Order of States? Essays in EU Law in Honour of Alan Dashwood* (Oxford: Hart Publishing, 2011), 565; and Martin Trybus, 'The vision of the European Defence Community and a Common Defence for the European Union', in Martin Trybus and Nigel White (eds), *European Security Law* (Oxford: OUP, 2007), 13.

³ Germany, Belgium, the Netherlands, and Luxembourg.

⁴ The text of the Declaration is available here: http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm (last accessed on 26 October 2012).

⁵ For an unofficial translation of the EDC Treaty in English, see <http://aei.pitt.edu/5201/1/5201.pdf> (last accessed on 26 October 2012).

disquiet caused, in a different context, by the early statements of the European Court of Justice about the transfer of national sovereignty in the context of the then European Economic Community.⁶

The main objective of the EDC was also defined in terms which set it apart from the emphasis on the joint concepts of security and defence, which underpin the current understanding of European integration in the area: instead, EDC was exclusively about defence. Article 2 of the EDC Treaty provided that 'it shall ensure the security of the member States against any aggression by participating in Western Defense within the framework of the North Atlantic Treaty and by accomplishing the integration of the defense forces of the member States and the rational and economic utilization of their resources'.

In addition to the institutional and substantive linkages with NATO,⁷ this provision is striking for two reasons. First, it refers to the integration of national defence forces, hence the establishment of a European army. The rigour with which this objective would have been achieved is remarkable: not only would Member States place contingents 'at the disposal of the Community . . . with a view to their fusion', but also no Member State would be allowed to 'recruit or maintain national armed forces'⁸ unless in exceptional and clearly defined circumstances. The second striking feature of the objective of the EDC, as set out in the Treaty, is the requirement of rational and economic utilization of national resources. As this analysis is written at a time when European integration is marred by a most profound economic and political crisis, a requirement of rationality and economic efficiency in managing defence capabilities is almost disconcertingly relevant. This is all the more so, given the implications of the financial crisis for the Union's security and defence policy, and as the possibility of the rationalization of the national capabilities at EU level may be seen as expedient on both financial and security grounds. While this is a theme to which this analysis will return,⁹ suffice it to point out the central role which practical considerations had in the provisions of this early attempt for defence integration.

The institutional design of the EDC followed that of the ECSC, which had been signed the previous year. It included an independent Board of Commissioners with significant executive and supervisory functions; the Council, consisting of national representatives and entrusted to take the most important decisions, to a considerable extent by majority voting; the Court of Justice, which was the ECSC Court, and the jurisdiction of which was described in the EDC Treaty in identical,

⁶ See, for instance, Case 26/62 *van Gend en Loos* [1963] ECR 1 and Case 6/64 *Costa v ENEL* [1964] ECR 585.

⁷ For instance, the NATO Supreme Commander would be actively involved in the implementation of the functioning of the EDC, as he would be 'empowered to satisfy himself that the European Defense Forces are organized, equipped, trained and prepared for use in a satisfactory manner' (Art 18(1) EDC Treaty). See Trybus, 'The vision of the European Defence Community and a Common Defence for the European Union', in Trybus and White (eds), *European Security Law*, at 37–41.

⁸ Art 9 EDC Treaty. ⁹ See Ch 9.

and therefore strikingly broad, terms to those of the Paris Treaty;¹⁰ finally, the ECSC Assembly, the precursor to the European Parliament, was also part of the EDC institutional design and was given an innocuous, rather decorative, role similar to that assigned to it under the Paris Treaty.

The EDC Treaty included a mutual defence clause. Its Article 2(3) read as follows: 'Any armed aggression directed against any one of the member States in Europe or against the European Defense Forces shall be considered as an attack directed against all of the member States. The member States and the European Defense Forces shall furnish to the State or Forces thus attacked all military and other aid and assistance in their power'. This provision recalls the mutual defence clause of the NATO Treaty.¹¹ However, it is broader in its scope and not subject to reservations.¹² The mutual defence clause of the EDC Treaty has become worth noting since the entry into force of the Lisbon Treaty, which includes for the first time a mutual assistance clause.¹³ This latter clause will be analysed in Chapter 3. At this juncture, suffice it to point out that the far-reaching implications that the EDC mutual defence clause would have had would need to be assessed in the light not only of its wording but also the specific context within which the whole Treaty was drafted. This leaves no doubt as to its profoundly supranational character and exclusively defence-oriented objective.

