

Areas of Grey: Tensions in EU External Relations Competences



By **Dr Simon Duke***

The EU's competences in external relations are shared between the European Community and the more intergovernmental 'pillars' on which the Union rests. This is most obvious in the case of the Common Foreign and Security Policy (CFSP – the so-called 'second pillar'). Moreover, the demise of the cold war and the rapid growth of CFSP and its subset, the European Security and Defence Policy (ESDP), have led to some tensions in the 'grey areas' that fall in-between the Community and CFSP. The purpose of this contribution is to examine the nature and extent of these tensions and to consider various approaches to resolving, or at least diminishing, them.

The EU's competences in external relations are shared between the European Community and the more intergovernmental 'pillars' on which the Union rests. This is most obvious in the case of the Common Foreign and Security Policy (CFSP – the so-called 'second pillar'), although external relations also involves an increasingly important collection of border, organised crime and counter-terrorism issues that arise in the context of the 'third pillar' of Police and Judicial Cooperation in Criminal Matters. Moreover, the demise of the cold war and the rapid growth of CFSP and its subset, the European Security and Defence Policy (ESDP), have led to some tensions in the 'grey areas' that fall in-between the Community and CFSP. The purpose of this contribution is to examine the nature and extent of these tensions and to consider various approaches to resolving, or at least diminishing, them.

The intention is not to offer a comprehensive legal analysis of competences in external relations, since many exist, but to consider the issue from a more political and policy-oriented perspective. Since the scope of the subject still remains broad, it is therefore hoped that the use of a case study, that of Small Arms and Light Weapons (SALW), will help to illustrate some of the more general issues.

Areas of grey in EU external relations

Historically there is evidence of at least concern, if not tension, between the predominant Community aspects of external relations and the European Political Cooperation (EPC) process that emerged in 1970. By design EPC was intended to be 'distinct from and additional to the activities of the Community'.¹ The sense of 'otherness' would have longer-term consequences since it implied that the com-

petences of EPC and its successor, CFSP, would be framed in a 'distinct' manner and, to some, as an appendage to the Community. The October 1981 London summit referred to the importance attached by the Ten to 'the Commission of the European Communities being fully associated with political cooperation, at all levels'.² Later, the Single European Act of 1986 noted that external policies were to be 'consistent' and the Presidency and the Commission were given 'special responsibility' in this regard.³ However, in a curious formulation, the preamble stressed the importance of Europe 'speaking increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interest and independence', but also that the Member States 'may make their own contribution to the preservation of peace and security...'. The juxtaposition between 'one voice' and 'own contribution' not only points backwards, to the 'otherness' of EPC, but also hints at the future difficulties that would be encountered in achieving a 'voice' in external relations.

The end of the Cold War and the Maastricht Treaty saw EPC incorporated into the Treaty on European Union (TEU) as CFSP, or the second pillar. The former EPC ministerial meetings were replaced by meetings of the Foreign Ministers meeting as the General Affairs Council (and, from 2002 onwards, as the General Affairs and External Relations Council). CFSP remained distinct in terms of its decision-making procedures and the respective rights accorded to the Member States and the Community. The TEU was attentive to the need for the Union to 'ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies'.⁴ The Council and the Commission, in the context of the Union's single institutional framework, were given

responsibility for consistency and were required to 'ensure the implementation of these policies, each in accordance with its respective powers'.

The Community, which has legal personality, derives its competences in external relations from two sources. First, there are *express* powers specifically bestowed upon the Community by the Treaty establishing the European Community (TEC), such as Article 300 which gives the Community the power to enter into international agreements. Other prominent examples would be Article 133 (addressing the common commercial policy) and Article 310 (concerning association agreements). The Community's external powers also include a number of other significant areas such as environmental policy (which specifically mentions the 'international level' and 'worldwide environmental problems' as part of the Community remit) and education and vocational concerns where the Community will 'foster cooperation with third countries'. Second, competences in external relations may also be *implied*, meaning that they derive from the internal competences laid out in Article 3 TEC.⁵ The Court has, over the years, shaped and extended the competences of the Community in external relations, most notably in the *Kramer* case where the authority to enter into international commitments could arise 'not only from an express attribution by the Treaty, but equally may flow implicitly from its provisions'.⁶

The advent of CFSP posed immediate questions of competence. For example, the common commercial policy in the TEC had not hitherto been particularly contentious, but it now raised implicit questions of how it relates to foreign policy. Similar issues arose with regard to development policy (which is one of the reasons that the Commission dislikes the notion of 'political conditionality' being ascribed to its external assistance programmes). From the outset the TEU gave rise, as we shall see below, to questions of hierarchy between the Community areas and Title V (CFSP).

