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*Brexit, a Catalyst for an Integrated European Defence Force?
A Limited Investigation Addressing European Union Common Security and Defence Policy
Initiatives*

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Abstract

Described as a watershed moment in European and international politics,¹ the result from the United Kingdom European Union Membership Referendum, held on the 23rd of June 2016, has reignited support for the furtherance of an integrated common European Union security and defence policy. Expanding upon seven decades worth of political attempts for a standardised, harmonised, and integrated defence policy, reflecting the fundamental principles of the European Project, the remaining Member States of the European Union have consciously embarked upon a bold new scheme towards the creation of the European Union Armed Forces. Utilising the diminishing British influence within the European sphere of political discourse, and in conjunction with growing confidences with coordinated peacekeeping missions in Africa and Southern Europe, the Union and the remaining Member States appear to be directing substantial political capital and economic resources towards the creation of a new military bloc; designed to combat unique security and defence challenges whilst minimising, and perhaps even replacing, the American lead NATO framework for collective regional security. The growing emergence of a European Military presents both substantial challenges to the pre-existing legal framework binding the remaining twenty-seven Member States, whilst providing for unconventional strategic opportunities for both the United Kingdom and for the European Union. Whilst the prevailing Brexit negotiations continue to cast immense political, economic, and civic uncertainty, the desire of a special Anglo-European relationship anchored upon the principles for collaboration in the fields of defence and security, does not hide the resolve nor the intent the European Union possesses towards increased influence in international affairs.

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¹ Editorial, 'Brexit Vote Marks a Watershed Moment for Europe: Merkel' *Reuters* (Berlin, 24 June 2016) <<https://www.reuters.com/article/us-britain-eu-germany-merkel/brexit-vote-marks-a-watershed-moment-for-europe-merkel-idUSKCN0ZA22C>> accessed 20 January 2018.

Introduction

On the 23rd of June 2016, the United Kingdom voted in the European Union Membership Referendum which produced a majority of 3.8% favouring the 'Leave' campaign.² Nine months later, on the 29th of March 2017, the British Prime Minister Theresa May initiated the formal notification phase for departing the European Union pursuant to Article 50(2) of the Treaty on the Functioning of The European Union.³ Within the same year, on the 13th of November 2017, twenty-five Member States signed the Permanent Structured Cooperation Agreement (PESCO)⁴ which formalised a process whereby "Member States [will] join forces on a regular basis, to do things together, spend together, invest together, buy together, [and] act together"⁵ to support the European Union global strategy for foreign and security policy. Whilst both the President of European Commission and President of the European Parliament described the Agreement as a fundamental mechanism for the furtherance of European integration and as a critical implement to provide independent protection for European interests,⁶ the-then British Secretary of State for Defence, Sir Michael Fallon, stated how "defence is for NATO and not the European Union" and how "[the United Kingdom] is not alone in [...] encouraging the EU to avoid duplicating [actions already undertaken] by NATO".⁷ In acknowledging successful European Union lead peacekeeping missions in Africa and Southern Europe, alongside a variety small to medium scale common security and defence policy undertakings, and effective coordination with NATO, it is now timely to explore the immediate and potential consequences Brexit may exert upon the future landscape of Europe defence and security.

² 'EU Results Referendum' (The Electoral Commission, 24 June 2016) <<https://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/electorate-and-count-information>> accessed 20 January 2018: Total Electorate: 46,500,001, Turnout: 72.2%: Remain: 16,141,241 (48.1%), Leave: 17,410,742 (51.9%); 'EU Referendum Results' BBC News (London, 24 June 2016) <http://www.bbc.com/news/politics/eu_referendum/results> accessed 20 January 2018.

³ Treaty on the Functioning of the European Union 2007 (TFEU): Article 50(2) states that "[a] Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament".

⁴ Member States opting-out of the Agreement are: Denmark. Member States undecided to join the Agreement are: Ireland, Portugal, Malta. Member States scheduled to depart the European Union are: the United Kingdom. 'PESCO: EU paves way to defence union' (DW, 13 November 2017) <<http://www.dw.com/en/pesco-eu-paves-way-to-defense-union/a-41360236>> accessed 20 January 2018.

⁵ 'Speech by HR/VP Federica Mogherini at the "Building on Vision, Forward to Action: Delivering on EU Security and Defence" Event' (European Union External Action, 13 December 2017) <https://eeas.europa.eu/headquarters/headquarters-homepage/37355/speech-hrvp-federica-mogherini-building-vision-forward-action-delivering-eu-security-and_en> accessed 20 January 2017.

⁶ 'Europe's 'Play It Safe' Summit' (Politico, 16 September 2016) <<https://www.politico.eu/article/europes-play-it-safe-summit/>> accessed 20 January 2018; Charlie Cooper, 'Martin Schulz Hits Back at UK over EU Army' (Politico, 23 September 2016) <<https://www.politico.eu/article/martin-schulz-hits-back-at-uk-over-eu-army-theresa-may-brexite/>> accessed 20 January 2018.

⁷ 'UK Minister Fallon 'Defence is for NATO and not the EU'' (DW, 18 February 2017) <<http://www.dw.com/en/uk-minister-fallon-defense-is-for-nato-and-not-the-eu/a-37611182>> accessed 20 January 2018; 'Full Text: Michael Fallon's Tory Party Conference Speech' (The Spectator Online, 4 October 2016) <<https://blogs.spectator.co.uk/2016/10/full-text-michael-fallons-tory-party-conference-speech/>> accessed 20 January 2018.

In exploring the Brexit Catalyst⁸ the following aspects shall be considered, accordingly:

Section I shall discuss the historical background to European defence integration before outlining a limited selection of common security and defence policy initiatives currently undertaken by the institutions of the European Union and by Member States. Finally, this section shall draw upon the historical and contemporary backgrounds to integrated European defence when considering the potential impacts Brexit may exert upon the Common Security and Defence Policy;

Section II shall identify and explore critical provisions within the various treaty provisions governing the institutions of the European Union and Member States for the purposes of establishing the militarised component of the common security and defence policy. This Section shall discuss the relevant treaty provisions for the functioning of the Permanent Structured Cooperation (PESCO) agreement, alongside treaty provisions establishing the European Defence Agency;

Finally, Section III shall discuss the possibility of a special Anglo-European relationship for the purposes of maintaining peace and security within the European continent. This Section shall explore the possibility for a British nuclear-umbrella for the European Union, whilst explicitly discussing British concerns with the emerging European Armed Forces initiative;

Section I. Historical and Contemporary Practices

The evolution of the European Project since conception and establishment by the 1952 European Coal and Steel Community,⁹ to the present-day European Union, as established by the Treaty on the European Union in 1992,¹⁰ has centralised around the critical aspiration for peace within continental Europe.¹¹ Aside from the substantial economic and political integration that resulted from the Treaty of Rome in 1958,¹² European states have sought, and continue to seek, additional measures for the maintenance of peace and security; most notably through the Common Security

⁸ The term, 'Brexit Catalyst', refers to a potential process in which the consequences of the British departure from the European Union accelerates integration between the remaining Member States and the institutions of the European Union. Denis Staunton, 'More Europe: Will Brexit be a Clear Path to even Greater EU Integration?' *The Irish Times* (Dublin, 3 July 2017) <<https://www.irishtimes.com/news/world/europe/more-europe-will-brexit-clear-a-path-to-ever-greater-eu-integration-1.3141115>> accessed 20 January 2018.

⁹ Treaty Establishing the European Coal and Steel Community 1952. Original Member States: Belgium, France, Luxembourg, the Netherlands, and West Germany. See, 'Treaty Establishing the European Coal and Steel Community, ECSC Treaty' (*EUR-LEX*, 15 October 2010) Available at: <<http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=LEGISSUM%3Axy0022>> accessed 20 January 2018.