The supranational character of the EDC, as well as its deeply political underpinnings, need to be assessed in the context of the different motivations of the various actors. While the defence of Western Europe in an increasingly polarized world was the main imperative, the question of the involvement of Germany was central both to the negotiations leading to the drafting of the EDC Treaty and to its demise. German rearmament had been accepted by the major players, including the United States, but its management proved controversial. Original thoughts by the United States for intergovernmental structures were strongly resisted by France, which was anxious to ensure that German involvement would be heavily constrained and controlled by tight rules and procedures. However, political change in France at the end of 1953 led to serious misgivings about the provisions of the Treaty and the extent to which they would be able to rein in the

¹⁰ Art 51 EDC entrusted the Court with the task of 'ensur[ing] the rule of law in the interpretation and application of the present Treaty and of its implementing regulations' (as Art 31 ECSC had done).

¹¹ Art 5 Washington Treaty: 'The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security'.

¹² See Trybus, 'The vision of the European Defence Community and a Common Defence for the European Union', in Trybus and White (eds), *European Security Law*, at 33–4.

¹³ Art 42(7) TEU.

German participation. It was in the light of these considerations that the *Assemblée Nationale* voted down the Treaty.¹⁴

The national sensitivities involved were illustrated in legal terms in the Treaty itself, which made it clear that it would not 'involve any discrimination among its member States'.¹⁵ Germany was adamant that it should not be viewed as a second-class participant, an attitude not discouraged by the United States. An incident illustrating the sensitivities of the main actors occurred in January 1951 when delegations from the United States, the United Kingdom, and France, then the occupying powers in Germany, met with a German delegation in Petersberg, outside Bonn, in order to discuss the eventual integration of German forces in Western defence mechanisms. When the German representative, Theodor Blank, the defence advisor of Chancellor Adenauer, arrived at the place of the Conference, his car was directed to a parking place away from the front of the building. There had only been space for three VIP cars reserved at the front of the building, and these were for the Heads of the other delegations. The German representative refused to enter the building unless his car was parked along with those of the other representatives.¹⁶ As this analysis will illustrate at various points, appearances matter in European policy, all the more so in the politically charged area of defence.

While it is interesting that a failure should lie at the very genesis of European integration, it is striking that the masters of the Treaties should have channelled their integrationist fervour directly into security and defence so early on. This is so not only because this area falls within the core of national sovereignty, but also because the Member States and the European Union institutions have spent more than fifty years seeking to ensure that any progress, slow and modest, and reluctant though it might appear to be, is heavily controlled by intergovernmental rules and procedures.

The second phase: another failure prior to marginalization

Following the failure of the plan for the establishment of the European Defence Community, defence policy became the subject matter of another initiative, albeit of a fundamentally different character. Devised by French President Charles De Gaulle and named after the French Ambassador to Denmark who wrote it, the Plan Fouchet was put forward in 1961, that is six years after the French Parliament ensured the end of the EDC. The proposal was distinctly intergovernmental and its objective was the establishment of 'a Union of States' which would aim 'to reconcile, co-ordinate and

¹⁴ For a political science analysis of the negotiating power of the actors involved, see Björn Fleischer, 'Negotiating the European Defence Community', (2012) 11 *European Political Science* (forthcoming).

¹⁵ Art 6 EDC Treaty.

¹⁶ Fursdon, *The European Defence Community—A History*, 107.

unify the policy of Member States in spheres of common interest: foreign policy, economics, cultural affairs and defence'.¹⁷ However, the proposal and the broad political union which it envisaged were rejected, since its intergovernmental provisions were viewed by the remaining Member States as misplaced and retrograde in the light of the existing ECSC and EEC frameworks.¹⁸

After this second attempt to place it within the scope of cooperation between Member States, defence policy was consigned to irrelevance as far as the structures of European integration were concerned. Instead, it formed the subject of the Western European Union and the North Atlantic Treaty Organization (NATO), the membership of which did not coincide with that of the European Economic Community and the subject matter of which was confined to defence.¹⁹ In fact, the broader area of foreign policy was, in formal legal terms, alien to the life of the European Economic Community (EEC), which was established by the Treaty of Rome three years following the rejection of the EDC Treaty. Based on the principle of limited competence, the EEC was confined to the powers conferred by the Treaty of Rome and foreign policy, and to an even greater extent security and defence were decidedly not among them.