The questions of competence and hierarchy were exacerbated by differences within the Commission itself, with no less than four Directorates-General (DGs) being responsible for external relations and development. The inevitable competition that resulted between the DGs and their respective Commissioners may, in part, account for the difficulties encountered in defining the Community's profile in EU external relations and in shaping the substance of its 'full association' with CFSP. Differences in bureaucratic culture and the size and composition of the EU institutions have also played a role in competences issues which is commonly under-estimated. The lighter structures within the Council General Secretariat and the more political role of Directorate-General E in particular, have allowed for more institutional adaptation and the assumption of tasks in the grey areas. The appointment of the High Representative for CFSP in October 1999, as well as the establishment of a Policy Unit which reports to him and, soon thereafter, the military and civilian crisis management institutions in the

ESDP area, have had a notable impact on the ascendancy of the Council in external relations.

Before embarking upon a more detailed look at the specific case of SALW, it is important to provide a sense of the extent to which differences or tensions exist in the so-called grey areas. This will hopefully provide useful context for the case study.

Shades of grey in EU external relations

There were some areas where the potential for overlap was clearly foreseen and provision was therefore made for this in the Treaties. The most obvious example of this nature is the interruption or reduction, in part or completely, of 'economic relations with one or more third countries' [Article 301 TEC]. In this instance the Council 'shall take the necessary urgent measures' and shall act by 'a qualified majority on a proposal from the Commission'. Hence, in this particular instance the Council adopts the necessary political decision to enforce economic sanctions while the Commission oversees the implementation. The relationship between the two institutions is also clearly laid out in this instance and the emphasis is very much upon the primacy of the Council.

An associated area where there is close collaboration between the Commission and the Council is in the respect for human rights and fundamental freedoms, which is mentioned in both the TEC and the TEU. The Commission routinely integrates human rights provisions (often referred to as an 'essential elements' clause) into its agreements with external partners, with stipulations

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for penalties in the event of non-compliance. One of the results of partial or total non-compliance can be the suspension of economic relations (as was the case in Liberia, Niger, Togo and Zimbabwe, to name but a few) in the manner outlined above.

Both of the above are examples of overlapping competences that were identified by the Treaties and provision was made for a consistent and coherent approach. They are also, however, rather predictable cases; other issues such as election monitoring, dual-use goods, defence industrial aspects, conflict prevention, civilian crisis management, SALW and issues of external representation pose more complex challenges, with less clear-cut responses.

Commission challenges to the Council have been mounted on a number of occasions for allegedly infringing upon Community competences in external relations. Common positions adopted in 1994 on Rwanda and the Ukraine were both criticised for the inclusion of Community matters in CFSP 'common positions'. Similar examples have been cited of the 'overly pervasive' use of CFSP instruments in the cases of electoral observation in Russia and South Africa as well as the Korean Peninsula Energy Development Organization initiative.⁷ Other issue areas, cutting across a number of countries, such as the export of dual-use goods have also frequently surfaced as points of contention between the

Community and the second pillar. Conversely, the Council has challenged the Commission's competence to act when it supported conflict-prevention programmes in West Africa (through The Southern Africa Development Community and the Economic Community of West African States) as well as in Nepal; supported peace-building and mediation in Aceh, Liberia and Sudan; promoted peace-building efforts in Bolivia; and support for UN good offices in Colombia.⁸ In a similar vein there are also dimensions of Security Sector Reform (SSR) that have military or (external) police dimensions which fall within the CFSP competence.

