

COMMON FOREIGN AND SECURITY POLICY OF THE EUROPEAN UNION

Krzysztof Orzeszyna

Department of Human Rights

The John Paul II Catholic University of Lublin

Summary. The Treaty of Lisbon has created a new impulse, for the external activities undertaken by the European Union, confirming its role as an international actor. As the Article 24, section 2 of the TEU reads: “Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States’ actions”. The Common Defence and Security Policy constitutes an integral part of the Common Foreign and Security Policy. Despite the deepened collaboration, the national security still remains “the sole responsibility of each Member State”.

Key words: international security, European security, common defence and security policy, common foreign and security policy

INTRODUCTION

The plans to form and establish the European Defence Community and the European Political Community failed back in 1954, due to a rejection on the part of the French National Assembly¹. During the subsequent period new plans were being submitted for potential consideration, including the Fouchet’s plans of 1961 and 1962, envisaging actions towards tightening of collaboration and establishing of European competency in the aforesaid areas. However, with fresh determination being born, the issue returned to the European public sphere when the European Political Cooperation was informally established².

The European Political Cooperation made it possible for the EU member states to make arrangements and enhance the decision-making process,

¹ M. Górka, *Wspólna Polityka Zagraniczna i Bezpieczeństwa*, in: J. Barcz, M. Górka, A. Wyrzyńska, *Instytucje i prawo Unii Europejskiej. Podręcznik dla kierunków prawa, zarządzania i administracji*, ed. 3, LexisNexis Polska, Warszawa 2012, p. 186.

² Ph. Delivet, *Les politiques de l’Union européenne*, La documentation Française, Paris 2013, p. 245.

during the significant and important moments (i.e. crises), such as the Helsinki Conference on Security and Co-operation in Europe (CSCE) taking place between 1973 and 1975, or during the Soviet invasion in Afghanistan (1979). The above concept also enabled its members to adopt a common declaration with regard to the Middle East in 1980, requesting that the Palestine Liberation Organization shall be involved in the peace negotiations.

However, the Balkans conflict, during which the member states were not reacting as a single body, has exposed the limitations and drawbacks this method entails. Moreover, lack of a true solidarity among the European nations was exhibited, with regard to the political events unfolding on the European soil³.

Formally, the Single European Act of 1987 had a fundamental meaning for the expansion of the collaboration in the area of policy. The above Act constituted a legal foundation for the European Political Cooperation which, up until the Act came into existence, had more of a pragmatic dimension⁴. The Maastricht Treaty (formally, the Treaty on European Union or TEU, signed in 1992) has established the Common Foreign and Security Policy, making it a part of the conventional community framework. The said policy formed the second pillar of the European Policies (Title V of the TEU). The Treaty of Amsterdam (1997) has integrated the Petersberg tasks into three types of tasks, which was decided upon by the Ministers of the Western European Union during a ministerial summit of the Council of the WEU on June 19th 1992 at Hotel Petersberg, near Bonn in Germany. The above referred to humanitarian aid or evacuation missions, peacekeeping and crisis management initiatives, all understood as operations that would be aimed at restoring peace in the areas concerned and affected by the conflicts. Furthermore, the Treaty has also deepened the institutional framework for the Common Foreign and Security Policy, creating the post of the High Representative of the Union for Foreign Affairs and Security Policy, entrusting this person with the responsibility ascribed to the Secretary General of the Council at the same time. Pronouncing the Common Foreign and Security Policy of the EU also forces the decision-makers to gradually expand and develop this domain. Treaty of Nice (2001) has expanded the ability to refer to the enhanced cooperation, within the framework of the Common Foreign and Security Policy (with exclusion of the defence-related issues)⁵. Furthermore, Political and Security Committee has been brought to life in January 2001⁶, that has been functioning in line with Article 38 of the TEU, and on the basis of the decision 2001/78/CFSP

³ The member states were divided, when it came to recognition of Slovenia and Croatia, with Germany endorsing such stance and France and the United Kingdom being against it.

⁴ M. Górka, *Wspólna Polityka Zagraniczna i Bezpieczeństwa*, p. 186.

⁵ Ph. Delivet, *Les politiques de l'Union européenne*, p. 247.

⁶ On the basis of the Treaty of Nice, as a Political Committee.

of the Council, made on January 22nd 2001⁷. According to Article 38 of the TEU, the Committee closely observes the international situation in the areas covered by the Common Foreign and Security Policy, also yielding the political control and strategic management with regard to the crisis management and containment operations.