¹⁰ Treaty on European Union 1992 (Maastricht Treaty) (Official Journal C 191, 29/07/1992 P. 0001 - 0110); and as expanded by the Treaty on the Functioning of the European Union (Lisbon Treaty) (TFEU) 2007.

¹¹ 'A Peaceful Europe - the Beginnings of Cooperation' (European Union europa.eu, 7 March 2018) <https://europa.eu/european-union/about-eu/history/1945-1959_en> accessed 25 January 2018; Andrew Williams, 'How Valid is the Claim that the EU has Delivered Peace in Europe?' (NewStatesman, 9 May 2016) <<https://www.newstatesman.com/world/2016/05/how-valid-claim-eu-has-delivered-peace-europe>> accessed 25 January 2018.

¹² Treaty Establishing the European Economic Community 1957 (The Treaty of Rome).

and Defence Policy,¹³ and through the collective regional security agreement created by the North Atlantic Treaty Organisation.¹⁴

HISTORICAL BACKGROUND

In November 2017, the Common Security and Defence Policy was extended to encompass the latest attempts for European integration for cooperation in security and defence; the Permanent Structured Cooperation (PESCO) agreement (2017 Agreement). The Agreement aims to “deepen[...] defence cooperation through binding commitments [...] amongst EU Member States who are capable and willing [...] to develop defence capabilities and make them available for EU military operations”.¹⁵ Hailed as a significant milestone towards the “ever closer Union”¹⁶, the 2017 Agreement is one of many historical agreements forged by various European states for the purposes of defence cooperation and coordination. Following the immediate aftermath of the Second World War, the United Kingdom and the Republic of France signed the Treaty of Dunkirk in 1947¹⁷ for the purposes of providing mutual defence assistance during potential instances of a German attack against the territorial integrity or political independence of either High Contracting Party; as framed within the confines of the recently established Charter of the United Nations.¹⁸ During the following year, the Dunkirk Treaty was revised to include an detailed mutual defence clause and expanded to accommodate new High Contracting Parties such as Belgium, Luxembourg, and the Netherlands. The Treaty of Brussels of 1948¹⁹ established the Western Union Defence Organisation which provided for the coordination of defence equipment and materials to primarily prevent German aggression with a secondary objective directed towards the containment of increasing Soviet influence in Western Europe. By 1951 Soviet influence and the perceived threats posed by the Soviet Union resulted in the absorption of the structures from the Western Union Defence Organisation into the recently created North Atlantic Treaty Organisation (NATO) structure.²⁰ Reflecting the mutual defence clause from the Treaty of Brussels, the NATO system provided for new defence partners, such as the United States of America and Canada, to

¹³ ‘Shaping of a Common Security and Defence Policy’ (European Union External Action, 8 July 2016) <https://eeas.europa.eu/headquarters/headquarters-homepage/5388/shaping-common-security-and-defence-policy_en> accessed 25 January 2018.

¹⁴ ‘North Atlantic Treaty Organisation (NATO), 1949 (Milestones 1945-1952)’ (Department of State, Office of the Historian) <<https://history.state.gov/milestones/1945-1952/nato>> accessed 25 January 2018; The North Atlantic Treaty 1949: Available at <https://www.nato.int/cps/ic/natohq/official_texts_17120.htm> accessed 25 January 2018.

¹⁵ ‘Permanent Structured Cooperation - PESCO: Depending Defence Cooperation among EU Member States: FactSheet’ (European External Action Service, 5 March 2018) <https://eeas.europa.eu/sites/eeas/files/pesco_factsheet_05-03-2018.pdf> accessed 7 March 2018.

¹⁶ The phrase, “ever closer Union” encompasses the values of peace, democracy, culture, security, prosperity, freedoms of movement for goods, capital, and persons, as core tenets of the European Project. ‘Ever Closer Union: The Legacy of the Treaties of Rome for Today’s Europe 1957-2017’ (European Council - Council of the European Union, 7 April 2017) <<https://www.consilium.europa.eu/en/library-blog/posts/ever-closer-union--the-legacy-of-the-treaties-of-rome-for-today-s-europe-1957-2017---online-exhibition/>> accessed 7 March 2018; the phrase was explicitly employed within the Solemn Declaration on European Union in 1983, Article 1 Objectives “[...] confirm their commitment to progress towards an ever closer union among the peoples and Member States of the European Community [European Union]” Solemn Declaration on European Union (European Council, Reproduced from the Bulletin of the European Communities Number 6/1983) Available at: <http://aei.pitt.edu/1788/1/stuttgart_declaration_1983.pdf> accessed 1 February 2018.

¹⁷ Treaty of Alliance and Mutual Assistance between the United Kingdom and France 1947.

¹⁸ As cited within the Preamble of the 1947 Treaty, “[The United Kingdom and France] Resolved to cooperate closely with one another as well as with the other United Nations in preserving peace and resisting aggression, in accordance with the Charter of the United Nations and in particular with Articles 49, 51, 52, 53 and 107 thereof”; whereby the Chapter VII Powers (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) permits “the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security” (Article 51).

¹⁹ Treaty of Brussels 1948.

²⁰ William Moylan, *The King of Terror* (first edition, Xlibris Publishing, 2015) Chapter 8 (The European Union Super State), Section 27 (History).

jointly redress any violation of the territorial integrity or political independence by way on an armed attack against one or all Members of the Treaty system.²¹ The imposition of Article 5 and the significant inclusion of the American Armed Forces has been, correctly, accredited as the foundation for modern European defence; safeguarding European and American interests from Soviet and Russian threats. However, the continuing evolution of common European defence initiatives was halted in 1954 after the failure on behalf the French Government to ratify the Treaty Establishing the European Defence Community²²; as now regarded as the predominant precursor to the PESCO 2017 Agreement. The proposed Defence Community sought to standardise weapons production and deployment within the established national armed forces of France, Italy, West Germany, Belgium, Luxembourg and the Netherlands. Furthermore, Article 9 and 10 of the Treaty provided for defence contingents to be placed at the disposal of the Community by contributing Member States for the purposes of ensuring collective security for the participating Member States party to the Agreement. The mutual defence clause as located within Article 2(3), along with the preamble of the Agreement suggests how the Defence Community agreement operated as a miniaturised NATO system of collective defence, with the substantial difference locatable with command and control authority for the provided defence contingents; whereby the Community and not the providing Member State would direct the defence contingents during instances of an armed attack.²³ As previously noted, the French Government failed to ratify the agreement in 1954 owing to a broad array of domestic political issues influencing French defence policy; most notably the diminution of French sovereignty in regards to the limited jurisdiction of control over French provided defence contingents.²⁴ This aspect of jurisdictional control over military assets was exacerbated by the conditions, created under Article 2(3), to furnish all possible French military assistance, which was perceived to include the French nuclear weapons programme, *force de dissuasion*, to repel or abate an armed attack against another Member State.²⁵ Additionally, French concern was directed towards the distinct absence of the United Kingdom as a significant global economic and military power. The United Kingdom in refusing to participate within the Treaty framework shared French concerns about sovereignty over deployed military assets. Additional reasons for the lack of British participation is clearly visible within the foreign policy objective to include the United States as a primary ally for the defence of Europe and British interests through the NATO treaty system. As summarised by General Lord Ismay, British policy pursuits for NATO was to “keep the Russians out [of Europe], the Americans in, and the Germans down”²⁶; given the significant size and capabilities possess by the American Armed Forces, the United Kingdom concluded that a more effective defence system could be achieved through a broader coalition of states than through European proposals.²⁷ After a prolonged period

²¹ Jonathan Masters, ‘The North Atlantic Treaty Organisation (NATO)’ (Council on Foreign Relations, 15 May 2017) <<https://www.cfr.org/background/north-atlantic-treaty-organization-nato>> accessed 1 February 2018.