The potential for clashes over issues of competence has doubtlessly been fuelled by the multifarious challenges facing the EU in its external relations and, in particular, the rapid growth of crisis management. These challenges, as the High Representative for CFSP, Javier Solana, observed in his European Security Strategy, call upon the Union to 'bring together the different instruments and capabilities: European assistance programmes and the European Development Fund, military and civilian capabilities from Member States and other instruments ... Security is the first condition for development'.⁹ Although undoubtedly correct, the issue still remains of how to combine the instruments and capabilities. The manner in which the strategy was drafted, primarily within the Council Secretariat and with little consultation with the Commission, is symptomatic of the issue. Chris Patten has already noted that the growth of CFSP and its associated structures depended upon finding a *modus vivendi* with the Community. The following reflections by Patten, made in 2000, are worth quoting with this in mind:

The important point is that – however awkward they may be – the new structures, procedures and instruments of CFSP recognise the need to harness the strengths of the European Community in the service of European foreign policy. That is why the Treaty 'fully associates' the European Commission with CFSP. We participate fully in the decision-making process in the Council, with a shared right of initiative which we shall exercise. Our role cannot be reduced to one of 'painting by numbers' – simply filling in the blanks on a canvas drawn by others. Nor should it be. It would be absurd to divorce European foreign policy from the institutions which have been given responsibility for most of the instruments for its accomplishment: for external trade questions, including sanctions; for European external assistance; for many of the external aspects of Justice and Home Affairs.¹⁰

Issues of foreign policy are one factor, but perhaps of more importance is the rapidly emerging ESDP with its various crisis-management roles; it has already been observed that some of the most sensitive competence issues have arisen in and around this area. From a legal perspective it is 'the aim and content of an envisaged operation' that determines the legal basis.¹¹ This therefore suggests that an operation is either a Community instrument, financed through the Community budget; a CFSP operation (without military or defence implications) financed through the CFSP budget; or, an ESDP

operation which falls outside the Community budget.¹²

The competence issue, though, is only partially a legal matter. The question of funding also influences competence issues between the pillars. Put rather directly, funding to support CFSP crisis-management operations remains limited, whereas the Community has substantial funds at its disposal. Again, to quote Patten, 'The secretariats that worked for the Council of Ministers and its High Representative for the CFSP resented the Commission's access to useful things like money'.¹³ As we look to the future the funding issue is likely to remain at the centre of the inter-pillar competence question. The Commission's Instrument for Stability (henceforth Stability Instrument) is intended to improve the EU's response to crises by streamlining the Community and CFSP responses under the forthcoming Financial Perspective (2007-13).¹⁴ The general thrust of the proposal has been welcomed by the Council and the European Parliament, although it has also met with charges that 'the Instrument oversteps Commission competences and would reduce parliamentary oversight'.¹⁵ Dewaele and Gourlay lament that the 'negotiations on this new financial instrument have not been carried out in the spirit of inter-institutional solidarity, but rather been reduced to legalistic arguments over the precise delineation of institutional competences'.¹⁶

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ECOWAS and SALW: a landmark case?

In retrospect Small Arms and Light Weapons (SALW) was one of the more likely areas for a clash between the Community and CFSP. The action brought by the European Commission against the Council of the EU on 21 February 2005 has the potential to be a

landmark case, with profound implications for the Council and the Commission.¹⁷

Before examining the case in more detail, a little background on SALW is necessary in order to understand why it has become a landmark case. The trade and spread of SALW has been recognised internationally and affects not only the security of civil populations but is also associated with terrorism and organised crime. According to UN estimates there are around 600 million light weapons in global circulation, which are responsible for 500,000 deaths per annum, 300,000 of which occur in armed conflicts. Of the 49 major conflicts in the 1990s, 47 were conducted with SALW as the major weapons.¹⁸

EU issues relating to the production, transfer and acquisition of armaments are generally a Member State competence (Article 296 TEC). In spite of this, arms trafficking was mentioned in the 1997 Amsterdam Treaty and eight broad criteria were agreed that Member States should take into account when licensing arms exports. A Programme for Preventing and Combating the Illicit Trafficking in Convention Arms was agreed to on 26 June 1997 which, although internal in focus, had important external dimensions including various weapons buy-back, collection and destruction schemes.¹⁹ The 1998 EU Code of Conduct included 'full scope' sanctions (in other words, those including military, arms and any other items).²⁰ A resolution on small arms the following year reinforced the Union's

resolve to stem the spread of SALW, with a particular emphasis on southern (SADC) and western (ECOWAS) Africa.²¹ The agreements above have been complemented by bilateral arrangements such as those with the United States and Canada. Finally, the European Council adopted a Strategy to combat the illicit trafficking of SALW and their ammunition in December 2005 and, of relevance for the case discussed below, the strategy noted that, 'Africa remains the continent most affected by the impact of internal conflicts aggravated by the destabilising influx of SALW'.²²