Treaty of Lisbon (2009)⁸ created a new impulse for the Union to undertake external activities. Above all, the issue of defining the legal personalities and co-existence of the Union and Community, has come to a definite closure. The Union, established on the basis of this Treaty, replaces the European Community, being its legal successor (Article 1 of the Treaty on European Union) and shall be considered to have a legal personality (Article 47 of the TEU). Furthermore, the Treaty of Lisbon determines goals for the EU and confirms its role as a global international actor, which is tied to and leads towards confirmation of the Union's identity: "In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter" (Article 3, subsection 5, TEU)⁹. Meanwhile, according to Article 24, section 2 of the TEU: "Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions".

I. COMMON FOREIGN AND SECURITY POLICY OF THE EUROPEAN UNION

The Treaty of Lisbon takes over and includes most of the common foreign and security policy provisions that were contained within the rejected Constitutional Treaty. Even though pillar-based EU structure has been liquidated, the changes introduced by the Treaty of Lisbon seem to be a proof for maintaining a certain degree of separate and extraordinary character of the aforesaid

⁷ Decision 2001/78/CFSP of the Council, 22.01.2001, "EC Official Journal" 2001, L27/1.

⁸ Treaty on European Union and Treaty on the Functioning of the European Union in the consolidated form, "Official Journal of the European Union" C 202/1.

⁹ E. Neframi, *L'action extérieure de l'Union européenne. Fondements, moyens, principes*, LGDJ, Paris 2010, p. 13.

domain. This includes the “General Provisions on the Union’s External Action and Specific Provisions on the Common Foreign and Security Policy” added to Title V of the TEU, consisting of two new chapters concerning, in general, external actions of the EU and the Common Foreign and Security Policy (Chapter 1: “General Provisions on the Union’s External Action”; Chapter 2: “Specific Provisions on the Common Foreign and Security Policy” also including section 2: “Provisions on the Common Security and Defence Policy”). The Treaty of Lisbon does not form a new qualitative dimension in the area of the Common Security and Defence Policy. It shall still be perceived as an intergovernmental domain of integration¹⁰. Within the Article 2 subsection 2 of the TEU it was expressly stated that “In particular, national security remains the sole responsibility of each Member State”.

The Treaty of Lisbon also creates the position of the High Representative of the Union for Foreign Affairs and Security Policy and the Commission who, additionally, acts as the Vice-President of the European Commission and acts as the Chair of the Foreign Affairs Council. The High Representative, according to Article 18 of the TEU, is appointed by the European Council which makes its decisions on the basis of supermajority, as authorised by the President of the European Commission.

Furthermore, solidarity clauses were also adopted within the treaty, covering the issue of mutual defence. Article 42, subsection 7 of the TEU reads as follows: “If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States”¹¹.

The clause also includes two disclaimers: firstly, the provisions of Article 42, section 7. sentence 1 of the TEU shall not prejudice “the specific character of the security and defence policy of certain Member States”¹², secondly, “[c]ommitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organization, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation”. In practical terms the above means that in the defence and security domain, the commitments arising on the grounds

¹⁰ R. Roloff, *L'UE et la sécurité. Cadre historique et institutionnel*, in: *L'Europe et sa Défense*, eds. G. Boutherin, E. Goffi, Choiseul, Paris 2011, p. 49; J. Barcik, § 81. *Wspólna Polityka Zagraniczna i Bezpieczeństwa*, in: J. Barcik, A. Wentkowska, *Prawo Unii Europejskiej po Traktacie z Lizbony*, ed. 2, Wydawnictwo C.H. Beck, Warszawa 2011, p. 454.

¹¹ UN Charter, “Journal of Laws” of 1947, No. 23, items 90 and 91.

¹² This applies to four neutral states: Austria, Finland, Ireland and Sweden.

of NATO membership shall take precedence over the commitments resulting from the EU membership¹³.

One of the clauses contained within the Treaty on the Functioning of the European Union Article 222 has a slightly different nature, requesting that the EU, as well as its member states shall “act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster”. For that purpose the Union would employ all of the instruments remaining at its disposal, including the military measures provided by the Member States¹⁴. Declarations No. 13 and 14. on the Common Foreign and Security Policy¹⁵ place an emphasis, in a general manner, on the fact that the regulations that concern the common foreign and security policy do not make any specific contributions with regard to the profile of the defence and security policies of the individual member states.

