

Is the European Union's Common Foreign and Security Policy (CFSP) adequately designed to respond to current global challenges?

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Abstract

The purpose of this paper is to investigate the design of the European (EU) challenges. The analysis starts with an examination of the powers given to the CFSP through the Treaty on the European Union and Treaty on the Functioning of the European Union. The primary finding is that the CFSP decision-making is not autonomous and that the CFSP is often limited in what it can do as it might interfere with the exclusive powers of other institutions. The success of the CFSP is determined by the willingness of EU Member States making it work. The political will is key. The Permanent Structured Cooperation (PESCO) has been the most exciting outcome of the CFSP and serves a complementary feature to NATO, which it is unlikely to replace. The CFSP is promising and has delivered some 'triumphs' such as the Iran Nuclear Deal or post-Crimea sanctions on Russia, however based on the analysis in this paper, as currently designed the CFSP is insufficient at implementing the EU's foreign policy. However, it is adequately designed in formulating foreign policy and moving agendas forward. This all comes at a time where the changing international political dynamics, especially with emerging new challenges and changes in relations with major powers, may put the EU at center stage of international relations.

Keywords: European Union, Common Foreign and Security Policy, CFSP

Introduction

On the 9th of November 2018, Bruno Le Maire the French Minister of Economy and Finance, stated that “it’s now that things are being played out, and the decisions we take now must enable us to affirm Europe as an empire with the size and power of China or the United States but with totally different goals.”¹ Le Maire, additionally defined a time frame, saying that “Europe has got to assert itself as a peaceful empire in the next 25 years.” This was not the first time that the European Union (EU) had been experimenting with the idea of becoming an empire. Jose Manuel Barroso, former President of the European Commission, famously compared the European Union to a “non-imperial empire,” much to the outrage of Euro-sceptics. The imperialist rhetoric regarding the EU’s global ambitions emanating mostly from France raises the question of whether the European Union’s Common Foreign and Security Policy (CFSP) institutions are adequately designed to respond to current global challenges. There is substantial writing on the CFSP and Common Security and Defense Policy (CSDP), since the European Union Global Strategy (EUGS) and its follow-ups have entailed much deliberation on the goals and future of the CFSP, however the results of this deliberation have failed to deliver an implementable strategy. The research in this article contributes to the already extensive literature on the EU’s foreign, external, and defense policies and reflect on whether these policies are adequately designed to respond to contemporary global challenges such as counterinsurgency, terrorism and the European Neighborhood Policy (ENP), the migration crisis, the potential creation of an EU army and shifting relations with the main foreign powers in the world today USA, Russia, and China.

Design of the CFSP

CFSP’s current policy goals are best understood through a close reading of the European Union

Treaties.² Firstly, Article 3(5) of the Treaty on European Union (TEU) states:

“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(5), TEU).

This article provides a general framework of CFSP - CFSP defining that its main goals should include the defense of European peace and security and the protection of EU citizens. This integration of CFSP into the TEU is notable as “after the Lisbon Treaty, the CFSP remains ‘distinct’ from the general, former ‘Community Logic’. Most importantly, the CFSP (and CSDP) are the only substantive policy domains found in the TEU, whereas other policies are found in the [Treaty on the Functioning of the European Union] TFEU.”³ Since the Maastricht Treaty, the EU is now closer to the ‘Community Logic’ as there now is only one Union and not different institutional pillars.

Article 24(1) of TEU outlines the competences of CFSP, which shall “cover all areas of foreign policy and all questions relating to the Union’s security, including the progressive framing of a common defense policy that might lead to a common defense.” However, it also delineates the limits of CFSP’s scope, stating that “[t]he common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council, and the Council acting

unanimously, except where the Treaties provide otherwise." The CFSP is subject to important limitations, and EU Member States have been reluctant to transfer competencies to the CFSP, choosing instead to be in control of it. Therefore, it is difficult to establish what the CFSP can actually do.⁴ Furthermore, the TFEU establishes in Article 2(4) that "[t]he Union shall have competence, in accordance with the provisions of the Treaty on European Union, to define and implement a common foreign and security policy." This attests to the fact that the CFSP is part of the Union's overall legal framework, rather than the outcome of cooperative intergovernmental proceedings. However, this still contrasts with TFEU Articles 3-6 that establish which areas have "exclusive competences, shared competences or supporting, coordinating or supplementing competences. It would probably come closest to the field of complementary competence."⁵ Legally the CFSP requires that EU Member States and the Union's institutions coordinate, which is politically desirable. A further check for member nation-state competences is that the European Court of Justice has limited jurisdiction on CFSP matters.⁶

It could be argued that the CFSP is the outcome of a natural evolution considering the historical context in which European cooperation emerged. On September 19, 1946 Winston Churchill famously proclaimed that Europe should develop into a sort of "United States of Europe". If the EU project is to be seen as a peace project in a continent that has experienced countless wars, it is to be expected that a unified foreign, security, and defense policy framework should be established, dampening tensions between member states. In 1952, the Treaty Establishing the European Defense Community attempted to create a European Defense Community (EDC), a pan-European army. This attempt came from the Pleven Plan. René Pleven was a French Politician

who proposed a unified European army, and to whom some attribute the creation of NATO.⁷ Ultimately, the EDC was not successful due to the reluctance of France and Italy; if a 27-country (26 if the UK leaves the union) European army were to be realized today, it would have to pass the same political obstacles that the then six countries failed to overcome.