²² Treaty Establishing the European Defence Community 1952 (Not Effective). Available at: <<http://aei.pitt.edu/5201/1/5201.pdf>> accessed 1 February 2018.

²³ Article 2(3) of the 1952 Treaty states that “any armed aggression directed against any one of the member States in Europe or against the European Defence Forces shall be considered as an attack directed against all of the member States. The member States and the European Defence Forces shall furnish to the State or Forces thus attacked all military and other aid and assistance in their power.”. Additionally, it is worth noting the level of detail for the proposed integration of armed forces; under Article 15(2) the Defence Force would wear a common uniform.

²⁴ Arnold Kanter, ‘The European Defence Community in the French National Assembly: A Roll Call Analysis’ (1970) 2 Journal of Comparative Politics 2063-228.

²⁵ Article 2(3) of the Treaty states that “The member States and the European Defence Forces shall furnish to the State or Forces thus attacked all military and other aid and assistance in their power.”

²⁶ ‘Lord Ismay NATO Leaders’ (NATO) <https://www.nato.int/cps/su/natohq/declassified_137930.htm> accessed 5 February 2018.

²⁷ Tim Street, ‘Taking Back Control? The UK, Europe, and NATO’ (Oxford Research Group, 30 September 2017) <http://www.oxfordresearchgroup.org.uk/publications/briefing_papers_and_reports/taking_back_control_uk_europe_and_nato> accessed 5 February 2018.

of inactivity concerning significant attempts for defence coordination,^{28,29} in 1992 the Treaty on the Functioning of the European Union³⁰ established the Foreign and Security Policy under Articles 41-46, which gave rise to the Common Security and Defence Policy.³¹ Under the treaty system and general principles of European Union law governing the passage of the Maastricht Treaty, the United Kingdom along with other Member States became legally bound to the terms and conditions of the Treaty in 1993. Following the establishment of the Common Policy, the position of a High Representative for Common Foreign and Security Policy was enacted within the Treaty of Amsterdam amending the Treaty on European Union in 1999³² for the purposes of coordinating and promoting the harmonisation of foreign policies of Member States, whilst developing an intergraded defence policy for all Member States.³³ The purview of the High Representative was expanded along with the scope and purposes of the Common Foreign and Security Policy in the 2001 Treaty of Nice³⁴, which stated under Article 17 that a common policy shall seek integration on all questions relating to the security of the Union, including the creation of a progressive framework for a common defence policy.³⁵ Again, the United Kingdom ratified the Treaty on the 18th of October 2001, thereby giving legal effect to the enhanced provisions concerning integration.³⁶ The most recent and substantial development in European Union treaty law is the Lisbon Treaty³⁷ which entered into force in 2009. The amendments to the Treaty of Nice and all other previous European Union Treaties consolidated the Common Security and Defence Policy under the critical Articles 48,49, and 50 of the Treaty. The intended consequences of consolidation was intended to permit the High Representative the ability to apply a comprehensive approach to crisis management and to effectively coordinate policy between twenty-eight Member States for harmonising the European External Action Service approach for collectivised foreign policy.

EXTERNAL ACTION IN SOMALIA

Transitioning beyond the historical background, the contemporary actions by the European Union, in conjunction with NATO, since 2005 has involved a total of 18 civilian and military missions

²⁸ For the purposes of this limited investigation, coordinating efforts such as the Petersberg Declaration of 1992 shall be omitted. See Declaration, available at: <<http://www.weu.int/documents/920619peten.pdf>> accessed 25 February 2018.

²⁹ For the purposes of a limited investigation, all relevant defence agreements concerning Members of the European Union and the European Union as an institution cannot be included for practical matters. Recommended reading: 'Timeline: EU Cooperation on Security and Defence' (European Council - Council of the European Union, 9 March 2018) <<http://www.consilium.europa.eu/en/policies/defence-security/defence-security-timeline/>> accessed 10 March 2018; 'Shaping of a Common Security and Defence Policy' (European Union External Action, 8 July 2016) <https://eeas.europa.eu/headquarters/headquarters-homepage/5388/shaping-common-security-and-defence-policy_en> accessed 5 March 2018/.

³⁰ Treaty on European Union (Maastricht Treaty) 1992

³¹ Additionally, see Protocols 1, 10 and 11 and Declarations 13 and 14 of the Treaty for an explanatory overview of the Common Security and Defence Policy.

³² Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts 1997.

³³ As achieved in Article J.8 of the Treaty "The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy".

³⁴ Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts 2001.

³⁵ Article 17 of the Treaty of Nice reads that: "The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements."

³⁶ Marcin Frydrych, 'UK Parliament Ratifies the Treaty of Nice' (EU Observer, 18 October 2001) <<https://euobserver.com/news/3832>> accessed 25 February 2018.

³⁷ Treaty of Lisbon Amending the Treaty on European Union and the Treaty establishing the European Community 2007 (Effective 2009) (Lisbon Treaty or Reform Treaty).

across Africa, the Middle East, and Southern Europe.³⁸ Currently, the European Union is involved with 17 civilian and military missions across land, air, and sea in Africa, the Middle East, and Europe.³⁹ Often authorised by Title V provisions of the Treaty on the European Union⁴⁰ or by United Nations authorisation, the missions performed by Member States within the European Union framework for operations predominantly concern expanding capacity and capabilities of a of local defence or security forces; regional policing; and search and rescue functions from spill-over conflicts. Underpinning the broad spectrum of missions types, the European Union focuses resources to eliminating international terrorism, promoting democratic reforms, and ensuring regional stability through justice and economic development programmes.⁴¹ Among the expanding list of current operations and missions, EU NAVFOR Somalia highlights the authorising mechanism under Title V of the Treaty on the European Union and United Nations Security Council authorisation, whilst EUAM Iraq demonstrates the the authorising processes undertaken by the Council when responding to a request for assurance and advice by a sovereign government.

EU NAVFOR Somalia⁴² was established in December 2008 in response to Somali-base piracy operations in the territorial waters of Somali and international waters off the Horn of Africa, and in the Western Indian Ocean. Under the Council Joint Act Document (2008/851/CFSP) the Council European Union, when considering Articles 14, 25(3), and 28(3), adopted a joint action for conduct “military operations in support of [United Nations Security Council] Resolutions 1814 (2008), 1816 (2008), and 1838 (2008)⁴³ in a manner consistent with action permitted with respects to piracy under Article 100 [...] of the United Nations Convention on the Law of the Sea”.⁴⁴ The authorising document outlined the nature of the mission under Article 1 which permitted European Union forces to protect vessels of the World Food Programme “delivering food aid to displaced persons in Somalia”; to provide protection to vulnerable vessels “cruising off the Somali coast, and

³⁸ Completed EU Missions and Operations: EUPM/BiH; CONCORDIA/FYROM; EUPOL Afghanistan; EURPOL PROXIMA/FYROM; EUPAT; EU SSR Guinea-Bissau; EUFOR Tchad/RCA; EUJUST THEMIS/Georgia; EUJUST LEX-Iraq; EUAVSEC South Sudan; EUMAN RCA; ARTEMIS/DRC; EUPOL RD CONGO; EUSEC RD CONGO; EUFOR RD Congo; EUFOR RCA; Aceh Monitoring Missions - AMM. ‘Military and Civilian Missions and Operations’ (European Union External Action, 3 May 2016) <https://eeas.europa.eu/headquarters/headquarters-homepage/430/military-and-civilian-missions-and-operations_en> accessed 25 February 2018.

