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**The Drivers and Destination of European Defence Cooperation:**

**Reconciling EU Law and IR Theory**

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*This paper investigates the factors underpinning the development of the European Union's Common Security and Defence Policy (CSDP) and the potential for more extensive cooperation in this policy area. It adopts an interdisciplinary approach using the insights of EU law to assess the utility of theoretical accounts of European defence cooperation. The paper breaks new ground by undertaking a legal study of the rules, procedures and constitutional specificity of CSDP that provides fresh insights into the theoretical contestation that surrounds the debate on the drivers and destination of European defence cooperation. In contrast to the majority of legal and political science accounts which emphasise the utility of constructivist approaches, this paper explores the explanatory power of Neorealism and the role of the 'balance of threat' as a driver of and limitation on CSDP. It highlights how the structural imperatives of the international system are fostering a broad process of convergence in the defence policies of the West European Great Powers (Britain, France and Germany). However, significant differentiation persists due to variance in the external vulnerability of these states. Furthermore, the paper finds that cooperation is limited by the impact of the Alliance Security Dilemma on the willingness of states to cede sovereignty in defence.*

**Introduction: Why EU Law and IR Theory?**

In its thirteen years of existence, significant steps have been taken towards endowing the CSDP with the institutional structures and military instruments necessary to make it an effective mechanism for dealing with sources of insecurity within Europe's geopolitical neighbourhood.

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However, important shortfalls in military capabilities remain. European states continue to duplicate military forces and capabilities and many EU members retain a substantial territorial defence capacity (Herz, 2009; Whitney, 2008: 5). Europe is also a long way from achieving an integrated defence market that will permit the economy of scale enjoyed by the US defence sector (Alto, 2008: 36-38). Furthermore, difficulties persist in NATO-EU cooperation, leading to areas of institutional competition which undermine the effectiveness of both organizations.

The initiation of Permanent Structured Cooperation in defence in the 2009 Treaty of Lisbon (ToL) as well as pooling and sharing initiatives such as CSDP's Ghent Framework and NATO's Smart Defence appear to offer new, more flexible opportunities for states to cooperate. However, as Moelling (2008: 3) notes: 'Whether or not CSDP continues to be a success story will depend not so much on the Lisbon Treaty provisions, than on the political will of member states to implement joint responses to security challenges'. This paper provides an analysis of the factors which determine the level of European political will to use these institutional mechanisms to pursue more extensive cooperation through CSDP.

The paper offers a novel contribution to the study of European defence through its interdisciplinary approach that uses the insights of EU law to assess the utility of existing theoretical accounts of defence cooperation. Law provides a fertile testing ground for theories of international cooperation, as it provides an excellent guide to the scope for state action in the policy area of defence and for EU institutions to foster a move toward supranational governance. The evolution of CSDP's legal status has generated responses from a relatively small number of legal scholars who have been preoccupied with either the EU's expansive approach to security[1] or the market aspects of military operations in order to depict the increasing convergence of national interests among the EU Member States vis-à-vis procurement cooperation.[2] Legal research on security and defence takes the approach that EU law constitutes a viable tool for integration but focuses upon the demarcation of its inherent limits rather than providing a treatise of 'defence integration'. For instance, in his review to Trybus' book on 'EU law and Defence Integration', Keukeleire (2006: 593) argues that 'the use of the "defence integration" perspective as the central thread comes across as rather artificial'. In short, legal research on CSDP omits to take into account the contribution of IR theory and consequently fails to adequately distinguish between the degree of cooperation achieved via legal arrangements and that accomplished through political will.

Hence the paper links EU law and IR scholarship by undertaking a detailed exploration of the structural factors which facilitate and hinder closer cooperation in European defence. The capacity of legal analysis to shed important empirical light on the extent of the shift from the 'sovereign' to the 'functional' in European defence and of IR theory to enrich legal scholarship by contextualizing it within its political context makes this paper of great relevance to scholars from both disciplines. In so doing the paper makes an important theoretical contribution to European defence. In contrast to the majority of the literature on CSDP that emphasises the analytical leverage of Constructivist/Governance accounts, the study explores the explanatory power of Neorealism. The paper examines the role of the balance of threat as a driver of CSDP.[3] Drawing upon the empirical insights delivered by an analysis of the legal bases of defence cooperation, the paper critiques the assumption inherent in Constructivist accounts of CSDP that a transition from the 'sovereign' to the 'functional' will be possible in defence.

The paper begins by outlining the legal framework of CSDP and the legal dimensions of the relationship between EU interests in the internal market and the member states' domestic security interests related to armament procurement. Having painted an empirical picture of the extent of the transfer of power to the supranational level in defence, the paper briefly undertakes a critical analysis of the analytical leverage provided by existing theoretical approaches the sources of defence cooperation and the potential for integration in this policy area. The paper then develops a balance of threat approach to understanding the convergence of European states around a process of 'reformed' bandwagoning on US power, before examining the impact of the 'Alliance Security Dilemma' and variance in external vulnerability on the scope and depth and cooperation. The study concludes with an analysis of the future directions for IR and Legal research on CSDP.

**The Legal Underpinnings of CSDP: The Primacy of State Sovereignty**

*Common defence policy or common defence?*

Since the Treaty of Maastricht, not only has defence policy cooperation in Europe been formalised but it has also been given a fully-fledged legal body. Currently, CSDP occupies Chapter 2, Section 2 of the TEU. The ToL has involved measures to strengthen the capacity of European security cooperation by facilitating the cross-national coordination of defence policy. What is more, the ToL has addressed the institutional vacuum of the former ESDP. Yet, the ToL is explicit that the progressive framing of CSDP towards common defence constitutes a future possibility. As it is argued in this section, the ToL reforms have not pushed towards an integrationist approach in the old 'Communitarian' sense. This is due to the absence of consensus between the Member States on key questions of foreign policy, which is reflected in the limited mandate of CSDP operations. As such, traditional dividing lines among the Member States, including reluctance to cede full authority to a supranational organisation, continue to undermine EU efforts towards policy coherence and collective action within the legal sphere of defence cooperation.