However, over the years the Member States adopted a set of arrangements which enabled them to cooperate in the area of foreign policy. These formed the European Political Cooperation (EPC), the precursor of the Common Foreign and Security Policy. The EPC framework developed in two phases. The first was carried out beyond the primary rules set out in the Treaty of Rome. Following the establishment of the EEC and the gradual acclimatization of the national administrations to the culture of cooperation, which emerged from the conduct of the Community's policies, the discussion of foreign policy issues crept in. Gradually, the Foreign Affairs Ministers of the Member States began to meet regularly to discuss foreign policy issues, albeit strictly on an intergovernmental basis and all the while being keen to maintain the strict separation between their EEC work and their cooperation in high politics issues. There is an episode in 1973 which illustrated the concern of Member States not to allow supranational principles to affect foreign policy coordination: at a meeting of Foreign Affairs Ministers of the Member States in Copenhagen, the French Minister prevented the discussion of EEC business, instead making his colleagues fly to Brussels in the afternoon of the same day to convene a Council meeting.²⁰ Once again, appearances are central to this area of external action.

¹⁷ Art 2 of the second draft presented on 18 January 1962 (the text is available on this website: <http://www.cvce.eu/viewer/-/content/c9930f55-7d69-4edc-8961-4f12cf7d7a5b/en>; the text of the first draft is available on this website: <http://www.cvce.eu/viewer/-/content/485fa02e-f21e-4e4d-9665-92f0820a0c22/en;jsessionid=441BD693160E8706492434D58977AEB5>), (last accessed on 26 October 2012).

¹⁸ See Christian WA Timmermans, 'The Uneasy Relationship between the Communities and the Second Union Pillar: Back to the "Plan Fouchet"?', (1996) LIEI 61.

¹⁹ These will be discussed in Chs 5 and 9.

²⁰ Eric Stein, 'European Political Cooperation (EPC) as a Component of the European Foreign Affairs System', (1983) 43 *ZaöRV* 49, at n14.

Having been developed incrementally and on an ad hoc basis during the late 1960s, these arrangements were then set out in three Reports presented by the Ministers of Foreign Affairs of the Member States to the Heads of State and Government in the period between 1970 and 1986.²¹ These Reports set out, with varying degrees of clarity and precision, the objectives and the institutional framework under which the Member States would attempt to formulate a collective stance on the international scene. In many cases, they simply formalized pre-existing arrangements about consultation and cooperation between the Member States.

The Luxembourg Report²² was the first formal attempt of the Member States to set out a mechanism of cooperation in foreign affairs. The need for the international presence of the then EEC to be equivalent to its economic role was stressed as the main reason for the establishment of a common foreign policy mechanism. EPC was conceived as being of potentially unlimited scope,²³ whereas its modest objectives were confined to coordination of national views. These objectives were to be achieved through equally modest consultation mechanisms confined to meetings between Foreign Affairs Ministers and the then established Political Committee, that is, the Directors of Political Affairs of the Member States Foreign Affairs Ministries.²⁴ The establishment of EPC as distinct from the EC was reflected by the significantly limited role of the Commission and the European Parliament.

The subsequent Copenhagen Report, adopted on 23 July 1973, reaffirmed the modest and vague objectives of EPC²⁵ and formalized procedural improvements to the consultation mechanism which had already been applied. While the Luxembourg Report was silent on security and defence, the Copenhagen Report referred to security in a very narrow context; that is, the coordination arrangements between Member States in the framework of the Conference on Security and Cooperation in Europe.²⁶

This Report stressed the distinct nature of foreign policy cooperation from the EEC institutional and legal set-up.²⁷ However, it also pointed out that, in the light of 'the widening scope of the European Communities and the intensification of

²¹ See David Allen and William Wallace, 'European Political Cooperation: The Historical and Contemporary Background', in David Allen, Reinhardt Rummel, and Wolfgang Wessels (eds), *European Political Cooperation—Towards a foreign policy for Western Europe* (London: Butterworth, 1982) 21 *et seq.*

²² It was adopted on 27 October 1970; see *European Political Cooperation (EPC)* (5th edn, Bonn: Press and Information Office of the Federal Government, 1988) at 24 *et seq.*

²³ According to Art IV, 'Member States may propose any question of their choice for political consultation'.

²⁴ The Political Committee is composed of the directors of political affairs of the Member States.

²⁵ Namely 'promoting the harmonisation of . . . views and the alignment of . . . positions and, wherever it appears possible and desirable, joint action': *European Political Cooperation (EPC)* (5th edn, Bonn: Press and Information Office of the Federal Government, 1988) at 35.

²⁶ Item 2(b)(i) under 'Results obtained from European Political cooperation on Foreign policy'.