³⁹ Current EU Missions and Operations: ALTHEA/BiH; EU NAVFOR Somalia; EUAM Iraq; EUAM Ukraine; EUBAM Libya; EUBAM Moldova and Ukraine (as noted by the EU External Action service the Moldova and Ukraine is not managed within the standard Common Security and Defence Policy Structures); EUBAM Rafah; EUCAP Somalia; EUCAP Sahel Mali; EUCAP Sahel Niger; EULEX Kosovo; EUMM Georgia; EUNAVFOR MED; EUPOL COPPS/Palestinian Territories; EUTM Somalia; EUTM-Mali. Military and Civilian Missions and Operations’ (European Union External Action, 3 May 2016) <https://eeas.europa.eu/headquarters/headquarters-homepage/430/military-and-civilian-missions-and-operations_en> accessed 25 February 2018.

⁴⁰ Title V of the Treaty on the European Union and the Treaty on the Functioning of the European Union (2007) addresses; General Provisions on the Union’s External Action and Specific Provisions on the Common Foreign and Security Policy. Additional Chapters (1 and 2) address the general provisions and specific provisions, whilst Sections 1 and 2 address the common provisions and the provisions for the common security and defence policy.

⁴¹ Annemaire Peen Rodt, ‘The EU: A Successful Military Conflict Manager?’ (2011) 7(2) Journal of Democracy and Security 99.

⁴² Known as Operation Atalanta: ‘European Union: European Security and Defence Policy: EU Naval Operation Against Piracy (EU NAVFOR Somalia - Operation ATALANTA)’ (EU Council Secretariat, August 2009) <http://www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede030909factsheetatalanta_/sede030909factsheetatalanta_en.pdf> accessed 20 February 2018.

⁴³ Council Joint Action 2008/851/CFSP on a European Union Military Operation to Contribute to the Deterrence, Prevention and Repression of acts of Piracy and Armed Robbery off the Somali Coast [2008] L 301/33, *Preamble*; UNSCR 1814 S/RES/1853; UNSCR 1816 S/RES/1816 and; UNSCR 1838 S/RES/1838.

⁴⁴ Article 100 of the United Nations Convention on the Law of the Sea (Duty to Cooperate in the Repression of Piracy) states that: All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

[provide] deterrence, prevention, and repression of acts of piracy”⁴⁵; to monitor fishing activities off the coast of Somalia, and to support other European Union mission and other international organisations in working to strengthen maritime security within the region”.⁴⁶ Whereas Articles 1 through 5 provides for technical and logistical details, Articles 6 and 7 addresses the command and control⁴⁷ of the military assets and personnel deployed to the operational zone.⁴⁸ Within Article 6 (Political Control and Strategic Direction), the Council delegates authority to direct the political elements and strategic direction of the military operation to the Political and Security Committee;⁴⁹ an ambassadorial level preparatory body. As Article 6 notes, the Political and Security Committee possesses authority to modify the Operation Plan, Rules of Engagement, and the Chain of Command to successfully discharge the operational requirements of the mission. Article 7 provides for additional European Union oversight and command over military assets through a reporting mechanism between the European Union Operation Commander and the European Union Military Committee. Established following the Nice Treaty in 2001, the Council Decision of 2001⁵⁰, with Annex provides how the Military Committee shall strengthen the “Common Foreign and Security Policy, and in particular of the Common European policy on Security and Defence” through the coordinating efforts conducted by all Chiefs of Defence from all Member States. Coordination is facilitated by article 2 of the Annex which clearly describes how the Military Committee experiences military direction of “all military activities within the EU framework”.⁵¹ Although a singular example, the EU NAVFOR Somalia operation provides a useful insight concerning how the European Union transforms authority for military action from a United Nations Security Council Resolution into a European Union directed mission involving the military capabilities of twenty-eight Member States.⁵²

In furtherance of an intergraded and comprehensive approach to address threats towards European security and interests, EUTM Somalia was established in 2010 for the purposes of land-based operations within Somalia and Uganda. As noted within the *Preamble* of the Council Decision (2007/971), The European Union determined how it is necessary to strengthen the

⁴⁵ Council Joint Action 2008/851/CFSP on a European Union Military Operation to Contribute to the Deterrence, Prevention and Repression of acts of Piracy and Armed Robbery off the Somali Coast [2008] L 301/33, Article 1.

⁴⁶ ‘Mission’ (EU NAVFOR Somalia - European Union External Action) <<http://eunavfor.eu/mission/>> accessed 20 February 2018.

⁴⁷ As per Article 3 (Appointment of the EU Operation Commander) of the Council Joint Action, Real Admiral Phillip Jones of the Royal Navy was appointed as the EU Operation Commander, and Article 4 (Designation of the EU Operational Headquarters) states how “the EU Operational Headquarters shall be located at Northwood, United Kingdom.

⁴⁸ On 5 March 2018, EU NAVFOR reported how the ESPS Patiño (replenishment oiler) from the Spanish Navy alongside one Spanish P-3M Orion (anti-submarine and maritime surveillance) aircraft from the Spanish Airforce was stationed within the operational zone. ‘Deployed Units’ (EU NAVFOR Somalia, 5 March 2018) <<http://eunavfor.eu/deployed-units/mpras/#news-tabs>> accessed 5 March 2018.

⁴⁹ As created by the Treaty of Nice in 2001, “the Political and Security Committee meets at the ambassadorial level as a preparatory body for the Council of the EU. Its main functions are keeping track of the international situation, and helping to define policies within the Common Foreign and Security Policy”: ‘Political and Security Committee’ (European Council - Council of the European Union, 9 November 2017) <<http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/political-security-committee/>> accessed 20 February 2018.

⁵⁰ Council Decision 2001/79/CFSP on Setting Up the Military Committee of the European Union [2001] L 27/4.

⁵¹ Article 2 ANNEX to the Council Decision 2001/79/CFSP on Setting Up the Military Committee of the European Union [2001] L 27/4, states that “Mission: The EUMC is responsible for providing the PSC with military advice and recommendations on all military matters within the EU. It exercises military direction of all military activities within the EU framework.”

⁵² It is worth noting how non-European Union states are actively involved within the EU NAVFOR Somalia mission; China, the United States of America, Republic of South Korea. ‘Force Commander of EU NAVFOR’s Operation Atalanta lists Tanzania’ (NavalToday.com, 27 November 2017) < <https://navaltoday.com/2017/11/27/force-commander-of-eu-navfors-operation-atalanta-visits-tanzania/>> accessed 20 February 2018.

planning and coordination of “EU non-executive military missions”⁵³ to promote and foster national unity, national sovereignty; territorial integrity, and to implement the rule of law.⁵⁴ Drawing upon similarities within the authorising Decision for EU NAVFOR, Article 2 prescribes how the authority for command and control shall be directed by the EU Military Staff, whilst the overarching political control and strategic direction of the mission shall be controlled by the Political and Security Committee, not by contributing Member States. Additionally, the authority for action originates from numerous United Nation Security Council Resolutions⁵⁵ calling upon Member States and International Organisations to contribute towards the stability of the Transitional Federal Government, including the Somali Ministry of Defence and Somali National Army, as part of the on-going Somali civil war. Various Memoranda of Understandings between the Transitional Government and the European Union have fostered a friendly relations permitting the deployment of European personnel and equipment, whilst authorising training missions, infrastructure construction, and interactions with Government ministries.⁵⁶ As reported within the 2017 Annual Report, EUTM Somalia has successfully involved eleven Member States, which reported to include 193 personnel, for the training and deployment of the first flight infantry company under the Pilot Infantry Company training programme.⁵⁷ Despite the successful passage and graduation of the first light infantry company, significant infrastructural investment, and the on-going development of credible relations with government officials, the Federal Republic of Germany announced in February 2018 intention to cease involvement within EUTM Somalia citing national scepticism over the mission effectiveness.⁵⁸ Germany is expected to withdrawal from EUTM Somalia by the 28th of March 2018. The impending German departure demonstrates a number of fundamental components on integrated European Union defence policy, most notably how Member States retain the sovereign ability to withdraw from external action at any time, for national reason. Additionally, how Member States may disagree with the common approach undertaken by the European Union pursuant to the Common Defence and Security Policy towards addressing the reducing threats to European peace and security, and finally; how Member States retain the sovereign ability to conduct independent foreign policy pursuits without European Union involvement. It is expected that Germany will reformulate economic and military assistance to Somalia, independently or in cooperation with NATO, later in 2018.⁵⁹

EU BATTLEGROUPS

As announced by the European Union External Action agency in 2007, the European Union possesses battlegroups with full operational capability to address emerging crisis and conflicts, globally. Deployable within a ten day period and able to operate upwards of 160 days, each

⁵³ Council Decision (EU) (2017/971) on Determining the Planning and Conduct Arrangements for EU non-executive Military CSDP mission and amending Decisions 2010/96/CFSP on a European Union Military mission to Contribute to the Training of Somali Security Forces, 2010/34/CFSP on a European Union Military Mission to Contribute to the Training of the Malian Armed Forces (EUTM Mali) and (CFPS) 2016/610 on a European Union CSDP Military Training Mission in the Central African Republic (EUTM RCA) [2017] Preamble (1).