There are two dimensions to 'defence' envisaged by EU law in the context of the CSDP. In the absence of a literal definition of 'defence' in the EU Treaty, Article 42 (2) TEU of the ToL contains a mandate for the European Council, acting unanimously, to progressively develop a 'common EU defence policy', which will allegedly lead to a 'common defence'. The ToL, therefore, distinguishes between i) a 'common defence policy' which falls within the ambit of EU competence and ii) 'common defence' per se that currently comprises a mere option or, to put it differently, an advanced stage of EU integration largely dependent on political will.

With regard to the formation of a 'common defence policy', the concept of security canvassed by the ToL is multidimensional with tasks ranging, according to Article 43 TEU, from humanitarian and rescue operations to peace-making and post-conflict stabilisation. The ToL has revolutionised the legal infrastructure of CSDP by introducing new institutions such as the new post of the High Representative of the EU for Foreign Affairs and Security Policy and her coordinating role under Article 43 (2) TEU); the new mutual defence clause (Article 42 (7) TEU), the extension of the Petersberg Tasks (Article 43 (1) TEU) and the prospect for

their implementation by a group of Member States (Article 44 TEU). The ToL has also authorised the termination of the Modified Brussels Treaty 1949 and the end of WEU operations. It has lastly provided for the institutionalisation of the European Defence Agency (EDA) in order to promote greater cooperation in the field of armaments procurement (Articles 42 (3) and 45 TEU).

With reference to 'common defence' as the second conceptual feature of CSDP, the transformation of CSDP to 'common defence' will have to be adopted by the Member States according to 'their constitutional requirements' as per Article 42 (2) TEU. As such, against the ambitious Helsinki Headline Goal 2003 calls for self-sustaining European forces, the CSDP legal framework put in place by the ToL confirms that state actors still dominate policy agenda-setting and implementation. Hence, the ToL reforms aside, EU law does not challenge the predominance of the state as the central actor in defence policy formulation and implementation. Neither does it cast any doubts as to NATO's supreme role in European security. Equally, the relevant provisions of the ToL do not push towards an integrationist approach that would compromise the intergovernmental nature of CSDP. This is the case especially since decisions in the field of defence still come under the unanimity rule. Finally, under Article 24(3) TEU, cooperation under the CFSP (including CSDP) falls outside the jurisdiction of the Court of Justice of the EU (CJEU). Despite the purported 'de-pillarisation' of the EU by the TolL, one can, therefore, argue with confidence that the legal underpinnings of CSDP strongly retain the primacy of state sovereignty.

*Defence Industrial Collaboration and Armament Procurement: Flexibility and National Autonomy*

This section will focus on the legal underpinnings of collaborative defence procurement within the EU framework, providing a synopsis of the law applicable to EU defence procurement. It will examine the various initiatives undertaken within the EU legal framework which aim at intensifying cooperation in CSDP. We will also briefly discuss the procurement rules of the European Defence Agency (EDA), which serves as the prime example of European collaborative defence procurement programmes within the auspices of the EU. The purpose of this section is to demonstrate that despite the proliferation of EU collaborative procurement initiatives, there is still way to go for Member States before transferring any decision-making powers to EU institutions. This is because defence

procurement consists of a significant part of Member States' public spending. It comprises a national competence characterised by a complex legal framework with regard to the publication of contract notices and selection criteria towards public contracts covering defence products. As such, although public procurement in general falls within the scope of EU primary law on the prohibition of barriers to free movement, Member States appear reluctant to compromise their own preferences and, therefore, trust the EU with the organisation of their domestic enterprises.

Defence procurement in Europe has been regulated both within the auspices of the EU and outside EU structures (Dyson and Konstadinides, 2013). The main EU instruments regulating defence procurement law are the principles emanating from the EU Treaties and two 'Defence' Directives on public procurement in security and defence (Directive 2009/81/EC) and on intra-EU transfers of defence products (Directive 2009/43/EC). Despite the harmonisation of national procurement laws through EU secondary legislation, Member States still appear reluctant to unreservedly include armaments within the framework of EU law. They have, therefore, often resorted to a protectionist approach by awarding contracts to national firms without competition or advertising. This practice which amounts roughly to half of defence procurement in the EU (Heuninckx, 2008:2) clearly contradicts the requirement that national defence procurement contracts with clear cross-border interests have to be in compliance with EU law. Despite this development, the role of the Commission has been vital in bringing national defence industries closer to the application of EU law. Since the 1990s, the Commission has produced detailed legal guidelines calling specifically for cooperation in the area of public procurement.[4] In particular, the Commission's Interpretative Communication on the application of Article 346 TFEU (ex Article 296 EC) renewed the EU's commitment to focus on the CSDP's scope of application by determining the breadth of national essential security interests.[5] What is more, the new legislative framework under the two abovementioned sector-specific Directives clarified the scope of application of the EU defence procurement system and enhanced competition for defence contracts.

The EU's steps to consolidate the economic aspects of the CSDP via defence industrial consolidation and more efficient public procurement were not immediately welcomed by Member States. This was, especially, due to their automatic reliance on Article 346 TFEU to

exempt most defence contracts from the scope of EU law. Indeed, Article 346 TFEU emphasises how Member States may take necessary measures for the protection of their essential security interests which are connected with the production of or trade in arms. This exception has not allowed for much use of Article 10 of the general Public Sector Directive 2004/18, which includes *inter alia* defence procurement within the scope of EU coordination of procedures for the award of public contracts. Against this backdrop, the CJEU has emphasised that while Member States are responsible for determining issues regarding the preservation of their national security, there is no general principle excluding procurement issues from the Treaty's scope.[6] This is the case even when EU primary law (Article 346 TFEU) stipulates exceptions for national security reasons in the field of armament production and trade. In the same vein, the CJEU has established that national practices exempting their defence contracts from the scope of EU law can be in breach of the conditions of competition in the internal market in the same way as measures regarding products, which are not intended for specifically military purposes.[7] Although a plain reading of Article 346 TFEU leaves one in doubt as to what falls within or outside its scope *vis-à-vis* whether a piece of equipment is specifically intended for military purposes, the CJEU has recently engaged into a rigid assessment which has narrowed the scope of this ambiguous derogation.[8] This development will no doubt have an impact upon Member States' freedom to define their own security priorities and shape the essential interests of their national defence.