²⁷ Art 10 of the Copenhagen Report points out that EPC 'is distinct from and additional to the activities of the institutions of the Community which are based on the juridical commitments undertaken by the Member States in the Treaty of Rome. Both sets of machinery have the aim of contributing to the development of European unification'.

political cooperation at all levels',²⁸ EPC could not operate in total isolation from the EEC, and provided that the development of EPC should 'keep in mind . . . the implications for and the effects of, in the field of international politics, Community policies under construction'.²⁹ This provision articulates one of the principles which would underpin the development of not just the foreign policy system of the Union, but also its security and defence policy. The notion of a watertight distinction between this area of high politics and the economic and social policies which have traditionally formed the nucleus of European integration is illusory. Once acknowledged expressly, this policy reality was bound to have legal repercussions for both the Union and its Member States. Indeed, this provision appears to constitute an embryonic form of the requirement of consistency which is laid down in subsequent Treaties.³⁰ It is revealing that this understanding of the intrinsic linkages between the traditional activities of the EEC (and later the EC and then the EU) should have been articulated as early as in 1973. At that time, there was no formal provision for foreign policy, let alone defence, in the Community's primary rules. Furthermore, that extract from the Copenhagen report recognizes the incremental nature of the activities carried out under the existing primary rules and affirms their dynamic nature, hence providing an even stronger foundation for the linkages between these activities and foreign policy.

The final stage of the development of EPC is marked by the London Report. Adopted on 13 October 1981, this articulates the objectives of EPC in considerably grander terms than the previous Reports. In fact, its language illustrates ambition in terms which have been recurring in subsequent policy documents: for instance, it is claimed that Member States must 'play a role in the world appropriate to their combined influence', they must 'increasingly seek to shape events and not merely to react to them', and they ought to be able to 'speak with one voice in international affairs'.³¹ While the London Report referred to the Member States, rather than the EEC, the force of its wording, which is not dissimilar to that of important security documents adopted more than twenty years later, such as the European Security Strategy,³² and the strength of its ambition are noteworthy. This is all the more so given that, at that time, there was no formal legal base on which the Member States could act in order to assume the central role on the international scene to which they aspired.

This is not the only theme of the Union's security policy which emerges from the London Report. In addition to intensifying the coordination procedures between the Member States, it draws upon the Copenhagen Report and the linkages between foreign policy and the other policies carried out within

²⁸ Art 10 of the Copenhagen Report. ²⁹ Art 12(b).

³⁰ This point is explored further in Ch 8.

³¹ European Political Cooperation (EPC) (5th edn, Bonn: Press and Information Office of the Federal Government, 1988), at 62–3.

³² *A Secure Europe in a Better World—European Security Strategy* (Brussels, 12 December 2003).

the EEC framework, which it acknowledges, and goes on by implication to envisage the use of EEC instruments for foreign policy objectives. Its preamble states that ‘the maintenance and development of Community policies in accordance with the Treaties will be beneficial to a more effective co-ordination in the field of foreign policy and will expand the range of instruments at the disposal of [then] Ten’.³³

Finally, the London Report refers to security for the first time in broader terms: in relation to the scope of EPC, it points out that, ‘having regard to the different situations of the member states, the Foreign Ministers agree to maintain the flexible and pragmatic approach which has made it possible to discuss in Political Cooperation certain important foreign policy questions bearing on the political aspects of security’.³⁴

This brief overview of the early development of EPC is relevant to our understanding of the Union’s security and defence policy. First, following the demise of what may appear, with hindsight, to be an over-ambitious effort to create a common defence policy, defence was banished from subsequent developments in the area of high politics. Instead, these focused on foreign policy and only gradually did they develop a vague and marginal security dimension. The shock of the EDC experience was so profound that the Member States focused their attention and efforts on the softer end of the high politics spectrum. Understood in its proper historical and political context, this shift from one end of the spectrum to the other may shed light on the current focus of the Union’s security and defence policy.

Second, it becomes apparent that, even within its clearly intergovernmental context, entirely beyond the constraints of primary rules and quite early on in the life of European integration, foreign policy, and therefore security, may not be viewed in isolation from the economic activities which form the core of European integration. The former owe part of their existence to the latter, and their conduct is bound to give rise to interactions between different policy and institutions.

The third phase: security and defence under primary law

As the Single European Act (SEA) amended the Treaty of Rome for the first time,³⁵ a reference to security was included for the first time in primary law. This change came about in the context of the addition of a new Article in the Treaty, which was dedicated entirely to EPC. In general terms, Article 30 SEA set out the commitment of the Member States in rather vague and ambiguous terms and drew upon

³³ *A Secure Europe in a Better World—European Security Strategy* (Brussels, 12 December 2003).

³⁴ Part I of London Report.