II. COMMON DEFENCE AND SECURITY POLICY

The EU defence security was, for a long period of time, perceived through the lens of the failure that occurred with regard to the European Defence Community (1954). The issue was reconsidered during a French-British Saint-Malo Summit, back in 1998¹⁶. The French-British summit organized on December 4th 1998 made it possible to create strategic European defence capabilities in the post-Cold War context¹⁷. The aforesaid change of direction was made possible thanks to a double move made by the two aforesaid states, changing their positions with regard to the stances that had been adopted by those countries previously: France accepted the significant role NATO plays within the domain of the European security environment, leaving aside the issues related to the differences between the European defence initiatives and the Atlantic Alliance¹⁸; meanwhile, the United Kingdom, having a long his-

¹³ E. Dell’Aria, *L’UE dans sa relation avec l’OTAN et quelques autres acteurs: bilan et perspectives*, in: *Le traité de Lisbonne. De nouvelles compétences pour l’Union européenne?*, ed. A. Raccach, L’Harmattan, Paris 2012, pp. 194–195.

¹⁴ T.R. Aleksandrowicz, *Bezpieczeństwo w Unii Europejskiej*, Difin, Warszawa 2011, pp. 80–81.

¹⁵ Declarations No. 13 and 14. concerning the common foreign and security policy, “Official Journal of the European Union” of 2016, C 202/1.

¹⁶ Ph. Delivet, *Les politiques de l’Union européenne*, pp. 252 and 257.

¹⁷ J. Favin Levêque, *L’Europe de la Défense après Lisbonne: enjeux, réalités et perspectives*, in: *Le traité de Lisbonne. De nouvelles compétences*, p. 186.

¹⁸ France, in 1996, resigned from participation in management of the NATO alliance – nonetheless it still participates in the NATO Military Committee and has joined the Integrated NATO Military Committee as of March 2009, meanwhile, the United Kingdom, having a long history of opposing the concept of autonomous European defence capabilities, accepted the decision to include the defence issues into the set of domains that are being discussed on the EU forum.

tory of opposing the concept of autonomous European defence capabilities, accepted the decision to include the defence issues into the set of domains that are being discussed on the EU forum¹⁹.

The Saint-Malo declaration confirmed the emergence of a need to implement the Treaty regulations concerning the common defence policy by the EU, so that it would have an “ability to undertake autonomous actions” at its disposal, based on credible military potential, allowing the Union to respond to the emerging international crises.

The further European summits have seen progress being made, within the scope of the European defence. During the summit in Cologne, organized in 1999, the member states have exhibited their determination to equip the EU with assets and capabilities required to take over the responsibility for creating the European defence and security policy. During the Helsinki summit, happening during the same year, decision was made to create new organs, as well as political and military structures (Political and Security Committee; Military Committee).

The European Council, during a meeting held in Santa Maria da Feira (2000) made a decision to create a Committee for Civilian Aspects of Crisis Management (CIVCOM), and established a mobilisation potential for such missions including ca. 5000 policemen, 300 legal experts and 2000 civil defence experts.

In December 2008, the European Council expressed its will to initiate the development of Common Defence and Security Policy that would be fully complementary with the NATO-defined approach. In order to meet the aforesaid challenge Europe should make efforts to gradually perfect its civil and military capabilities, allowing the Europeans to remain responsible, in a credible and effective manner, within the framework of the renewed transatlantic partnership. The conclusions that the nations came to back in 2008 were referred to by the European Council in December 2012, when it was noted that the European Union was called to become responsible within the domain of peacekeeping and maintaining of the international security. This would allow the EU to guarantee security for its citizens and to promote its interest²⁰. Thus, the European determination to increase the effectiveness of the steps undertaken in the area of Common Defence and Security Policy has been confirmed.

The Common Defence and Security Policy constitutes an integral, yet specific, due to the subject matter, part of the Common Foreign and Security Policy. For the first time in the EU's history, a separate section covered the Common Defence and Security Policy (Section 2 of Chapter 2 of Title V of the TEU Articles 42-46). The adopted provisions were directed towards guaranteeing the Union with operational capabilities based upon civil and

¹⁹ Ph. Delivet, *Les politiques de l'Union européenne*, p. 253.