⁵⁴ Where the concept of a non-executive mission is defined as an operation that supports a host nation within an advisory role only. 'European Union Concept for EU-Led Military Operations and Missions' EEAS 00990/6/14 REV6 [2014], European Union Military Staff - European External Action Service, Footnote 2.

⁵⁵ For example, UNSC Resolution 2346 S/RES/2346; UNSC Resolution 2383 S/RES/2383; UNSC Resolution 2372 S/RES/2372; UNSC Resolution 2316 S/RES/2316 and; UNSC Resolution 2246 S/RES/2246.

⁵⁶ 'Common Security and Defence Policy - European Union Training Mission - Somalia' (European Union External Action, March 2018) <<https://www.eutm-somalia.eu/documents/>> accessed 5 March 2018

⁵⁷ 'European Union Training Mission SOMALIA - Annual Report 2017' (EUTM-Somalia, European Union External Action, 2017) <<https://www.eutm-somalia.eu/documents/>> accessed 25 February 2018.

⁵⁸ 'German Military to End Role in EU Training Mission in Somalia' *Reuters* (Berlin, 1 February 2018) <<https://www.reuters.com/article/us-germany-military-somalia/german-military-to-end-role-in-eu-training-mission-in-somalia-idUSKBN1FL67S>> accessed 5 February 2018; 'Germany to Leave EU Mission in Somalia' (Euroobserver, 2 February 2018) <<https://euobserver.com/tickers/140811>> accessed 5 February 2018.

⁵⁹ 'Germany to End Participation in EU Military Mission in Somalia' (DW News, 1 February 2018) <<http://www.dw.com/en/germany-to-end-participation-in-eu-military-mission-in-somalia/a-42418157>?> Accessed 5 February 2018.

battlegroup contains a minimum of 1,500 personnel with support equipment as provided by a two or more Standby Member States.⁶⁰ Within the operational framework, non-European Union Member States and Non-NATO Member States, such as Macedonia, Ukraine, and Serbia participate within the Battlegroup initiative, whilst Non-European Union Member States such as Norway and Turkey have participated in previous standby allocation periods of six months.⁶¹ Within the operational framework, the Council of the European Union controls the deployed assets and personnel. The background to an integrated battlegroup force for the Union was established in 1999 during the Helsinki European Council summit in which the European Union Council expressed the desire for a rapidly deployable multi-national force with enhanced military capabilities.⁶² Expanding upon the general movement towards integrated European defence, the United Kingdom and France recognised the importance of outward looking defence policies after the success of the Operation Artemis in the Democratic Republic of the Congo in 2003. During the 2003 Franco-British Summit at *Le Touquet*, and during the UK-France Summit at Lancaster House, both the British Prime Minister and the President of France elaborated as to how rapid reaction forces could draw together a variety of European instruments and capabilities to ensure the safety of the European Union, citizens and interests,⁶³ whilst providing for an effective mechanism to address threats or violation of international peace and security; as defined by the United Nations Security Council pursuant to the Chapter VII powers of the United Nations Charter.⁶⁴ As acknowledged by United Nations Secretary-General, Kofi Annan, following the successful completion of Operation Artemis, and considering the distinct lack of a United Nations military force beyond peacekeeping operations, stated how European Battlegroups are a useful mechanism for enforcing United Nations Security Council Resolutions created under Article 42 of Chapter VII.⁶⁵ Prior to the Anglo-French summits in 2003 and the Helsinki Summit, the Western Defence Union, under the Petersberg Declaration, outlined the how the deterring situation in Bosnia and Herzegovina, and on-going conflicts within the Yugoslav Wars required a coordinated effort by all Member States to prevent and counter spill-over conflicts which might encroach upon the territories of Member States. Additionally, the Declaration required that any coordinated military action should encompass humanitarian and rescue operations, peacekeeping operations, crisis management and permit collaboration with other international partners such as NATO and the United Nations. Following general implementation by Member States, the 1997 Treaty of Amsterdam absorbed the objectives from Petersberg Declaration and implemented the Common Foreign Security Policy; thereby giving rise to the Common Security and Defence Policy under which the European Union Battlegroup appears to operate. In keeping with the evolutionary development of the European Project, the functions and legal framework permitting the integration of land-based elements is now located within Section 2 (Provisions on the Common Security and Defence Policy) of Treaty on the Functioning of the European Union.

⁶⁰ 'EU Battlegroups' (European Union External Action, 9 October 2017) <https://eeas.europa.eu/headquarters/headquarters-homepage/33557/eu-battlegroups_en?> accessed 20 February 2018.

⁶¹ 'EU Battlegroup: Military' (globalsecurity.org) <<https://www.globalsecurity.org/military/world/europe/eu-battlegroups.htm>> accessed 25 February 2018. [September 2006] (DGExPo/B/PolDep/Note/2006_146).

⁶² 'The European Security and Defence Policy; From the Helsinki Headline Goal to the EU Battlegroup' (Directorate-General for External Policies of the Union Directorate B - Policy Department) Section 5.

⁶³ Communiqué: UK-France Summit, Lancaster House, 24 November 2003; Franco-British Summit 2003 Declaration (London, 24 November 2003) 'Strengthening European Cooperation in Security and Defence);

⁶⁴ Chapter VII of the United Nations Charter provides for Action with Respects to Threats to the Peace, Breaches of the Peace, and Acts of Aggression. Articles 39 through 44 provide for an escalatory mechanism which can permit the use of authorised and defined force to restore international peace and security.

⁶⁵ Article 47 provides that "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations". Tom Clonnan, 'Battlegroups Reflect Changing World' (GPF Global Policy Forum, 15 October 2004) <<https://www.globalsecurity.org/military/world/europe/eu-battlegroups.htm>> Accessed 25 February 2018; Deaglan De Breadum, 'Value of EU 'Battlegroup; plan Stressed by Annan' *The Irish Times* (15 October 2004) <<https://www.irishtimes.com/news/value-of-eu-battlegroup-plan-stressed-by-annan-1.1162012>> accessed 25 February 2018.