Prior to the ToL, apart from the proliferation of defence procurement secondary legislation adopted under the former First Pillar, there was an almost parallel progress within the former Second Pillar, namely the establishment of the EDA. The EDA, introduced by Article 42(3) TEU, is a centralised European defence procurement agency set up by a Council Joint Action within the CFSP and all Member States are participants (the exception is Denmark).[9] It is responsible for promoting European armaments cooperation by opening up the defence markets of the Member States and promoting efficient and fair competition. Under the ToL, Article 45 TEU provides for the institutionalisation of the EDA within the legal framework of the CSDP. Furthermore, in order to perform its functions, the EDA has legal personality, although due to its nature as an EU agency it acts within the EU framework. This enables it *inter alia* to conclude contracts, to be party to legal proceedings and to enter into administrative arrangements with third States. As such, the EDA has successfully focused on key projects related to the promotion of European armaments cooperation and enhancement

of the defence technological and industrial base at EU level and beyond. The EDA's role is not to duplicate existing collaborative armament programmes in Europe but to support the Council and the Member States towards improving the EU defence capabilities within a voluntary and non-binding intergovernmental framework. Accordingly, the general rule is that all public contracts have to be put out to tender and would be awarded by the EDA on behalf of the participating Member States. Finally, the EDA procurement rules should not prejudice the measures adopted by Member States invoking the exception clause of Article 346 TFEU or Articles 10 and 14 of the Public Sector Directive 2004/18/EC.

Despite its contribution in facilitating cooperation in European armaments integration, the EDA has several limitations. First, its activities vary according to its participants' interests. For example, although the EDA is not an armaments acquisition agency, Member States are free to designate it as the central purchasing body. This creates uncertainty in the application of the public procurement Directives upon it. These Directives were enacted in order to harmonise national procurement practices and not with a view to apply to EU agencies. Moreover, since the EDA has no say over the Member States' essential security interests, it cannot effectively invoke Article 346 TFEU to derogate from the Treaties' application. It can only refrain from complying with the EU procurement framework if Member States decide to invoke Article 346 TFEU in relation to EDA procurement programmes. Last but not least, the EDA is not yet a defence procurement programme coordinator. It merely manages projects on behalf of the Member States and is controlled by them, operating under the political supervision of the Council and financed by the Member States (Koutrakos, 2011). On a different note, the EDA is an awkward institutional partner to the Commission *vis-à-vis* the delimitation of the market from the political elements of defence (Georgopoulos, 2005: 110; Trybus, 2006). Finally, the EDA remains detached from the wider European citizenry and democratically illegitimate (Griller and Orator, 2010). These shortcomings aside, the EDA is the first agency that brings European armaments cooperation under the umbrella of EU law. As such it has facilitated further EU action in the field of industrial defence policy by addressing the existing capabilities gap in Europe.

The first conclusion that can be drawn from this legal analysis is that despite the EU's assumption of a broad range of security-related tasks that have augmented its presence as a civilian actor, there is lack of consensus between the Member States on key questions of foreign policy, which is reflected in the limited mandate of CSDP operations. It is also evident that the

ToL has not changed the manner in which CSDP policy formulation and execution operates. Policy decisions are still by and large taken unanimously by the EU-27. Likewise, when it comes to the jurisdiction of the CJEU with regard to the interaction of security and defence with other EU external policies, the ToL has retained the separation between the former First and Second Pillars.

The above examples demonstrate that despite the demand for retaining and developing military capabilities for sustaining and enhancing CSDP, European defence cooperation remains bound to legal limitations. As the following sections will demonstrate, such limitations are illustrative of the lack of political will to generate concrete cooperative initiatives vis-à-vis credible CSDP defence capabilities. As such, the use of CSDP by Member States as an effective component of the EU's response to global threats and a means of facilitating cross-national coordination of defence policy remains a work progress. The ToL is far from generating initiatives that would compromise national autonomy in military planning (Blockmans and Wessel, 2009: 305). EU law has rather concentrated on the place of defence industries at the centre of CSDP. Yet, despite the rise of EU collaborative procurement initiatives, in the absence of structured coordination of national policies, the European armaments market appears fragmented along national lines.

**Constructivism and CSDP: Neorealism as a Straw Man**

Debate on the drivers and destination of CSDP is characterised by a high-level of theoretical contestation. Constructivism forms the ascendant approach, particularly within European academia.[10]   At the core of Constructivist thought lies the premise that socially and institutionally-embedded norms (rules of 'legitimate or appropriate behaviour') inform identities and, therefore, interests. Hence Cornish and Edwards (2001), Giegerich (2006), Howorth (2007), Rieker  (2006) and Meyer (2005) argue that CSDP provides evidence of the development of a European 'strategic culture' and the 'Europeanisation' of national defence and security policies. From this perspective, normative convergence at the national level is taking place, not only around key security challenges, but also around the instruments which should be deployed in response. Howorth (2007: 203-05) concludes, therefore, that CSDP represents a 'new normative approach to IR' that is distinct and autonomous from NATO.  According to Howorth (2007: 176; 203-05), this emerging European strategic culture is based upon the mobilisation of a range of policy instruments, an emphasis on civilian crisis-management and

prevention; a global scope of missions; multilateralism and a new definition of power that blends elements of 'civilian' and 'hard' power, in contrast to NATO's focus on hard power and global, high-intensity operations.