The General Provisions of the CFSP are found under Title V Chapter 2 in the TEU. Article 77 outlines some of these provisions, such as the "monitoring of external borders" (Article 77(1)). Due to the scope established in 24(1) of the TEU, the CFSP theoretically covers all areas of foreign policy. The policy is often an interconnected field, requiring cooperation across different policy areas; e.g., environmental and trade policies are interlinked.⁸ However, with the separate legal basis for the CFSP, compared to other policy areas established separately in the TFEU, policy coordination becomes complicated. Lastly, Article 40 of the TEU establishes the limits of what the CFSP can do individually:

"The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union. Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter." (Article 40 TEU).

This establishes that the CFSP decisions can be adopted only if they do not interfere with the

exclusive powers of the Union's institutions, established by the TFEU. An example of this limitation would be a policy restricting the import of commodities that have potential military applications.⁹

CFSP decision-making is not autonomous, many institutional actors are involved. The European Council has a leading role in the formulation of the CFSP (Article 22 TEU, Article 26 TEU, Article 15(6) TEU) although its role is indirect by setting the strategic interests of the CFSP.¹⁰ Additionally, there is The Council of the EU which "can be regarded as the main CFSP decision-making institution."¹¹ Article 26(2) of the TEU outlines that the Council shall frame the CFSP and take decisions based on the strategic guidelines provided by the European Council. Articles 28 and 29 of the TEU further develop this. The Council also decides on voting procedures. The High Representative and the European External Action Service (EEAS), as outlined by Articles 27 and 30(1) of the TEU must chair the CFSP. In this case there is a need for coordination as the High Representative is the Vice President of the Commission. The European Commission can influence the CFSP through its negotiations with the Council; however, it is not directly involved in the implementation of decisions.¹² The European Parliament is often seen as the most democratic institution of the EU. In relation to CFSP, outlined by Article 36 of the TEU, the High Representative can consult the European Parliament and consider its views in the formulation of CFSP.¹³ The European Parliament has oversight over the CFSP, as it approves its budget. Given that all these parties are involved in the functioning of the CFSP, the quality of its decision-making, and therefore its adequacy can be said to be externally derived. In sum, the practical implications of all the institutional complexity described is that it is a constraint for the CFSP as it must go through multiple levels of

decision-making, immensely slowing down the speed of any implementation and shows a lack of clarity of who creates and is ultimately responsible for the CFSP.

Analysis and Discussion

In the "Special Report: Future of Europe", the Economist wrote that "Russia led by a newly belligerent Vladimir Putin, Turkey under an increasingly distant Recep Tayyip Erdogan, the Middle East a more violent mess than ever, Britain preparing to leave the EU and an apparently more isolationist America, it is no longer enough. The union clearly needs to focus more on strengthening its common foreign and security policy (CFSP)."¹⁴ The CFSP has seen recent success, most notably through the EEAS's work to secure the 2015 Joint Comprehensive Plan of Action (Iran Nuclear Deal) and placing sanctions on Russia, after the 2014 Crimea Invasion. The most pressing issues for CFSP are how to deal with future crises. These crises may come primarily in three forms: foreign aggression (both military or digital), mass movement of people (e.g., due to a refugee crisis), or a decline in current inter-governmental institutions and their cooperative framework (such as NATO). To best address these issues, this paper argues that the EU should develop the CFSP framework further, as it has with the development of deployment forces. Furthermore, the new institutions should try to the best of their capabilities to complement existing structures, such as NATO. This assumes that in the long run, the US will remain a staunch ally to Europe as it is in both of their strategic interests. This is most notably seen in the expansion of NATO from a military alliance to a "Security Community"¹⁵ which symbolized a change from merely being a military alliance, to a strategic cooperation with shared values.

The success of the CFSP will be determined by the willingness of EU Member States to make it work.¹⁶ This comes at a time when member states have experienced an influx of immigrants and rising electoral support for populist and Euro-skeptic parties during elections, such as UKIP for the UK, AFD for Germany, Front National in France, and so on. Discourse in Europe now emphasizes the loss of sovereignty to the EU. However, despite this, there are some positive signs, most notably the good intentions and forceful statements emanating from Germany and France.