As an immediate example of European defence integration, it is timely to outline previous and current contributions made by the United Kingdom since the formal establishment of the European Union Battlegroups (EUBGs). It is, however, worth considering how the European Union has established similar integrated systems for defence for other land-based purposes; Finabel, Eurocorps, and the European Gendarmerie Force (for special policing operations and missions). Additionally, the European Union has established air-based structures for developing interoperability and cooperation between Member States; the European Air Group and the European Air Transport Command. Finally, the European Maritime Force was established in 1995 pursuant to the Petersberg Declaration for humanitarian missions, peacekeeping missions, crisis response through naval, naval-air, and amphibious operations. With the emerging criticality of cyber capabilities within international conflict, it remains to be seen if the European Union will implement a multinational force to support a cyber element of the Common Security and Defence Policy. In returning to current multinational forces supporting the Common Security and Defence Policy, the United Kingdom participates in Finabel, and the European Air Group, and has provided equipment and personnel to four Standby periods as the framework state for the Union Battlegroup initiative.⁶⁶ In 2005, the United Kingdom was the second participating Member State to form a Standby Battlegroup, after France. The United Kingdom Standby Battlegroup was reactivated in 2008 whilst the dual-national, British lead Battlegroup was formed in 2010 with the Netherlands which built upon the British and Dutch Amphibious Force agreement of 1972.⁶⁷ The most recent British participation within the Battlegroup framework was in 2003 and involved Lithuania, Latvia, Sweden and the Netherlands. Whilst on standby, the Battlegroup conducted joint training operations facilitated by the United Kingdom at British defence installations.⁶⁸

BREXIT EVALUATION

The United Kingdom, the institutions of the European Union, and the remaining twenty-seven Member States share a common and fundamental goal; the continuation and enhancement of international peace and security, with particular attention directed towards ensuring peace and stability within the European continent. Additionally, this common goal extends to include protection for regional and international European interests, as coordinated by the Common Foreign and Security Policy. This fundamental goal shall continue to influence British and European Union policy creation and implementation irrespective of the impending British departure from the European Union due to occur on the 29th of March 2019.⁶⁹ Although the precise nature of the British departure is yet to materialise, it is of paramount importance to reiterate how the United Kingdom has led and contributed towards European defence integration and coordination. In acknowledging the detailed historical background to integration, the United Kingdom has abundantly invested in fostering bilateral and multilateral agreements between European states to provide for mutual and collective regional defence systems. Within the historical evolution of British defence policy, two distinct pathways emerged with the creation of the NATO Treaty System. Favouring the atlanticist approach towards global security, the United Kingdom has sought to maintain a favourable balance between European initiatives for European purposes, and NATO initiatives for global security purposes.⁷⁰ The requirement for a balanced approach reflects the unique geo-strategic positioning of the United Kingdom as global power

⁶⁶ 'Finabel Research: Public Studies: United Kingdom' (Finabel, 2017) <<http://www.finabel.org/studies>> accessed 25 February 2018; 'Partners' (European Air Group, 2017) <<http://www.euroairgroup.org/about-eag/partners/>> accessed 25 February 2018.

⁶⁷ 'United Kingdom/Netherlands Amphibious Force Agreement 1972' (Dutch Minister of Defence) <<https://www.defensie.nl/onderwerpen/internationale-samenwerking/maritiem-en-amfibisch/brits-nederlandse-samenwerking-mariniers>> accessed 25 February 2018.

⁶⁸ 'Royal Marines Train on Salisbury Plain' (gov.uk, 21 May 2013) <<https://www.gov.uk/government/news/royal-marines-train-on-salisbury-plain>> accessed 25 February 2018.

⁶⁹ HM Government, 'Foreign Policy, Defence and Development: A Future Partnership Paper' [2017] [2].

⁷⁰ Claire Taylor, 'Franco-British Defence Co-operation' House of Commons Library Service (SN/IA/5750) International Affairs and Defence Section (8 November 2010).

with advanced and sophisticated military capabilities.⁷¹ Furthermore, the United Kingdom has supported the NATO treaty system as the most effective defence arrangement for the protection of European States owing to the presence of military forces provided by the United States; currently the only superpower with unmatched military capacities.⁷² The continuing theme of British support for European defence is further demonstrated through a variety of joint expeditionary forces outside the purview of the European Union but predominantly involving European Union Member States. Both the UK Joint Expeditionary Force involving Sweden, Denmark, Finland, Estonia, Latvia, Lithuania, the Netherlands, and Norway⁷³ alongside the Combined Joint Expeditionary Force involving France⁷⁴ is underpinned by the guiding philosophy permitting states significant autonomy over deployed military assets and personnel whilst operating within the expeditionary agreements.⁷⁵ This approach is significantly different when compared with European Union mission and operations which confer political and operational control over military assets and personnel to the Council of the European Union, the Political and Security Committee, and the Military Committee. Regardless of the structural differences concerning autonomy, the United Kingdom has participated within European Union external operations and missions. As previously outlined, British warships, personnel, and facilities have been utilised by the EU NAVFOR Somalia operation to successfully address piracy in the Western Indian Ocean. Within the internal framework for integration, the United Kingdom has led the creation of the Battlegroup programme in conjunction with France and has contributed equipment and personnel on four occasions, thus far. What can be ascertained by British policies and practices is how the United Kingdom is a significant European defence provider that has been instrumental in establishing the legal framework for the common defence and security policy. When considering the unknown nature of the British departure from the European Union, what is abundantly obvious is how a deficit in military capabilities, equipment, personal availability, finances, and experience shall significantly impact the scope, range, and abilities of Member States when implementing the current Common Defence and Security policy at similar levels of operational integrity and regularity prior to the British departure.

From the perspective of the European Union concerning the impending British departure as a catalyst for the furtherance of the Common Security and Defence Policy, which was been incorrectly cited as accelerating plans to create a unitary full-spectrum European Armed Force,⁷⁶ the historical evolution and contemporary practices of integrated defence is of critical importance when establishing how Brexit may not give rise to immediate and significant integration; akin to

⁷¹ George Allison, 'Study Finds UK is Second Most Powerful Country in the World' (UK Defence Journal, 20 November 2017) <<https://ukdefencejournal.org.uk/study-finds-uk-is-second-most-powerful-country-in-the-world/>> accessed 25 February 2018; Andrew Moravcsik, 'Europe Is Still A Superpower: And It's Going to Remain one for Decades to Come' (Foreign Policy, 13 April 2017) <<http://foreignpolicy.com/2017/04/13/europe-is-still-a-superpower/>> accessed 25 February 2018/

⁷² David Kennedy and Karl Eikenberry, *The Modern American Military* (1st edn, Oxford University Press 2015) Chapter 10.

⁷³ 'Sweden and Finland join UK-led Response Force' (Ministry of Defence, 20 June 2017) < <https://www.gov.uk/government/news/sweden-and-finland-join-uk-led-response-force>> accessed 25 February 2018.

⁷⁴ HM Government, 'France - UK Summit: 31 January 2014: Declaration on Security and Defence' [2014]; 'UK-France Summit 2010 Declaration on Defence and Security Co-operation' (Prime Ministers's Office, 10 Downing Street, 2 November 2010) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277167/France-UK_Summit-Declaration_on_Security_and_Defence.pdf> accessed 25 February 2018.

⁷⁵ Speech by General Sir David Richards (Chief of Defence Staff) at the Royal United Services Institute on the 17th of December 2012. Transcript Available at: < <https://www.gov.uk/government/speeches/chief-of-the-defence-staff-general-sir-david-richards-speech-to-the-royal-united-services-institute-rusi-17-december-2012>> accessed 1 March 2018.