Constructivist perspectives on European defence cooperation are also associated with the concept of 'Security Governance' that points to the gradual erosion of the nation-state as the sole actor in defence and security policy agenda-setting and implementation (Webber, 2004: 3-26). As institutional structures are established above the nation-state and policy agenda-setting and implementation becomes increasingly multi-level, a gradual 'socialisation' and 'policy-learning' dynamic emerges that accelerates processes of normative convergence at the domestic level and increases the willingness of states to devolve competencies to the supranational level (Howorth, 2007: 196-97; Reynolds, 2007: 359-60). At the heart of such approaches lies the assumption that 'anarchy is what states make of it': that the state enjoys a significant level of 'international agential power'[11]. For Constructivists, CSDP forms, therefore, a nascent, but increasingly robust example of the capacity of states to rise above the competitive nature of the international system (Cornish and Edwards, 2005: 817-18; Howorth, 2007: 205-06). As Webber et al (2004: 19) argue: 'The involvement…of heterarchical power centres, multiple actors, new institutions and ideational exchanges has generated a powerful and purposeful momentum in favour of ESDP…The Europeanisation of security has been the great political revolution of the late twentieth and early twenty-first century'.

However, the empirical picture painted by the legal analysis outlined earlier in this paper highlights the limited shift from the sovereign to the functional in defence. Indeed, the Constructivist reading of the drivers and potential destination of CSDP is challenged by Neorealist scholars who argue that CSDP's emergence is consequent upon the adherence of European states to the powerful material forces of the balance of power (Jones, 2007; Posen, 2004: 1-17). While these forces lead to the convergence of defence and security policy objectives and instruments (military structures, doctrine and capabilities), they also entail significant limitations on the scope of cooperation in defence. The Constructivist literature on CSDP is dismissive of the insights provided by Neorealism, yet it is guilty of portraying Neorealism as a 'straw man'.

In his review of Neorealist scholarship, Howorth (2007) fails to explicitly engage with the insights of Waltz (1979) about the balance of power's impact on regional security arrangements

or with Posen's argument that CSDP represents an instance of 'soft balancing' against US power (Posen 2004: 1-17). Similarly, while developing an empirically-rich and sophisticated account of CSDP's impact upon national strategic cultures, Giegerich (2006) does not explore the potential of Neorealism. The contribution of Neorealism also receives no attention in the work of Cornish and Edwards (2001), while Merand (2005) focuses on refuting the 'soft-balancing' thesis. This hasty jettisoning of Realist thought is not confined to Constructivist analyses. In her analysis of European defence cooperation through the prism of 'two-level games theory', Matlary (2009: 79) dismisses Realist theory on the basis that 'realist power balancing appears to be very far from political realities in Europe', thereby painting a rather uni-dimensional picture of possible European responses to a uni-polar international system. However, Realism has much to say about the scope and form of contemporary European defence cooperation and cannot be so easily discarded.

## Neorealism and the Drivers of CSDP: Reformed Bandwagoning on US Power

Neorealism's vision of the international system is one of uncertainty and competition in which the opacity of other states' intentions forces states to adopt offensive strategies in order to maximise their security (Labs, 1997; Waltz, 1979). However, the international system is not characterised by a constant 'pure war', as the intensity of the security dilemma varies over time and space. The likelihood of conflict or cooperation between states is dependent upon the distribution of material power in the international system.

Four main distributions of power exist: unipolarity; bipolarity[12]; balanced multipolarity, and unbalanced multipolarity (Hyde-Price, 2007: 41-44). Unipolarity is characterised by the economic and military dominance of a single state and is prone to instability. In order to maximise its security, the unipolar leader will seek to enhance its relative lead over other competitors by creating an offensive military. The hegemon will attempt to increase its influence in strategically-important areas of the globe through unilateral and preventative military action ('offensive unipolarity') (Mearsheimer, 2001: 41-45). Unbalanced multipolarity (where three or more states enjoy relatively similar material power, but one state has the potential to achieve hegemony) is a particularly unstable configuration of power, while balanced multipolarity (where the major powers enjoy relatively similar power capabilities and no one state has the potential to strive for hegemony) is a more stable power distribution. Post-Cold War Europe is situated within a unipolar international system in which the US is acting according to the

dictates of offensive unipolarity, highlighted by the increasingly unilateral behavior of the US (Hyde-Price, 2007: 83-86). At the same time, Europe is subject to regional 'balanced multipolarity' due to the power balance between Britain, France and Germany. This power distribution is highly-conducive to isomorphic European responses to structural imperatives.

There are, however, two possible responses for European states to unipolarity. Firstly, 'balancing' that involves re-armament and the formation of a military alliance against the state of greatest capability, in order to contain its power. According to Jones (2007), Layne (2006: 34-36), Pape (2005: 7-45), Posen (2004: 1-17) and Walt (2002; 2005: 129), CSDP forms an example of 'soft balancing' against the U.S., involving the use of non-military tools to frustrate unilateral action by the hegemon and the beginning of a more explicit military alliance to oppose US power. Such a strategy is accompanied by high risk as it requires not only significant resource allocation, but may also provoke pre-emptive action by the unipolar leader. There is, indeed, a high-level of contestation within Realist thought on whether states balance against or side with (bandwagon) the dominant state in a unipolar international system. While the likelihood of eventual attack by the dominant state led Waltz (1979: 126) to argue that state balance against capabilities, Walt (1985) argues that states are not only concerned with countering the power of the state of greatest capability, but the state that is the most threatening. A less powerful but closer state that is equipped with offensive military capabilities poses a greater threat than the unipolar leader (Walt, 1985: 8-12).