The development of EU policy on SALW has had a slow gestation. The emergence of the Schengen area focussed attention on the issue since it implied that there was a need for cooperation on a variety of efforts to counter organised crime, terrorism and drug trafficking – all of which carried external ramifications, including the SALW.²³ The Member States would clearly not give up their interest in SALW-related issues, given national sensitivities in this area, alongside the continued existence of Article 296 TEC. However, the linkage with Community activities is also irrefutable. A SALW pamphlet (published by the European Commission) makes the link clear:

Countries with high levels of insecurity or violence cannot make effective use of development assistance. Therefore, assistance to conflict-prone countries or regions should be provided in order to promote security, disarmament and demobilisation as well as reintegration of ex-combatants into civil society, as an integrated part of social and economic development programmes.²⁴

In the case of ECOWAS specifically, the members declared a moratorium on the import, export and manufacture of SALW in November 1998 and, a year later, a code of conduct. The Commission has indirectly supported the moratorium for several years, especially through a € 1.9 million conflict-prevention project approved in 1999. Ironically conflict prevention, which became a 'fixed priority' for the Union in 2001, was to be another area subject to conflicting competences and inter-institutional friction.

To return to the case, the Commission requested the annulment of a Council decision of December 2004, 'for lack of competence', regarding an EU contribution to ECOWAS in the framework on the Moratorium on SALW.²⁵ It is therefore now up to the Court of Justice to review the legality of the Council decision.²⁶ The Commission challenge was mounted on the grounds that the Council was not competent to adopt the decision referred to and that existing legislation, in this case the Cotonou Agreement, covers *inter alia* the spread of SALW.²⁷ Article 11(3) of the Agreement mentions, amongst other things, the need to address 'the excessive and uncontrolled spread, illegal trafficking and accumulation of small arms and light weapons'. The Council decision also allegedly violates Article 47 of the TEU which

states that, ... nothing in this Treaty shall affect the Treaties establishing the European Community or the subsequent Treaties and Acts modifying or supplementing them. According to the Commission's challenge the Council's Joint Action also violated Articles 177 and 181a of the TEC. Under these respective articles the Community is attributed competence for development aid and, in particular, 'within its spheres of competence, economic, financial and technical cooperation measures with third countries'. The Commission also sought a declaration of illegality for a further Council Joint Action from July 2002.²⁸

From the Council perspective the Joint Actions referred to above were consonant with Title V of the TEU which states that, 'The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy ...' [Article 11.1]. The TEU also states that CFSP shall 'include *all* questions relating to the security of the Union ... [Article 17.1 *emphasis added*]. However, the Common Provisions of the TEU state that the Union shall be 'founded on the European Communities, *supplemented* by the policies and forms of cooperation established by this Treaty' [Article 1, *emphasis added*]. It should be noted that

the following article sets out as one of the Union's objectives to 'maintain in full the *acquis communautaire* and to build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community' [Article 2]. The two articles, when read together, would seem to imply that CFSP (and, for that matter, the third pillar) are subservient

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to the Community in the sense that the development of the second pillar must respect the *acquis communautaire*. The presence of a 'single institutional framework', the need to ensure the consistency of the Union's external actions while 'respecting and building upon the *acquis communautaire*' [Article 3 TEU] and the precedence of Community law over national law, all imply that there exists a Union *acquis*, applying equally to the second and third pillars, in practice if not name.²⁹ It would be equally counter-intuitive to assume that the existence of CFSP (and the third pillar) does not modify the *acquis communautaire* and European law. According to Pascal Gauthier the requirement for consistency, a responsibility falling to the Council and the Commission, 'each in accordance with its respective powers' [Article 3 TEU], has led 'both institutions to rightly claim competence over all aspects of the Union's external activities'.³⁰

An attempt, by deduction, to ascertain the nature of 'all aspects of security', which is of relevance to our discussions, is also likely to end in frustration. If we look at the external powers of the Community, these aspects are merely implied from the internal Community tasks laid out in Article 2 (TEC). Aside from the legal niceties, the practical, everyday, challenges of deciding where, for example, financial support strays into security policy issues, or *vice versa*, is often

unclear. So, in addition to the legal ambiguities surrounding this case, there is also the all important question of the intentions and perceptions of the respective instruments referred to above.