²⁰ *Ibidem*, pp. 254 and 258.

military assets. The Union may make use of the said regulations within the framework of peacekeeping, conflict prevention, and international security enhancement operations, all conducted outside its territory, in line with the UN Charter²¹. Besides the goals listed above and the humanitarian and rescue operations, the Treaty of Lisbon also included the post-conflict stabilisation missions within the framework of crisis management armed deployments, joint disarmament operations and military support and consulting operations, among the possible uses for the EU military assets²². The tasks listed above are being carried out on the basis of the capabilities provided by the member states. “The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements” (Article 42, section 2 of the TEU)²³. The policy in question shall not prejudice the specific profile of the member states defence and security policy.

Currently, a certain dose of political will exists within the EU to continue the expansion of the domain within which the European security is placed. This is also expressed through further specifying of the Petersberg Tasks²⁴ and unification of them within Article 43, section 1 of the TEU, according to which the said tasks “referred to in Article 42(1), in the course of which the Union may use civilian and military means, shall 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”. The aforesaid regulation also includes the following provision: “all these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories”. The coordination of civil and military aspects for those missions is entrusted with the High Representative of the Union for Foreign Affairs and Security Policy, working under the guidance of the Council and in close and continuous cooperation with the Political and Security Committee (Article 43 section 2 of the TEU). Considering the acts of terror in the New York City (2001), Madrid (2004), and London (2005) it was also specified that all of the aforesaid deployments may also be embedded within the initiatives the objective of which would be

²¹ Article 1 of the UN Charter.

²² K. Badźmirowska–Miastowska, *Wspólna polityka zagraniczna i bezpieczeństwa Unii Europejskiej. Aspekty prawne i polityczne*, Wydawnictwo Akademii Obrony Narodowej, Warszawa 2013, p. 102.

²³ J. Barcik, § 81. *Wspólna Polityka Zagraniczna i Bezpieczeństwa*, p. 476.

²⁴ The qualification has been derived from the Petersberg Declaration of the Western European Union (UEO) issued in 2002.

to act against terrorism through provision of support for the third countries in the process of conducting counter-terrorism activities within their territories²⁵.

The Treaty of Lisbon also gave more authority to the European Defence Agency, providing EDA with a wider range of competencies in the defence industry and trade areas. According to Article 42 section 3 of the TEU, “The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as ‘the European Defence Agency’) shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities”²⁶. The task of the Agency, particularly, is to identify the subjects of military capabilities of the member states, promote the harmonisation of operational requirements, support the multilateral initiatives and support R&D in the field of defence technologies, as the Article 45 of the TEU suggests²⁷.

Tighter collaboration between the member states may be expanded as a form of “fixed structural cooperation”. The aforesaid cooperation remains open for the member states that “fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions” (Article 42 of the TEU)²⁸.

According to Article 42. section 6 of the TEU, the “Member States whose military capabilities fulfill higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework”. The list of the member states involved in the above has been adopted following a consultation with the High Representative. Leaving the procedural differences aside, when it comes to referring to the enhanced cooperation on the grounds of the common law, the fixed structural cooperation has a limited field of application in the area of joint defence and security policy, and is based, primarily, on the military capabilities of the participating nations.

The permanent structural cooperation must be discriminate from the ability provided to the Council, as the Council may assign command within a mission to a group of states willing to be burdened with such responsibilities,

²⁵ Ph. Delivet, *Les politiques de l'Union européenne*, p. 255.

²⁶ M. Górka, *Wspólna Polityka Zagraniczna i Bezpieczeństwa*, p. 192.

²⁷ Defence expenditure of the member states have been limited, constituting one third of the US spending and 1.34% of the EU GDP in 2010, in comparison with the 4.7% GDP level in case of the US.

²⁸ J.-L. Sauron, *Comprendre le Traité de Lisbonne. Texte consolidé integral des traités. Explications et commentaires*, Gualino, Paris 2008, p. 123.

on condition that the said states have the required abilities at their disposal (Article 42 section 5 of the TEU). “Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree among themselves on the management of the task” (Article 44 of the TEU). The difference here arises on the grounds of the fact that the latter case does not pertain to performance of the competencies within the area of defence and security by adiminished, smaller Union, but it rather applies to execution of decisions adopted by the EU as a whole. The group of the EU member states remaining in possession of capabilities required for the said mission carries out operational activities, the results of which remain legally binding for the whole EU. This form of flexibility allows for better securing of the commitments arising on the grounds of the substantive law, but does not create pro-development effect on joint defence and security policy²⁹.