Walt's theory would appear to be verified by the empirical evidence of European security dynamics. European states appear to be continuing to bandwagon on US power, as the global hegemon is a vital ally against closer and more threatening states such as Russia and Iran, as well as the security challenges deriving from failed and failing states. Rather than a competing security framework to NATO, CSDP represents a key pillar of a process of 'reformed' bandwagoning on US power in which European states side with the strongest power in the international system for 'opportunistic gain' (Schweller, 1994: 81-82). This strategy is not without risk, as bandwagoning will increase the power of the unipolar leader, who may ultimately turn against its Allies once common foes are defeated. However, the imperative of tackling proximate, immediate opponents is greater for secondary states; a factor that is magnified by the inherent uncertainty involved in longer-term strategic calculations, incentivising a focus on the maximisation of security over the short-medium term (Labs, 1997: 15-16).

During the bi-polarity of the Cold War, Western European states bandwagoned on the US nuclear guarantee in order to attain security from the threat posed by the Soviet Union. In the post-Cold War era, this process of bandwagoning has undergone a process of reform that has been focused on three key areas. Firstly, attaining greater influence in Washington through the creation of the NATO Response Force (NRF) in 2002 and burden-sharing in ad-hoc coalitions of the willing (notably troop contributions to US-led expeditionary operations in Afghanistan and Iraq) (Press-Barnathan, 2006: 285). The second key pillar of 'reformed' bandwagoning has involved hedging against the threat of abandonment by the US through the Battlegroup Initiative and an increasingly militarised CSDP that will allow the Europeans to take independent actions within their geopolitical neighbourhood in cases of US disinterest. (Hyde-Price, 2007: 88-90; Rynning, 2005: 151-57).

Finally, it is also important to note of a set of flexible bi/pluri-lateral initiatives, both within NATO and CSDP and external to these organisations, which have arisen to facilitate cross-national capability procurement and troop contributions to CSDP/NATO missions. Such procurement initiatives within CSDP include the European Defence Agency's Joint Investment Programmes on Force Protection and Innovative Concepts and Emerging Technologies; the European Defence Agency's (EDA) Miracle Project on Micro-Satellite Cluster Technology; the July 2006 Code of Conduct of Defence Procurement and the Galileo Project under the European Space Agency. Arrangements outside CSDP and NATO include the SAR-Lupe, Pleiadas and Common Operational Requirements Programmes and nEUROn Unmanned Aerial Combat Vehicle Demonstrator Project. These projects are aimed at enhancing the Command, Control, Communication, Computer, Intelligence Surveillance and Reconnaissance (C4ISR) capabilities of participating states. Furthermore, the Organisation for Joint Armaments Coordination (OCCAR) was established in 1996 to manage collaborative arms procurement programmes and in 1998 the Letter of Intent (LOI) on developing a more integrated European defence market was signed. The LOI has since been supplemented by the 2001 Framework Agreement on compatibility in defence supply. A range of capability procurement initiatives have also been established within NATO, aimed at enhancing the Alliance's C2ISR capabilities (Dyson, 2010: 71-76).

An array of flexible, bi/pluri-lateral force-generation and command and control standardisation initiatives have also been established outside CSDP/NATO frameworks.

These initiatives include EUROCORPS, EUROFORCES, the European Gendarmerie Force, German-Netherlands Force, European Amphibious Initiative, European Air Group, Movement Coordination Centre Europe, Nordic Coordinated Arrangement for Military Peace Support, Baltic Defence Cooperation, Multinational Peace Force South East Europe and Multinational Interoperability Council (Dyson, 2010: 75-84).

However, the convergence of European states around a process of reformed bandwagoning on US power is not without contestation. Indeed, the development of two organisations with increasingly similar instruments competing over similar objectives would, at first glance, appear to point to the emergence of regional security competition. Steps have been taken during recent years to facilitate cooperation in force planning command and strategic coherence between CSDP and NATO (Mowle and Sacko, 2007; Rynning, 2005: 155; 172). Yet these arrangements have faltered due to differences between France and the UK about the relative prominence of NATO and the EU in European security.

The 2003 Berlin-Plus Agreement ensured the inclusion of EU outsiders into CSDP and granted the EU the right to use NATO operational planning, capabilities and assets. However, Berlin Plus did not clarify a 'division of labour' between the two organizations (Hofmann and Reynolds, 2007: 2). Furthermore, in April 2005 Belgium, France, Germany and Luxembourg attempted to initiate a permanent EU operational headquarters (an initiative reattempted by France, Germany and Poland in 2011). Both these attempts at decoupling the EU from NATO operational planning capabilities failed in the face of opposition from the UK that feared enhanced competition between the EU and NATO. A compromise agreement in 2005 did, however, led to the establishment of an EU planning cell at NATO and a NATO liaison cell within the EU Military Staff. Yet the work of these planning/liaison cells has been undermined by the lack of a security agreement between the EU and NATO, hence neither organisation can share official documents (Hofmann and Reynolds, 2007: 5).

In addition, the poor relationship between Cyprus and Turkey has undermined the work of the EU-NATO Capability Group (established in 2003 to enhance the complementarity of EU-NATO capability development), as Cyprus has blocked an administrative arrangement between Turkey and the EDA (Sturm, 2010: 3). Berlin Plus has also allowed Turkey to block the sharing of NATO information with Cyprus and Malta. Since their EU accession in 2004, formal meetings have had to take place without the participation of Cyprus and Malta and

these meetings can only discuss Berlin-Plus operations, leaving central issues of EU-NATO cooperation, such as Afghanistan and Kosovo, untouched (Sturm, 2010: 3).

Yet there are also strong signs of EU-NATO complementarity. To begin with, many of the military capabilities developed under CSDP will also be of use to NATO missions. Reflecting Europe's military isomorphism during the post-Cold War era, CSDP is attempting to develop interoperable capabilities for full-spectrum military tasks, particularly in effective engagement, tactical and strategic lift and C4ISR (Dyson, 2010: 67-69). These developments mirror efforts within NATO's C3 Agency and the Multinational Interoperability Council (Dyson, 2010: 72). Stronger coordination between the EU and NATO is, however, required in order to foster greater cohesiveness between EDA and NATO procurement programmes (Valasek, 2007). The EU and NATO must also reach formal agreement on pooling key 'enablers', particularly heavy airlift, to ensure that in the event of the simultaneous Battlegroup and NRF deployment, Europe is not left bereft of such capabilities (Valasek, 2007). However, NATO and the EU have made informal attempts to 'de-conflict' the rotation of national capabilities available for the NRF and Battlegroups (Moelling, 2007).