Chancellor Merkel of Germany and President Macron of France have both called for the creation of an EU army to complement NATO.¹⁷ Merkel has stated that the EU Army would complement NATO rather than oppose it and that the member states, would not be able to easily integrate their military and defense capabilities due to prevailing disparities, such as different weapon systems. In light of the European Migration Crisis, the discourse of US President Trump, the abandonment of the INF Nuclear Arms Treaty by Russia and the US, tensions with NATO exemplified by recent conferences and the current political enthusiasm for European common defense, it seems more likely than ever before that European defense capabilities will expand. However, this expansion will not replace the security cooperation offered by NATO in the near future.

In 2018, the Permanent Structured Cooperation (PESCO), became part of the EU's security and defense policy. NATO's secretary general, Jens Stoltenberg, has publicly welcomed the formation of PESCO and has stressed the possible complementary nature of PESCO with NATO.¹⁸ Of the 25 Members¹⁹ of PESCO, 23 are members of NATO. Stoltenberg also stated that "military mobility can be the flagship of NATO-EU cooperation, which is being stepped up."²⁰ This also raises the question of the practical and

strategic feasibility of having an increasingly autonomous EU defense from NATO. As it stands currently, this is unlikely to occur. The reasons for this are that NATO already exists with its comprehensive structure, decision-making in NATO, and structural capabilities such as command lines already exist in NATO. However, EU security policy will must also focus on non-traditional security challenges described in this paper. The likely mechanism that PESCO will have is the ability of rapid deployment of security forces in cases of crisis. This measure is consistent with the recent challenges the EU has experienced. In the case of another migrant crisis or economic and political collapses of countries in the EU Neighborhood Policy (ENP), the mobility of PESCO gives the EU a rapid response mechanism. Furthermore, this is aligned with the Helsinki 'Headline Goal 2010' of establishing 'battlegroups', which gives "the ability for the EU to deploy force packages at high readiness as a response to a crisis either as a stand-alone force or as part of a larger operation enabling follow-on phases."²¹ However, the battlegroup concept is currently under revision and no battlegroup has ever been operative. "The ambition of the EU is to be able to take a decision to launch an operation within five days of the approval of the so-called Crisis Management Concept by the Council"²² If the battlegroups are sufficiently developed, this would add significantly to the adequacy of the CFSP and better allow them to respond to current and future security challenges.

The CFSP would have to deal with many other prominent issues, one of which would be counter-insurgency and counter-terrorism. The Battle of Baghuz Fawqani, saw ISIL losing its last controlled territory. However, home-grown terrorism and the resurgence of terrorist groups will likely remain a threat to the EU in the near future. In the Mediterranean, under CFSP policy, attempts to

reduce piracy have been made with efforts focusing on offshore Somalia. The CFSP will need to work across other areas, in order to meet its goals and not violate other EU institutions' jurisdiction. An additional concern is that climate change could be a potential security threat and has already become an important external affairs issue. There is a vast array of other emergent issues that also need to be addressed by the CFSP. To name a few: trade, the environment, the internet, and migration. As these issues are covered by different EU institutions, it becomes difficult for the CFSP to adequately address them.

Given the likely departure of Britain from the EU, the post-Brexit structure of the CFSP will be crucial, as it means the EU will lose one of its most important countries in terms of economics, military size and capabilities, nuclear power, and a permanent member of the UN Security Council. However, the UK is also one of the few countries that makes consensus difficult, and sometimes impossible within the CSDP. Member States have also experienced alleged Russian interference in elections and governance, and PESCO includes projects related to cybersecurity.²³ PESCO is part of the European Defense Agency (EDA), which is part of the CFSP.²⁴ The EEAS executes the policies established by the CFSP. Although the CFSP is limited, as shown earlier in this paper, through political cooperation new agencies can be created that support the development and implementation of CFSP. One conclusion one could draw from this is that CFSP is not adequately designed to implement foreign policy unilaterally. Giving the CFSP more power would require changes to the Lisbon Treaty, which is unlikely to occur.