On the question of intentions, Bastien Nivet comments that the 'EU's intervention in ECOWAS countries and its support to ECOWAS in the field of SALWs had first developed essentially as a financial support to local and UNDP-operated existing programmes'.³¹ Thus, the Commission-backed SALW efforts could legitimately be portrayed as a matter of Community competence, based on the Cotonou Agreement, since it was primarily financial in nature. The Council, acting through CFSP, committed the EU to 'offer a financial contribution and technical assistance to set up the Light Weapons Unit within the ECOWAS Technical Secretariat and convert the Moratorium into a Convention on small arms and light weapons between the ECOWAS Member States'.³² The Council therefore wished to establish direct technical and financial assistance to the ECOWAS Secretariat itself, rather than the Commission model which was based on support directed through existing programmes; as Nivet comments, the Council's approach 'implies a shift of cooperative method'.³³

The EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition, adopted by the European Council after the above-mentioned legal challenge, continues to portray SALW as primarily a CFSP concern, even going so far as to argue that, 'generally speaking, the whole range of CFSP instruments can be mobilised in support of Union SALW-related action (Personal Representatives, Special Representatives, political declarations, technical support, demarches and structured dialogues, ad hoc seminars on export controls)'.³⁴

The story is further complicated by the fact the Union's principal vehicles to stem SALW in Africa had been through Disarmament, Demobilization and Reintegration (DDR) and SSR which it helps to finance through the European Development Fund (EDF).³⁵ The EU strategy refers to 'development and assistance programmes financed by the EDF, in the framework of EC-ACP cooperation' as one of the available external instruments.³⁶ The advent of the African Union (AU) in December 2002 at the Durban Summit contained a strong security dimension; hence the inclusion of a Peace and Security Council. At the AU Maputo summit in 2003 the heads of state proposed that a peace facility be set up using EC development co-operation agreements directed at their respective countries. The EU



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accordingly agreed in July 2003 to establish a EU Peace Support Operation Facility for the AU financed from funds allocated to them via existing development co-operation agreements, matched initially by matching funding from *unallocated* EDF resources.³⁷

The AU Peace Facility (APF) is now worth some €250 million and is managed by Africans. The overall purpose of the Facility is to create the conditions for development since, as is acknowledged by Solana in the European Security Strategy and in the Cotonou Agreement, there can be no development without security. From the Commission's perspective, 'the decision to extend the use of development funds to peace and security issues was therefore a deliberate one'.³⁸ The use of funding originally intended as Official Development Assistance for peace support operations has created controversy and, more generally, the support for AU peacekeeping missions is a change from the normal economic co-operation that has typified the Union's role on the continent. Hence, to some critics, it was seen as 'inappropriate to use development aid for military-related expenditures, which was the case with the Africa Peace Facility even if they are not considered directly "military" operations'.³⁹

The APF carries the seeds for further confusion regarding the roles of the Community and the second pillar. Although the APF has been presented primarily as a vehicle for development, which necessitates an active Community role, the political implications of supporting sensitive peace keeping operations points to an active CFSP role (especially that of the Political and Security Committee).

Formal and informal approaches to competence issues

One of the first solutions, or perhaps a form of short-term 'non-solution', is simply to step back and let the situation evolve, with the Court's decision on the ECOWAS/SALW case as an integral part of this evolution. Indeed, it could be argued that different interpretations of competences are part of everyday life – in national administration, the work place and even the home – and the situation will gradually right itself. Whilst there is some merit to the argument, it can be challenged on the grounds that there may be a very real human cost in terms of the Union's ability to be an effective international actor, if the problems outlined above are not addressed.

A more formal approach, interrupted by the two 'No'

votes in the 2005 referendums, was to address the competence issues through the Constitutional Treaty. The Laeken Declaration on the Future of the EU had identified the need for a redefined division of competence while, at the same time, guarding against 'creeping expansion of the competence of the Union or to encroachment upon the exclusive areas of competence of the Member States ...'.⁴⁰ The Constitutional Treaty did little to solve the issue of competences since the procedures, instruments and institutions remain much as they are currently. The innovations in the external relations area, such as the Union Minister for Foreign Affairs or the European External Action Service, may hold the potential to alter the institutional balance of powers, but they will also become part and parcel of the competences struggle and most likely its focus.