CSDP also displays three important differences to NATO which enhance the organisations' complementarity: function; intensity and geographical scope. Firstly, while CSDP and NATO both emphasise crisis-management, CSDP, unlike NATO is not an instrument of collective security. Secondly, the two organisations differ in the intensity of operations undertaken. The contemporary operational environment, where conflict can vary rapidly in intensity, makes an element of duplication inevitable, as both organisations must ensure that they are capable of operating across a broad spectrum of conflict. However, the vast majority of operations under CSDP have primarily involved the use of civilian capabilities, whereas NATO operations have largely involved the deployment of high-intensity military force.

This variance in intensity is evidenced by the differences between the Battlegroups and NRF. While the NRF consists of a core element of 5-10,000 troops it can, at full capacity, command a force of up to 25,000. In contrast, the Battlegroup Concept is capable of deploying up to 3,000 troops at any one time. Moreover, the Battlegroups do not have dedicated maritime and air capabilities and consist only of land forces. The NRF, on the other hand, is fully self-contained, consisting of air, land and maritime components and is, therefore, capable of undertaking a broader range of military tasks. In addition, the Battlegroups have a stronger emphasis on tasks

at the lower-end of the conflict spectrum, whereas the NRF focuses on collective defence, high-intensity war-fighting and disaster management (Moelling, 2007). Furthermore, although the NRF is capable of acting as a 'stand-alone' force, the Battlegroups are limited to a small-scale, initial-entry 'bridging' role (Lindstrom, 2007: 18). The complementarity of the Battlegroup and NRF initiatives has also been bolstered by the Battlegroup Concepts' use of NRF criteria for certification (Moelling, 2007).

Furthermore, NATO and EU operations have been characterised by spatial differentiation. The EU's strategic radius has grown rapidly since 1999, yet the majority of EU operations have taken place within the EU's geo-strategic neighbourhood (Europe, the Middle East and sub-Saharan Africa) (Jones, 2007: 216). CSDP's lower-intensity and geographically-limited role reflects its responsibilities in picking-up largely low/medium intensity tasks consequent upon partial US disengagement from the former-Yugoslavia and sub-Saharan Africa. As an organization closely linked to US policy, NATO deployments have been increasingly global, with the majority of troops operating under NATO currently deployed in Afghanistan. (Mowle and Sacko, 2007: 597-618).

Important changes have also taken place to French defence policy which point to growing Atlanticisation of its defence policy, pointing to the potential for greater complementarity between NATO and CSDP. Crucially, France has abandoned its 'semi-detachment' from NATO. This process began during the early 1990s, though it was not until 2009 that President Nicolas Sarkozy signalled a clear break with a key tenet of Gaullism by full returning to NATO's integrated command structures. Although differences continue to persist between the UK and France over the scope of European defence autonomy, France's return to NATO has formed the basis for further cooperation between the two states. This cooperation has been forcefully demonstrated by the 2010 Franco-British Treaty. France has also been increasingly willing to support US-led operations, such ISAF and Operation Unified Protector.[13]

At the same time, while the UK remains opposed to the establishment of a permanent European operational planning capability, it has been increasingly willing to support other efforts to enhance Europe's capacity to undertake autonomous operations (Dover, 2007). British leadership has been central to CSDP: to its launch at the December 1998 St Malo

Summit and to the Battlegroup Concept that was first developed at the February 2003 Franco-British Summit (Kaitera and Ben-Ari, 2008: 1).

Hence CSDP/NATO relations present a complex picture containing elements of both complementarity and competition. It is, however, clear that while a number of European states have been willing to push for measures within CSDP which foster an element of duplication with NATO, this does not represent an attempt to reduce the role of the US in European security. While not abandoning its support for European military autonomy, France has sought closer relations with NATO during the post-Cold War era. At the same time, staunch Atlanticists, such as the UK and Poland have been increasingly willing to put their weight behind CSDP. The European Great Powers have also thrown their support behind a plethora of force generation and capability procurement initiatives outside of the framework of CSDP and NATO, many of which will augment the capacity of both the EU and Atlantic Alliance to undertake expeditionary crisis-management operations.

Hence Neorealism provides a compelling account of the forces driving convergence in the defence policies of the West European Great Powers towards NATO and CSDP. However, as the following section will demonstrate it also delivers theoretical mechanisms for explaining the highly-intergovernmental nature of CSDP and the differentiation in the embeddedness of European states' defence policies within the EU and NATO that has been highlighted in this section.

*Neorealism and the Limits to Cooperation: The Alliance Security Dilemma and External Vulnerability*

Constructivists, such as Howorth (2004: 239) argue that Neorealism views CSDP as 'fundamentally flawed'. This is a rather exaggerated claim. The convergence of European states around reformed bandwagoning has created a strong degree of momentum behind numerous functionally-complementary capability procurement and force generation initiatives within and outside NATO/CSDP. But while not fundamental, a significant flaw exists in CSDP that accounts for the highly-intergovernmental nature of European defence. The 'Alliance Security Dilemma' within the EU and NATO acts as an impediment to a shift from intergovernmental coordination to integration and governance (Snyder, 1984: 461-95). The fears of abandonment or entrapment by alliance partners are central to the strategic

calculations of European states. Every military alliance involves a trade-off between these two problems (Press-Barnathan, 2006: 271-309; Snyder 1984: 467).