³⁵ It entered into force on 1 July 1987.

and improved further the pre-existing consultation arrangements.³⁶ The distinct character of the EPC was not only maintained but also illustrated with considerable clarity by the structure of the amended Treaty, as Article 30 SEA constituted a separate Title (Title III), and until a late stage of the negotiations was intended to form a separate Treaty.

All the provisions about security were laid down in Article 30(6). They read as follows:

- (a) The High Contracting Parties consider that closer co-operation on questions of European security would contribute in an essential way to the development of a European identity in external policy matters. They are ready to coordinate their positions more closely on the political and economic aspects of security.
- (b) The High Contracting Parties are determined to maintain the technological and industrial conditions necessary for their security. They shall work to that end both at national level and, where appropriate, within the framework of the competent institutions and bodies.
- (c) Nothing in this Title shall impede closer co-operation in the field of security between certain of the High Contracting Parties within the framework of the Western European Union or the Atlantic Alliance.

Title III SEA refers to the Member States as 'the High Contracting Parties'. Given that the remaining part of the Treaty uses the term 'Member States', this wording provides a stark reminder of the intergovernmental character of EPC, its distinct nature from the activities carried out by the EEC, and the central role which the Member States retained for its implementation.

The absence of a reference to defence is also noteworthy. Consistent with the practice which followed the demise of the EDC, it suggests that Member States were not prepared to revisit this sensitive policy area even pursuant to a method decidedly intergovernmental. Even the references to security were considerably qualified. In fact, there was no reference to security policy as such. Instead, Article 30(6)(a) SEA refers to matters of European security in general, hence avoiding any reference to the security of the Member States, let alone the then EEC, and it merely acknowledges the links between national coordination on such matters and the development of a European identity in external relations. This constitutes a statement of the obvious at best.

In terms of more specific provisions, Article 30(6) SEA singles out the political and economic aspects of security. However, even these are not subject to any obligation on Member States to coordinate their positions. Instead, the new provision envisages the readiness of the masters of the Treaty to do so more closely. The remarkably loose wording of this provision notwithstanding, the reference to the economic aspects of security for the first time in primary law is noteworthy. Following the

³⁶ For an early commentary on the new provision, see Simon Nuttall, 'European Political Cooperation and the Single European Act', (1985) 5 *YEL* 203, and Stelios Perrakis, 'L'incidence de l'Acte Unique Européen sur la Coopération des Douze en Matière de Politique Etrangère', (1988) 34 *AFDI* 807.

genesis and development of EPC since the 1960s, the wider context within which security was gradually discussed at EEC level was decidedly linked to the economic position of the Community. It was its clout and policy expertise which created the external and internal factors (expectations from third countries and consultation culture respectively) necessary for the gradual development of EPC. Viewed from this angle, it is not surprising that the economic aspects of security are mentioned expressly. It is in this vein that the reference to the technological and industrial conditions necessary for the security of the Member States in Article 30(6)(b) SEA ought to be seen. Again, this express reference is more significant on symbolic grounds, as it is not accompanied by either a duty imposed on Member States or anything other than an anodyne statement and a heavily qualified declaration of intent.

Article 30(6)(c) SEA is noteworthy for a different reason. By acknowledging the right of Member States to pursue policies of closer cooperation in the context of security organizations entrusted at the time with protecting the security of Western Europe, the Member States disassociated the security dimension of EPC, such as it was, from national security and, by implication, defence. After all, the Western European Union was and NATO is a defence organization. In doing so, the SEA set a trend which was to be followed by all subsequent amendments of the Treaty.

The loose wording and innocuous nature of the references to security in the SEA are by no means exceptional. In fact, they characterize Title III SEA in general, and their ambiguous wording reflected both the sensitive nature of its subject matter and the fact that it was only the first time that it was enshrined in binding Treaty law. It was precisely this wording which gave rise to litigation in Ireland questioning its legal significance.³⁷

Following the SEA, the role of security became more pronounced in subsequent amendments to the Treaties. This was consistent with the upgrading of the arrangements pursuant to which the Member States agreed to coordinate their foreign policies. The establishment of the European Union under the Maastricht Treaty, which entered into force on November 1993, signalled the introduction of the Common Foreign and Security Policy (CFSP) which succeeded the EPC. This transition had a strong symbolic force: the wars in the former Yugoslavia, and the difficulty of the Member States in agreeing a common stance, let alone any intervention to prevent a massacre in Europe, had