Conclusion

As presently designed, the CFSP is insufficient at implementing the EU's foreign policy, however, it is adequate in formulating foreign policy and

moving agendas forward. Given new institutions that can develop a mandate for a CFSP, e.g., through PESCO or other institutions, the CFSP could respond to the current and future challenges of the EU. However, it is reliant on cooperation between the Member States and their political will, to be effective. The vague nature of the language on the competencies of the CFSP, highlight that it is not there to replace national foreign policies of Member States, but rather to be an instrument that promotes the general interests of all states and that can be used to respond to crises that affect the Union as a whole. The only way for the CFSP to make decisions is on the basis of unanimity with the exception of the issues defined in PESCO. When there is a consensus in the Union, the CFSP becomes powerful and can deliver strong foreign policy results, such as the Iran Deal or sanctions on Russia. In future migrant crises, it is possible that the deployment force created by the CFSP will be used, although a debate on the utility of such an action should be initiated. The future challenges of rising tensions with Russia, instability in ENP countries such as Algeria, the friction created by Erdogan in Turkey, current and future conflicts in the Middle East, and possible decline of NATO and the US alliance; can be addressed but not solved by the CFSP. However, with PESCO and continued developments, it is possible that the CFSP can play an important future role, in a way that it has not been able to do before now. The reason for this could be a stronger consensus in the EU after Brexit, and out of necessity to fulfill security objectives and maintain balance of power. However, this would require more transfer of power to the CFSP so that it can go beyond the present design constraints so it can be more effective than it has been thus far.

There are broader implications to consider here. The post-cold war international relations structure can be said to have shifted towards a multipolar

power structure. The bipolar dominance of the USSR and the USA has waned. Prominent IR Scholar and father of the Neorealism school of thought in international relations, Kenneth Waltz, suggested that a bipolar system is more stable than unipolar and multipolar systems. Furthermore, Waltz argues that wars are generated by imbalances in the international structure, and that this balancing is more likely to fail in multipolar systems. It can be argued that the US is now pursuing a Jeffersonian or Jacksonian policy, i.e. an introverted foreign policy with isolationist features. It is important to note here that the US is not pursuing a complete retrenchment policy, rather a revisionist policy. If this trend continues, then the current international system, characterized by multipolarity and the rise of China, may see the EU becoming even more influential in international peace and stabilization processes. The defining conflict may pivot fully to EU versus China and the key question for the EU then becomes internal political will and institutional design. If this pivot becomes the case, then having a robust foreign policy framework will facilitate peace and stability. CFSP will therefore be more important than ever to secure global stability.

Endnotes

- [1] M. Bruno Le Maire, 'Europe must become a "peaceful empire", says Minister'. *Embassy of France in London*, 9 November 2018, <https://uk.ambafrance.org/Europe-must-become-a-peaceful-empire-says-Minister>.
- [2] To see the treaties go to: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF and <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT>. Other treaties are also available on this website.
- [3] Bart Van Vooren and Ramses A. Wessel, *EU External Relations Law*, (Cambridge, Cambridge University Press, 2014), 347.
- [4] Van Vooren, *EU ER Law*, 347.
- [5] *Ibid.*, 347.
- [6] Panos Koutrakos, "Judicial Review in the EU's Common Foreign and Security Policy." *International & Comparative Law Quarterly* 67 (2017): 1-35. doi:10.1017/S0020589317000380.
- [7] Encyclopedia Britannica, 'Rene Pleven'. *Encyclopedia Britannica*, <https://www.britannica.com/biography/Rene-Pleven#ref73199>
- [8] Van Vooren, *EU ER Law*, 351.
- [9] *Ibid.*, 355.
- [10] *Ibid.*, 369.
- [11] *Ibid.*, 370.
- [12] *Ibid.*, 375.
- [13] *Ibid.*, 375.
- [14] The Economist, 'The importance of a European foreign and security policy'. *The Economist*, 23 March 2017, <https://www.economist.com/special-report/2017/03/23/the-importance-of-a-european-foreign-and-security-policy>.
- [15] Emanuel Adler. "The Spread of Security Communities: Communities of Practice, Self-Restraint, and NATO's Post—Cold War Transformation." *European Journal of International Relations* 14 (2008): 195–230. doi:10.1177/1354066108089241.
- [16] Van Vooren, *EU ER Law*, 35.7
- [17] Maia de la Baume and David M. Herszenhorn, 'Merkel joins Macron in calling for EU army to complement NATO'. *Politico*, 14 November 2018, <https://www.politico.eu/article/angela-merkel-emmanuel-macron-eu-army-to-complement-nato/>.
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- [19] Austria, Belgium, Bulgaria, Czech Republic, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain and Sweden.
- [20] NATO, 'NATO Secretary General welcomes PESCO, stresses need for complementarity. *NATO*, 14 November 2017, https://www.nato.int/cps/ua/natohq/news_148838.htm?selectedLocale=en.
- [21] http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/sede110705headlinegoal2010_/sede110705headlinegoal2010_en.pdf
- [22] Van Vooren, *EU ER Law*, 410.
- [23] European Defence Agency, 'Permanent Structured Cooperation (PESCO)'. *European Defence Agency*, <https://www.eda.europa.eu/what-we-do/our-current-priorities/permanent-structured-cooperation>
- [24] It might get a bit confusing here. The CSDP is part of the CFSP (articles 42-46) TFEU.

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