Entrapment by the US is more of a secondary worry for European states, due to the broadly unifying security challenges which impact on the US and Europe and the high power disparity between European states and the US that dictates dependence on US power. However, abandonment by the US, or other European alliance partners, presents a significant risk. As Snyder (1984: 466) notes, abandonment refers not only to full defection from an Alliance, but can be manifested in a number of ways: 'the ally may realign with the opponent; he may merely de-align, abrogating the alliance contract; he may fail to make good on his specific commitments, or he may fail to provide support in contingencies where his support is expected'. Although the balance of threat creates an incentive to pool resources, European history provides many examples of these different forms of defection from alliances. EU and NATO states cannot, therefore, be fully certain that their European partners and the US will remain true to their promises. Consequently, states remain highly-sensitive to the potential threat of losses in relative power which can derive from defection and are highly-cautious about relinquishing sovereignty in defence.

As an interview partner within the German Christian Democrats noted: 'The problem with pooling and sharing [capabilities and forces] through the EU is that it is impossible for us to find a sufficiently reliable partner. The risks of cooperation outweigh the potential benefits'.[14] The Federal Republic has taken a lead role in pooling and sharing both through the Ghent Framework and NATO's Smart Defence. Nevertheless, Germany is only willing to pool in areas which do not foster dependencies that reduce national strategic autonomy and affect its ability to 'put boots on the ground'.[15]

As the previous section has demonstrated, European states differ in the extent to which they are willing to embed their defence policies within CSDP, NATO and in the level of national autonomy they wish retain; a factor that plays an important role in fostering institutional competition between CSDP and NATO. These variations in preference for the venue and depth of cooperation derive from subtle, but important, differences in external vulnerability. As the following case study of German abstention from the UN Security Council Resolution on Libya will highlight, this variance in external vulnerability can have an important impact

on states' calculations of the appropriate trade-off that should take place between abandonment and entrapment by the US and their willingness to frame their defence and security policies within CSDP, NATO or, as in the case of Germany and Operation Unified Protector, national strategic autonomy.

While Constructivist accounts of German foreign policy privilege the impact of Germany's anti-militaristic strategic culture on its unwillingness to play an active role in Operation Unified Protector (Aronsson and Keller, 2012: 12), another variable played a prominent role: access to secure oil supplies. Given the importance of access to secure oil supplies to the health of national economies, oil is central factor in enabling the maximisation of relative power in the international system. Both Britain and France have identified Libya as a potential source of dependable oil supplies in the context of the depletion of North Sea oil. For the UK the prospect of declining North Sea oil has not only left it facing a drop in domestic supply, but also in the oil reserves of its largest importer (Norway). The UK's dependence on oil imports have gradually increased during the last decade. In 2003 imports comprised some 34% of UK crude oil consumption.[16] This figure rose to 46% in 2008.[17] At the same time, Norway, that supplied Britain with 55.2% of its crude oil imports in 2008, will not be a reliable source of oil over the medium to long-term.[18]

The UK therefore urgently needs to identify new sustainable and reliable sources of crude oil. In 2004 Libya accounted for only 0.25% of UK imports.[19] However, this figure rose to 3.6% by 2008 and looks set to increase significantly.[20] Secret Foreign Office documents leaked in August 2009 illustrate how the Labour government (1997-2010) had been courting Libya as a new source of oil that will be capable of supplying a high percentage of UK supplies.[21] Libya has the largest proven oil reserves in Africa (46 billion barrels); an estimated 3.6% of the world's untapped oil reserves and is the world's 9th most oil-rich state.[22] Furthermore, Libyan oil can be safely transited to the UK through secure European sea lanes. A long-term strategic partnership was signed in 2004 between Libya and the British oil company Shell to explore new oil fields.[23]

France also views North Africa, and particularly Libya, as a key pillar of its future energy security. Like the UK, France is heavily reliant on North Sea oil and Norway's declining oilfields (Norway accounted for 15% of French crude oil imports in 2008, down from 19% in

2003).[24] In 2003 Libya accounted for only 4.2% of total French oil imports,[25] rising to 10% by 2009.[26] The divergence in external resource dependency between France, Germany and the UK has been given clear expression in official policy documents. The French 2008 Defence White Paper identifies a main strategic axis characterised by a 'concentration of energy resources' stretching from the Atlantic to the Indian Ocean.[27] During the 2000s Libya accounted for between 8% and 10% of German crude oil imports (8.5% in 2008).[28] However, in contrast to France and the UK, Germany's energy security priorities are focused on a 'strategic ellipse' that includes Russia, the Caucuses, Central Asian Republics, Iran, Iraq and the Arabian Peninsula.[29] Germany views the Middle East, Russia and the Central Asian Republics of Azerbaijan and Kazakhstan as its suppliers of choice to compensate for the decline of Norwegian oil stocks (Goetz, 2007: 18).

In short, Libya has been identified as a central pillar of future British and French energy security, providing an important rationale for military intervention by these two states. As Santini notes: 'French and British energy interests will especially benefit from a more structured and advantageous presence in Libya facilitated by their military engagement and their pro-National Transitional Council stance'.[30] Germany, that is looking to Eurasia for the lion's share of its energy supplies, lacked a similar strategic motivation for intervention. As a senior source within the German Foreign Ministry noted: 'The lack of German oil interests in Libya made it much easier for Westerwelle [German Foreign Minister 2008-present] to adopt an anti-war position'.[31] Hence Neorealism's focus on differentiated patterns of external resource dependency provides a powerful explanation for the adoption by Germany of a position of national strategic autonomy on Libya.