³⁷ See the judgment of the Irish Supreme Court in *Crotty v An Taoiseach and Others* [1987] 2 CMLR 666. This action was brought by an Irish citizen against the Irish Government on the basis of the latter's refusal to include Title III SEA in the European Communities Bill 1986 ratifying the SEA. The Supreme Court held that the relevant provisions were binding under international law on Ireland. See John P McCutcheon, 'The Irish Supreme Court, European Political Cooperation and the Single European Act', (1988) 2 LIEI 93; Finbarr Murphy and Arnaud Gras, 'L'Affaire Crotty: La Cour Suprême d'Irlande Rejette l'Acte Unique Européen', (1988) 24 CDE 276; John Temple Lang, 'The Irish Court Case which Delayed the Single European Act: *Crotty v An Taoiseach and Others*', (1987) 24 CMLRev 709.

affected the main actors of European integration profoundly.³⁸ The CFSP illustrated the determination of Member States to become more active in the area of foreign policy and to exercise influence commensurate to the economic might of the Community.

However, the establishment of the CFSP was by no means merely a symbolic gesture. It laid down a more detailed set of rules, imposed tighter duties on Member States, and introduced specific instruments.³⁹ For the purposes of this analysis, the main point of interest is the elevation of security to one of the components of the system which it introduced in the Union's legal order. This was apparent in the title of the new policy framework, which referred expressly to security for the first time, and was also illustrated by its substantive provisions. Another noteworthy innovation was the reference to defence: whereas absent from all three Reports of the 1970s and 1980s, as well as the SEA, defence featured in the CFSP framework from its inception at Maastricht, the preamble to which stated that the Member States were resolved 'to implement a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world'.⁴⁰ While of an aspirational nature rather than the subject matter of a specific policy, the reference to defence signified both the growing confidence of the Union as an international player and the incremental widening of the scope of its activities.

The substantive provisions of CFSP at Maastricht illustrate the considerable upgrading of security and defence in the context of its external action. The objectives of the CFSP included the 'safeguard[ing of] the common values, fundamental interests and independence of the Union' and the 'strengthen[ing of] the security of the Union and its Member States in all ways'.⁴¹ This reference to the security of the Union as distinct from that of the Member States is noteworthy, given the previous reluctance of the drafters of the Treaty to include any such term in primary

³⁸ On the Union's role in relation to the war in ex-Yugoslavia see Eric Remacle, *La politique étrangère européenne: de Maastricht à la Yougoslavie* (Brussels: GRIP dossier, 1992); Caroline J Smith, 'Conflict in the Balkans and the Possibility of a European Union Common Foreign and Security Policy', (1996) XIII/2 *International Relations* 1; and Petros N Stangos, 'La Communauté et les Etats membres face à la crise yougoslave', in M Telò (ed), *Vers une nouvelle Europe?* (Brussels: ULB, 1992), 177.

³⁹ See Marise Cremona, 'The Common Foreign and Security Policy of the European Union and the External Powers of the European Community', in David O'Keeffe and Patrick Twomey (eds), *Legal Issues of the Maastricht Treaty* (London: Chancery Law, 1994), 247; Florica Fink-Hooijer, 'The Common Foreign and Security Policy of the European Union', (1994), 5 *EJIL* 173; Christopher Hill, 'The Capabilities-Expectations Gap, or Conceptualising the European International Role', (1993), 31 *JCMS* 305; Ian MacLeod, Ian D Hendry, and Stephen Hyett, *The External Relations of the European Communities* (Oxford: Clarendon Press, 1996), Ch 24; Dominic McGoldrick, *International Relations Law of the European Union* (London: Longman, 1997), Ch 8.

⁴⁰ 10th para of preamble to TEU (Maastricht).

⁴¹ Art J.1(2) TEU (Maastricht).

law. The new position of security was not confined to the Union's objectives, as the scope of CFSP expressly included 'all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence'.⁴²

The scheme of the CFSP in relation to security and defence follows the example set by the SEA: the relevant provisions are set out in a single Article, namely Article J.4. However, this is where similarities end. While defence features prominently in this new set of rules, it is not in a positive manner, that is in order to define a course of action for Union in the area. Instead, the new arrangements are about the engagement of an existing international organization; that is, the Western European Union (WEU), to implement Union measures with defence implications,⁴³ and the right of Member States to make fundamental choices about the defence of their territories.⁴⁴

The two subsequent amendments of the Treaty on the European Union (TEU) by the Amsterdam and Nice Treaties retained the scheme of CFSP as introduced originally at Maastricht and built upon its main characteristics. In fact, there is a gradual evolution which makes the transition to the legal rules and procedures currently in force predictable. Each Treaty amendment tightens up the security and defence component of CFSP and makes its provisions more detailed. For instance, at Amsterdam, the scope of the activities covered by this component is expressly set out for the first time and refers to humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.⁴⁵ These were known as the Petersberg tasks and had been adopted by the Western European Union in June 1992 at the Hotel Petersberg, near Bonn.⁴⁶ In addition, there is the first reference to the possibility of cooperation in the area of armaments with a view to supporting the progressive framing of a common defence policy.⁴⁷

⁴² Art J.4(1) TEU (Maastricht).