In the absence of a Constitutional Treaty, other forms of *ad hoc* cooperation in the 'grey areas' could be fostered. There are already examples of close cooperation in, for example, the current missions to Aceh and the Moldova-Ukraine border monitoring mission. Another interesting example is the joint appointment of Erwan Fouéré as Head of the European Commission delegation to the Former Yugoslav Republic of Macedonia, as well as EU Special Representative – thus avoiding the sometimes awkward relations between the Special Representative and the heads of the Commission delegations. More *de facto* collaboration has arisen in the External Service as well, since the boundaries of what is *communautaire* and what is intergovernmental have become more blurred, aided and abetted by the lack of Council Secretariat representation overseas outside of liaison offices in Geneva and New York (separate from those of the Commission).

The Commission has also realised the need for occasional specialist advice in the 'grey' areas, exemplified by the temporary assignment of a military advisor from the EU Military Staff to give advice on the Darfur region. The relatively new European Defence Agency has revived the Community's interest in the defence-industrial aspects, especially through DG Enterprise who strongly backs the objective of creating a strong and competitive European defence industry supported by cooperative research and development. In spite of these encouraging signs, the question remains as to whether they are *ad hoc* or part of a broader emerging understanding on competences.

Conclusion

There is no simple solution to the complex issues raised above. The Constitutional Treaty, if adopted, would still leave many questions of competence in the air and may well exacerbate existing tensions. At the practical level there are a few examples of pragmatic solutions which involve the recognition of common aims but which also, in many cases, reflect the existence of limited resources. It is therefore possible that a slow neo-functionalist approach may clarify some of the competence issues in a bottom-up manner. Such a process could also be complemented by top-down effects, such as judgements of the Court of Justice. It should nevertheless be noted that the general non-applicability of the Court's jurisdiction in the CFSP area, alongside the ability to conclude international agreements to implement



Javier Solana, Secretary General of the Council of the EU and High Representative for CFSP.

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CFSP, may lead to further disputes in the numerous 'grey areas' identified above.

One of the best hopes for diminishing inter-institutional tension in the grey areas may stem from the Constitutional Treaty itself, in the form of the European External Action Service. In spite of the fact that the Service is intimately tied to the existence of a Union Minister for Foreign Affairs, there may be some logic to reviving the talks between the Council and the Commission on the Service. Although this could easily lead to charges of 'cherry picking' (and the Service is often mentioned as a potential target), it is the *process* of talking through the design of the Service that is almost as important as any outcome. The discussions on the Service will inevitably be very sensitive since they go to the very heart of the competence issue, but they are also long overdue.

NOTES

- * Dr Simon Duke, Associate Professor – EIPA Maastricht.
- ¹ *Bulletin of the European Communities*, No. 10-1972, p. 18.
- ² 'Report on European Political Cooperation', London, 13 October 1981, in *Bulletin of the European Communities*, Supplement 3-1981, pp. 14-17.
- ³ Treaties Revising the Treaties establishing the European Communities and Acts relating to the Communities (Single European Act), 11 June 1986, Title III, Article 20, Para. 5.
- ⁴ This list of external activities is however limited and would now have to include other areas such as energy, JHA, agriculture and Economic and Monetary Affairs, all of which have significant external aspects.
- ⁵ Articles 94, 95 and 308 TEC are often used to establish