⁷⁶ Martin Banks and Peter Foster, 'Europe Forges Ahead with Plans for EU Army' The Telegraph (6 September 2016) <<https://www.telegraph.co.uk/news/2016/09/06/europe-forges-ahead-with-plans-for-eu-army/>> accessed 26 February 2018; James Blitz, 'Brexit Briefing: Delusions over an EU Army (Financial Times, 25 August 2016) <<https://www.ft.com/content/1c017210-6aae-11e6-a0b1-d87a9fea034f>> accessed 26 February 2018; Jennifer Rankin, 'Is there a Secret Plan to Create an EU Army' (The Guardian - Online, 27 May 2016) <<https://www.theguardian.com/politics/2016/may/27/is-there-a-secret-plan-to-create-an-eu-army>> accessed 26 February 2018.

the proposals for an EU Army, now popular in contemporary discourse.⁷⁷ When considering the historical development of European and European Union integration efforts for defence purposes, a common trend favouring increasing cooperation, interoperability, interdependence, and collaboration, is clearly visible. Considering the scope, terms, and frameworks of the 1948 Brussels Treaty, the Petersberg Declaration and Helsinki Summit, alongside the Treaty on Functioning of the European Union in 2007, it can be established how the European Union and Member States have operated a gradual approach towards increasing interdependence between military forces and furthering the integration regime. This stable and gradual approach will remain unaffected by the British departure from the Union when considering how the legal framework amalgamating previous defence integration efforts, the Treaty on the Functioning of the European Union, was adopted into Union law in 2007 by all Member States, prior to any substantive and meaningful discussions concerning continued British membership.⁷⁸ Whilst the 2007 Treaty reiterates the creation of the Permanent Structured Cooperation Agreement⁷⁹ it does not expand the scope or purview possessed by the institution of the Union to accelerate defence integration and coordination. Additionally, the impending British departure has not nor will not change the existing legal framework governing common security and defence policies unless Member States agree to either a new treaty governing the European Union, subjected to standard European treaty adoption principles,⁸⁰ or a separate defence agreement which could include the United Kingdom. Effectively, any movement towards a unitary European Union defence force, comprising of an Army, Air Force, and Navy, will only occur with substantial modifications to the 2007 Treaty, requiring approval and support from all Member States.⁸¹

Section II. Legal Considerations

Currently, the authority for the European Union Common Security and Defence Policy rests within the Treaty on the European Union and the Treaty on the Functioning of the European Union. The legal framework and all provisions are legally binding upon all Member States, except where express opt-out clauses have been agreed between Member States and the European Union.⁸² The most recent development in European Union common defence is the Permanent Structured Cooperation Agreement (PESCO) which was authorised under the Treaty on the European Union.

⁷⁷ Benjamin Kentish, 'Emmanuel Macron Calls for EU Army and Shared Defence Budget' (The Independent Online, 26 September 2017) <<http://www.independent.co.uk/news/world/europe/emmanuel-emmanuel-macron-eu-army-joint-defence-budget-french-president-nato-britain-brexit-russia-a7968346.html>> accessed 25 February 2018.

⁷⁸ Noting how the substantive and meaningful discussions regarding British membership coincided with the Bloomberg Speech by the then British Prime Minister David Cameron, calling for a public referendum on continued membership within the Union. David Cameron, 'EU Speech at Bloomberg' (Cabinet Office, Prime Minister's Office, 10 Downing Street) 23 January 2013. Transcript Available at: <<https://www.gov.uk/government/speeches/eu-speech-at-bloomberg?>> accessed 26 February 2018.

⁷⁹ As provided by Article 42 (6) of the Treaty on European Union (TEU) and contained within Protocol (No 10) On Permanent Structured Cooperation Established by Article 42 of the Treaty on European Union within the Treaty on the Functioning of the European Union 2007.

⁸⁰ Michael Peel, 'EU States Back New Common Defence Pact' (FT Online, 13 November 2017) <<https://www.ft.com/content/ad6c198a-c877-11e7-ab18-7a9fb7d6163e>> accessed 1 March 2018; Jacopo Barigazzi, 'New EU Defence Pact: Who's Doing What' (Politico EU, 14 December 2017) <<https://www.politico.eu/article/new-eu-defense-pact-whos-doing-what/>> accessed 1 March 2018; Jacopo Barigazzi, 'Mogherini Hails 'Historic' EU Defence Pact' (Politico EU, 13 November 2017) <<https://www.politico.eu/article/federica-mogherini-defense-hails-historic-eu-defense-pact-as-23-countries-sign-up/>> accessed 1 March 2018.

⁸¹ Generally see, 'EU Treaties' (European Union europa.eu, 12 March 2018) <https://europa.eu/european-union/law_en> accessed 25 February 2018.

⁸² Professor Klaus-Dieter Borchardt, *The ABC of European Union Law* (1st edn, Publication Office of the European Union 2010) pp 029-081; 'The Treaty of Lisbon: Fact Sheets on the European Union' (European Parliament, January 2018) <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_1.1.5.html> accessed 10 February 2018; 'Opting Out' (EUR-Lex) <http://eur-lex.europa.eu/summary/glossary/opting_out.html?> accessed 10 February 2018.

TREATY PROVISIONS OF THE EUROPEAN UNION

In exploring the legal framework for common defence the critical articles from the Treaty on the European Union and Treaty on the Functioning of the European Union, to include all relevant annexed agreements, shall be identified. As clearly outlined by the High Representative for Union Foreign Affairs and Security, the PESCO Agreement was firmly authorised within the legal framework of the Treaty on the European Union and was activated in response to a series of crisis across Eastern Europe, and the Middle East.⁸³

Defined within Chapter 1, Article 21 of the Treaty on the European Union⁸⁴ (General Provisions on the Union's External Action and Specific Provision on the Common Foreign and Security Policy), the outlook for European Union external action

[...] on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

Under Article 24 (1), the Treaty provides for a common foreign and security policy, which includes a common defence policy, to enact the general provisions provided under Title IV (Provision on Enhanced Cooperation) and Title V

The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.

Section 2, Article 42 (Provisions on the Common Security and Defence Policy) describes how a common security and defence policy shall be integral to the external operations of the Union whilst complimenting the common foreign and security policies. Additionally, Article 42 (1) outlines the general scope of the Common Policy for peace-keeping purposes, conflict prevention, and for the strengthening of international peace and security.

The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

To facilitate the integration and coordination of all defence policies across the Member States, Article 42 (2) outlines how

⁸³ Immediate concerns cite the Libyan Civil War, the conquest of Middle Eastern territory by the Islamic State of Iraq and the Levant (ISIS), the migrant crisis resulting from numerous Middle Eastern conflicts, Russian intervention in Ukraine, and the annexing of Crimea. Additionally, the European Council on Foreign Relations cites American isolationism, and the impending British departure as relevant factors influencing Member States to activate the PESCO provisions. 'Time for the Sleeping Beauty to Wake' (European Council on Foreign Relations - [ecfr.eu](http://www.ecfr.eu), 15 November 2017) <http://www.ecfr.eu/article/commentary_time_for_the_sleeping_beauty_to_wake> accessed 20 February 2018.

⁸⁴ As consolidated to included amendments created by the Treaty on the Functioning of the European Union (Lisbon Treaty)

The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.⁸⁵

Furthermore, Article 42 (3) obliges Member States to contribute equipment and personnel towards the common security and defence objectives.

Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.⁸⁶

The Council of the European Union and the High Representative of the Union for Foreign Affairs and Secure Policy is entrusted with decision making capabilities as outlined under Article 42 (4)

Decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy or an initiative from a Member State. The High Representative may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

Article 42 (6) provides for the establishment of permanent structured cooperation of national defence forces. This provision was agreed by all Member States through adoption, and forms the critical legal basis for the PESCO Agreement; thereby permitting enhanced European integration of defence purposes.⁸⁷

Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 46. It shall not affect the provisions of Article 43.

⁸⁵ Article 42 (2) elaborates: “The policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.”

⁸⁶ Article 42 (3) elaborates: “Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as “the European Defence Agency”) shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.”

⁸⁷ Protocol Number 10 “Consolidated version of the Treaty on European Union - PROTOCOLS - Protocol (No 10) on permanent structured cooperation established by Article 42 of the Treaty on European Union” elaborates on the creation and operational purview of the Permanent Structured Cooperation initiative.

Finally, Article 42 (7) provides for a mutual defence clause akin to Article 5 of the North Atlantic Treaty.⁸⁸ Following a succession of terror attacks throughout France, the the French government activated Article 42 (7) in November 2015.⁸⁹

If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Particular attention ought be directed towards the final clause of Article 42 (7) which prohibits the initiating Member State from violating the neutrality of other member States such as Ireland, Austria, and Sweden.⁹⁰

EUROPEAN DEFENCE AGENCY

Article 45 of the Treaty on the European Union permits the establishment of the European Union Defence Agency under the authority of the Council. Article (1) (a)-(e) outlines the objectives of the Agency to include:

- (a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;*
- (b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;*
- (c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;*
- (d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;*
- (e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.*

Whilst Article 45 (2) provides that...