Furthermore, the Treaty of Lisbon also introduced a certain degree of flexibility in the area of common defence and security policy, through creation of an option of maintaining tighter cooperation, which depends on a unanimous approval expressed by the council on the basis of the opinion issued by the High Representative and the Commission and following an approval issued by the European Parliament (Art. 329 section 2 Treaty on the Functioning of the European Union).

CONCLUSION

Reaction to armed conflicts around the world is a symptom for political helplessness and lack of a true European solidarity among the EU member states. However, adoption of the Treaty of Lisbon has become a new impulse for the external activities undertaken by the European Union, confirming the EU’s role, as a global international actor. As the Article 24, section 2 of the TEU reads: “Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States’ actions”. The Common Defence and Security Policy constitutes an integral part of the Common Foreign and Security Policy. Despite the deepened collaboration, the national security still remains “the sole responsibility of each Member State”.

²⁹ E. Neframi, *L’action extérieure de l’Union européenne*, p. 32.

REFERENCES

- Aleksandrowicz, Tomasz R. 2011. *Bezpieczeństwo w Unii Europejskiej*. Warszawa: Difin.
- Badźmirowska–Miastowska, Katarzyna. 2013. *Wspólna polityka zagraniczna i bezpieczeństwo Unii Europejskiej. Aspekty prawne i polityczne*. Warszawa: Wydawnictwo Akademii Obrony Narodowej.
- Barcik, Jacek. 2011. “§ 81. Wspólna Polityka Zagraniczna i Bezpieczeństwa.” In Jacek Barcik, and Aleksandra Wentkowska, *Prawo Unii Europejskiej po Traktacie z Lizbony*, 449–488. Ed. 2. Warszawa: Wydawnictwo C.H. Beck.
- Delivet, Philippe. 2013. *Les politiques de l’Union européenne*. Paris: La documentation Française.
- Dell’Aria, Eric. 2012. “L’UE dans sa relation avec l’OTAN et quelques autres acteurs: bilan et perspectives.” In *Le traité de Lisbonne. De nouvelles compétences pour l’Union européennes?*, edited by Aurélien Raccach, 193–208. Paris: L’Harmattan.
- Favin Levêque, Jacques. 2012. “L’Europe de la Défense après Lisbonne: enjeux, réalités et perspectives.” In *Le traité de Lisbonne. De nouvelles compétences pour l’Union européennes?*, edited by Aurélien Raccach, 185–191. Paris: L’Harmattan.
- Górka, Maciej. 2012. “Wspólna Polityka Zagraniczna i Bezpieczeństwa.” In: Jan Barcz, Maciej Górka, and Anna Wyzomska, *Instytucje i prawo Unii Europejskiej. Podręcznik dla kierunków prawa, zarządzania i administracji*, 185–194. Ed. 3. Warszawa: LexisNexis Polska.
- Neframi, Eleftheria. 2010. *L’action extérieure de l’Union européenne. Fondements, moyens, principes*. Paris: LGDJ.
- Roloff, Ralf. 2011. “L’UE et la sécurité. Cadre historique et institutionnel.” In *L’Europe et sa Défense*, edited by Grégory Boutherin, and Emmanuel Goffi, 31–50. Paris: Choiseul.
- Sauron, Jean-Luc. 2008. *Comprendre le Traité de Lisbonne. Texte consolidé integral des traités. Explications et commentaries*. Paris: Gualino.

WSPÓLNA POLITYKA ZAGRANICZNA I BEZPIECZEŃSTWA UNII EUROPEJSKIEJ

Streszczenie. Traktat z Lizbony dał nowy impuls do działania zewnętrznego Unii Europejskiej i jej potwierdzenia jako globalnego aktora międzynarodowego. W ramach zasad i celów swoich działań zewnętrznych Unia Europejska określa i realizuje wspólną politykę zagraniczną i bezpieczeństwa, opartą na rozwijaniu wzajemnej solidarności politycznej między państwami członkowskimi. Wspólna polityka bezpieczeństwa i obrony stanowi integralną część wspólnej polityki zagranicznej i bezpieczeństwa. Jednakże pomimo wzmocnionej współpracy między państwami członkowskimi, bezpieczeństwo narodowe nadal pozostaje w zakresie wyłącznej odpowiedzialności każdego państwa członkowskiego.

Słowa kluczowe: bezpieczeństwo międzynarodowe, bezpieczeństwo europejskie, wspólna polityka zagraniczna i bezpieczeństwa, wspólna polityka bezpieczeństwa i obrony