- implied external competences.
- ⁶ Case 3,4 and 6, Kramer et al. (1976), ECR 1279 at 1308.
- ⁷ Gauttier, p. 28.
- ⁸ Aline Dewaele and Catriona Gourlay, *The Stability Instrument: defining the Commission's role in crisis response*, ISIS Briefing, 27 June 2005, p. 5.
- ⁹ Javier Solana, *European Security Strategy*.
- ¹⁰ Speech by The Rt Hon Chris Patten, Institut Français des Relations Internationales (IFRI), Paris, 15 June 2000, SPEECH/00/219.
- ¹¹ As established in Case C-376/98, *Germany v European Parliament and Council* (2000) ECR-8419.
- ¹² *Communication from the Commission to the Council and the European Parliament: Financing of Civilian Crisis Management Operations*, COM (2000)674 final, Brussels, 28 November 2001, p. 4.
- ¹³ Chris Patten, *Not Quite the Diplomat: Home Truths About World Affairs*, (London: Allen Lane, 2005), p. 157.
- ¹⁴ *Proposal for a regulation of the Council establishing an Instrument for Stability*, COM (2004) 630 final, 29 September 2004.
- ¹⁵ *The Stability Instrument: defining the Commission's role in crisis response*, ISIS Europe, 27 June 2005, p. 1.
- ¹⁶ *Ibid.* p. 6.
- ¹⁷ 'Action brought on 21 February 2005 by the European Commission against the Council of the European Union', (Case C-91/05), in *Official Journal of the European Union*, C115/10, 14 May 2005.
- ¹⁸ *EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition*, adopted by the European Council, 15-16 December 2005, Council 5319/06, 13 January 2006, Para. 8.
- ¹⁹ *Programme for Preventing and Combating the Illicit Trafficking in Conventional Arms*, Council Doc. 9057/97, 20 June 1997.
- ²⁰ *Code of Conduct on Arms Exports*, Council Doc. 8675/2/98, Rev. 2, 8 June 1998.
- ²¹ *Development Council's Resolution on Small Arms*, 21 May 1999. For full text see, <http://www.grip.org/bdg/g1787.htm>
- ²² *EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition*, Para. 12.
- ²³ This point is made by Simon Hix, *The Political System of the European Union*, (Basingstoke: Macmillan, 1999), p. 321.
- ²⁴ *Small Arms and Light Weapons: The response of the European Union*, European Commission, (Luxembourg: Office for Official Publications of the European Communities, 2001), p. 8.
- ²⁵ Council Decision 2004/833/CFSP, 2 December 2004.
- ²⁶ Article 230 of the Treaty establishing the European Community states, in part, that the Court of Justice shall have 'jurisdiction in actions brought by a Member State, the Council or the Commission on the grounds of lack of competence ...'.
²⁷ 7285/05, JUR, *Information Note for the attention of Coreper II*, 14 March 2005, Brussels.
- ²⁸ Council Joint Action 2002/589/CFSP, 12 July 2002 on the EU 's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, OJ L 191, 19 July 2002.
- ²⁹ In some respects the stipulations regarding PJCCM are even more explicit than CFSP, especially when Article 29 of the TEU states that the provisions concerning the area of freedom, security and justice, shall be exercised 'without prejudice to the powers of the European Community ...'.
- ³⁰ Pascal Gauttier, *Horizontal Coherence and the External Competences of the European Union*, *European Law Journal*, Vo. 10, No. 1 January 2004, p. 27.
- ³¹ Bastien Nivet, *Security by Proxy? The EU and (sub-) regional organisation: the case of ECOWAS*, Occasional Paper, No. 63, March 2006, p. 26.
- ³² Quoted in Nivet, *Ibid. Loc Cit.*
- ³³ *Ibid. Loc cit.*
- ³⁴ *EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition*, Para. 19.
- ³⁵ The EDF is not part of the general Community budget, but is funded by the Member States and is covered by its own financial regulations that are ratified by the national parliaments, and is managed by a specific committee.
- ³⁶ *EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition*, Para. 19.
- ³⁷ 1.25% of EDF 9 (this is the ninth round) money was taken from the Cotonou country 'B' envelopes within the €10 billion long-term development envelope; amounting to around €126 million. Information from <http://www.bond.org.uk/networker/2004/aug04/apf.htm>.
- ³⁸ *Securing Peace and Stability for Africa: The EU-Funded African Peace Facility*, Directorate-General for Development, Information and Communication Unit, European Commission, 2004, p.5 (at http://europa.eu.int/comm/development/index_en.htm).
- ³⁹ European Peacebuilding Liaison Office, 'Comment on the Proposal for a Regulation of the Council establishing an Instrument for Stability', 23 May 2005, Section 1.3.2 (at <http://www.eplo.org/documents/EPLOPolicyPaperStabilityInstrument.pdf>).
- ⁴⁰ *Laeken Declaration on the Future of the European Union*, 15 December 2001.

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