⁴³ Art J.4(2) TEU (Maastricht). A Declaration on Western European Union (WEU) was also attached to the Treaty. This applied to the then Member States, which were also members of the WEU (namely Belgium, Germany, Spain, France, Italy, Luxembourg, the Netherlands, Portugal, and the United Kingdom) and set out arrangements about the relationship between the WEU and the EU and NATO.

⁴⁴ Art J.4(4) TEU (Maastricht) refers to neutral States as well as to members of NATO.

⁴⁵ Art 17(2) TEU (Amsterdam).

⁴⁶ Petersberg Declaration by WEU Council of Ministers (Bonn, 19 June 1992) (<http://www.weu.int/documents/920619peten.pdf>), (last accessed on 31 October 2012). On their introduction in the TEU at Amsterdam, see F Pagani, 'A New Gear in the CFSP Machinery: Integration of the Petersberg Tasks in the Treaty on European Union', (1998) 9 EJIL 737.

⁴⁷ Art 17(1), subpara 4 TEU (Amsterdam). For an analysis of the Amsterdam CFSP provisions, see Panos Koutrakos, *Trade, Foreign Policy and Defence in EU Constitutional Law* (Oxford: Hart Publishing, 2001), 26–34, and Jörg Monar, 'The European Union's Foreign Affairs System after the Treaty of Amsterdam: A "Strengthened Capacity for External Action?"', (1997) 2 EFARev 413.

The starting point for the European Security and Defence Policy—the St Malo Declaration

The increasingly prominent position which security and defence assumed in the Union's life in the first decade of the 2000s originated in a joint United Kingdom and French initiative. On 3–4 December 1998, the then British Prime Minister Tony Blair and the then French President Jacques Chirac signed a Joint Declaration in St Malo, a French seaside town on the coast of Brittany. This relatively short document was succinct in its drafting, wide in its scope, and ambitious in its objectives. Its starting point was that the European Union 'needs to be in a position to play its full role on the international stage'.⁴⁸ It then explained what this objective entailed, namely that 'the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises'.⁴⁹ The Declaration acknowledged the central role of the WEU and NATO in collective defence, but also expressed the need for the Union to 'have recourse to suitable military means', and pointed out that 'Europe needs strengthened armed forces that can react rapidly to the new risks, and which are supported by a strong competitive European defence industry and technology'.⁵⁰

As any foreign policy act of sovereign States, the St Malo Declaration served different national interests for the United Kingdom and France. On the one hand, Blair was keen to ensure that the advent of the economic and monetary union would not marginalize the UK from the European political stage, and the dynamic emergence of the Union's security and defence policy would provide a suitable arena within which the UK would become a central player. On the other hand, Chirac was keen to ensure that France, one of the two important military players in Europe, would be part of a European security structure which would not play second fiddle to NATO. Furthermore, the political and security landscape in Europe was in a state of flux, given the impending gradual disengagement of the United States from European security following the end of the Cold War.⁵¹ The difficulties in controlling Serbian action in Kosovo also lent an air of urgency to the construction of a more effective European security policy. The Declaration was seen as 'revolutionary' for bringing security and defence back to the mainstream of European policy and for giving rise to a healthy debate about the security role of

⁴⁸ Franco-British Joint Declaration on European Defence, adopted at the Franco-British summit, St Malo, 3–4 December 1998, Art 1. The text of the Declaration is available on this site: <http://www.atlanticcommunity.org/Saint-Malo%20Declaration%20Text.html> (last accessed on 26 October 2012).

⁴⁹ Franco-British Joint Declaration on European Defence, Art 2.

⁵⁰ Franco-British Joint Declaration on European Defence, Arts 3 and 4.

⁵¹ See Nicole Gnesotto, 'Common European Defence and Transatlantic Relations', in Philip H Gordon (ed), *NATO's Transformation: The Changing Shape of the Atlantic Alliance* (Lanham, MD: Rowman and Littlefield, 1997), 39.

the Union on the international scene.⁵² In doing so, it had a significant impact on the changes of the TEU provisions of security and defence introduced at Nice,⁵³ and contributed to the momentum which kept the policy at the centre of the political and legal process, which led to the drafting of the Constitutional Treaty and, later, the Lisbon Treaty.