Variance in external vulnerability is also of great utility in explaining other instances of divergence in European defence such as British Atlanticism and the traditional French proclivity for national strategic autonomy and Europeanised defence cooperation. Dependence on the US to secure global power and influence following the end of Empire and its reliance on the US for technology transfer, has left Britain uniquely vulnerable to US defence planning decisions and loathe to take decisions which may threaten US engagement in Europe (Keylor, 2006: 306). France, on the other hand, by virtue of its geographic position, is particularly sensitive to German power, fostering a reluctance to depend too heavily on Anglo-Saxon Alliance partners to guarantee its security. Combined with French dependency

on Empire for key mineral resources, this variance in external vulnerability fostered a focus during the Cold War and initial post-Cold War era on national strategic autonomy and the framing defence cooperation within European structures (Dyson and Konstadinides, 2013; Martin, 1989: 625). France's geographical vulnerability to German power remains, however, as sub-Saharan Africa has become less important for French energy security, so a greater convergence with UK and US interests has taken place in the context of the threat of declining global oil reserves. Consequently France has become increasingly (if not fully) willing to embed its defence policy more firmly within NATO.[32]

## Conclusions

Our findings suggest that, as a consequence of the Alliance Security Dilemma and variance in external vulnerability, there is a general reluctance amongst European states to 'Communitarise' policy in the field of defence. We do not dispute the possibility for greater harmonisation and/or even 'governance' in the 'softer' aspects of security, such as the external dimension of the Area of Security Freedom and Justice. Yet, the paper highlights that cooperation in areas with significant ramifications for states' relative power, such as military structures, force postures and capability procurement, remains limited. The relevant limitations inherent in the ToL will persist as long as competition and uncertainty remain features of the international system. The empirical section of this contribution has provided evidence that, as Neorealism posits, the principle of national sovereignty in defence remains sacrosanct for EU member states. Hence in contrast to the predictions of Constructivist and Governance approaches to CSDP, the political and legal analysis provided offers compelling evidence to support the thesis that cooperation in defence will be inherently intergovernmental due to the low 'international agential power' of the state.

This contribution does not pretend to be exhaustive *vis-à-vis* the implications for the future of European defence cooperation and the implications for further Legal and IR scholarship as well as further possibilities for dialogue between Law and IR in European defence. This paper merely advocates that an approach which straddles both law and IR theory captures a different dimension of European defence cooperation and helps our understanding of the limitations of the EU as a global actor. The interdisciplinary bridge built between EU law and Neorealism is capable of enriching the debate about the function of the EU as an international actor regarding the future use of the ToL's mutual assistance clause and flexibility

arrangements as well as the institutional role of the High Representative and the External Action Service. We have, therefore, made an initial attempt to connect the study of defence law with the structural forces of the balance of power and balance of threat.

However, it is, perhaps, Neoclassical Realism that provides the most valuable theoretical template for further research reconciling legal developments with political variables over the CSDP's current and future purpose. Neoclassical Realism posits that while states adhere to structural imperative over the long-term, domestic-level variables form intervening variables affecting the temporality of the transmission belt between systemic imperatives and policy response (Ripsman et al 2009: 297-98). Legal scholarship has the potential to make an important contribution to the Neoclassical Realist research agenda. Not only does legal analysis offer the opportunity to assess the empirical accuracy of competing 'systemic-level' explanations of the drivers and destination of CSDP and other bi- and plurilateral force generation/capability procurement initiatives, but it also provides valuable potential insights into the domestic-level factors which play an intervening role in determining the timing and scope of defence cooperation.[33]

Legal analysis would, for example, enrich comparative analysis of constitutional barriers and opportunities to the generation of 'state power' (including the role of Parliaments overseas troop deployment and broader constitutional powers of the core executive in defence policy). Legal issues are also prominent variables in debates on changes to force structures (manifested, for example, by legal challenges to military base closures); in changes to military doctrine and rules of engagement and in the relationship between government and the defence industry. All these areas are highly-relevant to the study of European defence, yet are under-researched and form venues for fruitful interdisciplinary enquiry by law and Neoclassical Realist theory.

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[1] See, for example, Von Kielmansegg (2007: 629).

[2] See, for instance, Georgopoulos (2005: 559); Scannelll (2004: 529); Eisenhut (2008: 577); Trybus (1999).

[3] On the balance of power see Waltz (1979); on the balance of threat see Walt (1985: 3-43).

[4] COM (97) 583 final.

[5] COM (2006) 779 final.

[6] Case C-273/97, *Sirdar* [1999] ECR I-07403.

[7] Case C-337/05, *Commission v. Italy (Agusta)* [2008] ECR I-02173.

[8] Case C- 615/10, *InsTiimi Oy* [2012] ECR 00000, paras 40-44.

[9] Council Joint Action 2004/551/CFSP [2004] OJL 245/17 replaced by Council Decision 2011/411/CFSP [2011] OJ L 183/16.

[10] While Constructivist approaches dominate the field, CSDP has also been explained through institutionalist; two-level games, liberal intergovernmentalist and classical realist perspectives. For a full account of the core premises, strengths and weaknesses of these approaches, see Dyson and Konstadinides (2013).

[11] 'International agential power' is defined by Hobson (2007: 7; 148-49) as 'the ability of the state to mitigate the logic of inter-state competition and thereby create a cooperative and peaceful world'.

[12] Bi-polarity is the most stable distribution of power, where two superpowers enjoy equality in material capabilities.

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[16] 'Energy, Yearly Statistics', 'United Kingdom', Table 4.1 Crude Oil and Feedstocks, Eurostat, European Commission, 2010, p.392.

[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] http://www.guardian.co.uk/world/2009/aug/30/libya-oil-shell-megrahi, date accessed 20 June 2011.

[22] http://af.reuters.com/article/investingNews/idAFJOE66T0F82010073, date accessed 20 June 2011; https://www.cia.gov/library/publications/the-world-factbook/rankorder/rawdata_2178.txt, date accessed June 20 2011.

[23] Ibid.

[24] 'Energy, Yearly Statistics', 'France', Table 4.1 Crude Oil and Feedstocks, Eurostat, European Commission, 2010, p.154.

[25] Ibid.

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[31] Interview, Defence and Security Policy Division, German Foreign Ministry, 09/03/2012.

[32] For further analysis of the impact of external vulnerability on British and French defence policy, see Dyson and Konstadinides (2013).

[3333] On the requirement for further research on the nature of intervening variables in Neoclassical Realism, see Ripsman et al (2009: 280-90).