For the purposes of this analysis, suffice it to make the following observations. First, the initiative did not come either from an institution of the European Union or Member States acting under the EU umbrella. Instead, it originated in two powerful Member States acting autonomously to spearhead progress, hence illustrating clearly the inherent role of national administrations in the design and conduct of security and defence policy. Second, the initiative was undertaken by the two Member States, which are by far the main military powers in Europe. This conveys clearly that any meaningful security and defence policy for the EU would require not just the backing but also the active participation of France and the United Kingdom. Third, it is noteworthy that the St Malo Declaration refers expressly to the economic aspects of security and the need for a competitive European defence industry. As the role of this dimension will emerge clearly in subsequent parts of this analysis,⁵⁴ it is crucial that it should have been so well understood by the Member States, which are the main players in this area.

Conclusion

This analysis suggests that the development of the Union's security and defence policy has followed the movement of a pendulum which, having reached one end of its trajectory, then swings back the other way. Having attempted to apply a distinctly supranational logic to defence, that is a policy area closest to the core of national sovereignty, and then having rejected a distinctly intergovernmental approach, the Member States left it entirely beyond the realm of their endeavours. Its emergence in the sphere of the Union's activities has been slow, incremental, and characterized by a number of interrelated features.

First, it is marked by a distinct shift of emphasis from defence to security. In fact, even after the EPC was formalized in the Treaties, defence was decidedly not a central policy, and the relevant provisions were either confined to economic and political aspects of the area or constituted emphatic reminders of the sovereign right of Member States to make fundamental choices about the defence of their realm.

⁵² Jolyon Howorth, *Security and Defence Policy in the European Union* (London: Palgrave Macmillan, 2007), 36–7.

⁵³ The Nice Treaty will be examined in Chs 2 and 3, in the context of the subsequent changes introduced by the Lisbon Treaty.

⁵⁴ See Ch 9.

Second, security and defence policy, as it became, loses its autonomy and any focus of the energies of the Member States and becomes secondary to the efforts of the Member States to coordinate their activities in the area of foreign policy. Rather than constituting the subject matter of an autonomous set of actions, rules, and procedures, defence becomes subsumed by a much broader framework, the EPC and then the CFSP, which develop independently from the main activities carried out pursuant to the primary rules governing European integration. By emerging within the fold of the foreign policy set of rules and procedures, security and defence policy acquires the main characteristics of EPC and, later, CFSP.⁵⁵ Its development is dynamic; constantly evolving beyond the Treaties framework as well as within it. Indeed, every amendment of the Community's and the Union's primary rules is accompanied by an amendment of the rules on security and defence.

Third, neither defence requirements nor security imperatives on their own shape the origins of the precursor to the CSDP. It is also the growing success of economic integration under the existing legal structures of ECSC and EEC, the increasing ambition of European political actors to match their economic might with political stature, and the growing expectations of third parties, which provide the momentum for the genesis and development of EPC and, within it and secondarily, security and defence. This point is significant for it defines the very genesis of CSDP. It suggests that its DNA is both diverse and troubled. It is troubled because it is conditioned by a death; the failure of the EDC which has always shaped the inherent reluctance of Member States to relinquish control in the area of security and defence. And it is diverse because it owes its existence partly to factors which are not directly linked to either security or defence. This feature has policy implications: because the Union's security and defence policy is organically linked to the policies carried out first by the EEC, then by the EC and now the EU, the objectives and conduct of the latter are bound to have an impact on the conduct of the former. There are also legal implications for the regulation and management of security and defence, given the distinctly supranational features on the basis of which the Union organizes its economic and social policies. This analysis shows that the emphatic reminders of the intergovernmental nature of security and defence within the process of European integration are accompanied by the clear realization that rigid distinctions between this and the other EU policies are both untenable and undesirable. Therefore, there is a thread which brings together the emergence and early development of security and defence policy and the references to the requirement of coherence, which is introduced in different forms in the more recent amendments of the Treaties.

⁵⁵ On the characteristics of the development of CFSP up until the Amsterdam Treaty, see Panos Koutrakos, *Trade, Foreign Policy and Defence in EU Constitutional Law* (Oxford: Hart Publishing, 2001), 14–18.

Finally, there is an overwhelming pragmatic dimension underpinning the impact of the relevant rules and procedures. This is about the role of the Member States, which are the main players in the field. The willingness of the Member States, which are the main European security actors, to engage actively in the conduct of ESDP is a *conditio sine qua non* for the success of the latter. This is an area where clearly 'some animals are more equal than others'.⁵⁶

⁵⁶ George Orwell, *Animal Farm*, (London: Penguin, 2000), 90.