[...] The Council, acting by a qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities [...]

⁸⁸ Where Article 5 states that The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

⁸⁹ Ian Traynor, 'France Invokes EU's Article 42.7, but What does it Mean?' (The Guardian - Online, 17 November 2015) <<https://www.theguardian.com/world/2015/nov/17/france-invokes-eu-article-427-what-does-it-mean>> accessed 25 February 2018.

⁹⁰ 'What is Article 42.7 of the Lisbon Treaty: France has invoked the EU article after the attacks on Paris' (Politico EU, 17 November 2015) <<https://www.politico.eu/article/what-is-article-42-7-of-the-lisbon-french-government-terrorist-attacks-paris-treaty/>> accessed 25 February 2018.

Council Joint Action and Council Decision documents provide the detailed framework for the operational tasks and mission types that are required to be executed by the Defence Agency.

In the Council Joint Action on the establishment of the European Defence Agency in 2004,⁹¹ the original mission was described within Article 2 as...

[supporting] the Council and the Member States in their effort to improve the EU's defence capabilities in the field of crisis management and to sustain the ESDP as it stands now and develops in the future.

Under Article 5 of the Council Joint Action document, the Defence Agency was directed to develop defence capabilities in the field of crisis management; promotion and enlargement of European armaments co-operation for purchase and employment; strengthening of the European Defence Technology and Industrial Base Strategy;⁹² and for enhanced effectiveness of European research and technology for defence purposes. Article 16 (Contributions and Reimbursements) creates a funding mechanism through a gross national product linked calculation, which is furthered detailed in Council Decision 2000/597/EC.⁹³

During 2015, the Council revised the establishment Joint Action document within the Council Decision (CFSP) 2015/1835 document. Under Article 2 (Mission) the mission of the Agency was expanded to include

Article 2 (2) :

The Agency shall identify operational requirements, promote measures to satisfy those requirements, contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, participate in defining a European capabilities and armaments policy, and assist the Council in evaluating the improvement of military capabilities.

Additionally, the scope of functions and tasks required by the Agency, as listed under Article 5, was amended to reflect the introduction of the Capability Development Plan; which attempts to foreshadow future European defence requirements.⁹⁴ Correspondingly, the Agency priorities research and development as a critical area of focus and currently maintains four capability high-level programmes which focus on air-to-air refilling; remotely piloted aircraft system. governmental satellite communications and; cyber defence.⁹⁵ Although the mechanism for contributions as retrained the original premise of gross national product linked calculations, the contextual Council Decision document has been updated to reflect the opinion of the European Economic and Social Committee, as included within the Council Decision 2007/436/EC document,⁹⁶ which sought to expand a research driven knowledge-based economy through standardised funding mechanisms designed to promote efficiency.⁹⁷ As reported in the most recently available Annual Accounts for 2016, contributions made by all participating Member States totalled 29,075,850 Euros. The

⁹¹ Council Joint Action 2004/551/CFSP on the Establishment of the European Defence Agency [2004].

⁹² 'Strategy for the European Defence Technical and Industrial Base' (European Defence Agency) <<https://www.eda.europa.eu/what-we-do/our-current-priorities/strategies/Technologicalandindustrialbase>> 1 March 2018.

⁹³ Council Decision 2000/597/EC on the system of the European Communities' own Resources [2000].

⁹⁴ 'Capability Development Plan' (European Defence Agency) <<https://www.eda.europa.eu/what-we-do/our-current-priorities/strategies/Capabilities>> accessed 2 March 2018.

⁹⁵ 'Capability Programmes' (European Defence Agency) <<https://www.eda.europa.eu/what-we-do/our-current-priorities/capability-programmes>> accessed 2 March 2018.

⁹⁶ Council Decision 2007/436/EC on the system of the European Communities' own Resources [2007].

⁹⁷ Opinion of the European Economic and Social Committee on Implementing the Community Lisbon Programme: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — More Research and Innovation — Investing for Growth and Employment: A Common Approach. COM(2005) 488 Final. (2006/C 309/02).

largest monetary contribution was from Germany at 6,268,775 Euros, with the United Kingdom providing the second largest monetary contribution at 5,117,484 Euros⁹⁸

THE PESCO AGREEMENT

Regarded as the most significant advancement of European Union defence integration within the twenty-first century,⁹⁹ the Permanent Structured Operation provides for enhanced coordination, increased investment, and expanded operational coverage of European defence policies. Article 42 (6) of the Treaty on the European Union states that

Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 46. It shall not affect the provisions of Article 43.

As amended by the Treaty on the Functioning of the European Union, Protocol Number 10 on permanent structured cooperation¹⁰⁰ permits willing Member States to

Article 1 (a)

proceed more intensively to develop [...] defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and

Article 1 (b)

have the capacity to supply [...] targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article 43 of the Treaty on European Union, within a period of five to 30 days [...]

To facilitate structured cooperation, Article 2 (b) obligates Member States to

bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;

Additionally, subsections (c) and (d) direct Member States to

take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures [and]

⁹⁸ European Defence Agency 2016 Annual Accounts [30 June 2017] p 30.

⁹⁹ Kim Sengupta, 'PESCO' Remaining EU Countries Agree to Plan to Integrate their Military Forces After Brexit' (The Independent Online, 14 December 2017) <<http://www.independent.co.uk/news/world/europe/brexit-latest-eu-military-pesco-nato-integrate-army-a8111311.html>> accessed 1 March 2018.

¹⁰⁰ Consolidated version of the Treaty on European Union - PROTOCOLS - Protocol (No 10) on permanent structured cooperation established by Article 42 of the Treaty on European Union.

*work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the Capability Development Mechanism.*¹⁰¹

As outlined within the 2017 Council Decision,¹⁰² the Permanent Structured Cooperation has been activated as per the contents of Article 1 (Establishment of Permanent Structured Cooperation).¹⁰³ The founding Member States, as listed under Article 2, are Belgium Bulgaria, Czech Republic, Germany, Estonia, Ireland, Greece, Spain, France Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden. As previously established, Denmark in maintaining an opt-out from the Common Security and Defence Policy will not participate within the Permanent Structured Cooperation Agreement. Likewise, the United Kingdom will not participate owing to the impending departure from the European Union in 2019.

However when considering the impending British departure, it is worth noting that under Article 9 of the Council Decision, the PESCO Agreement is permitted to include participation of third States within individual projects. As outlined under Article 9 (1), the Council shall decide and proscribe the conditions for third State involvement, whilst the Member State and third State are permitted to enter into administrative arrangements for the purposes of collaborating on a PESCO Project; however such administrative arrangement must, as per Article 9 (3), respect the procedures and decision-making autonomy of the Union. Given the defence capabilities possessed by the United Kingdom, it is reasonable to assume how an agreement for defence integration and advancement may arise under Article 9 between the United Kingdom and the remaining Member States. Regrettably, Article 9 lacks definitive clarity when considering the maximum number of PESCO Projects a third State is entitled to participate within.

As the critical component of PESCO, Article 5 outlines the PESCO Project formation and allocation system. Designed as a mechanism for integration and standardisation across all armed forces from each participating Member State, the PESCO Projects are the tangible outcomes of furthered integration. As declared with the Declaration on PESCO Projects all participating Member States will contribute to at least one of the following projects:

- *European Medical Command;*
- *European Secure Software defined Radio (ESSOR);*
- *Network of logistic Hubs in Europe and support to Operations*
- *Military Mobility;*
- *European Union Training Mission Competence Centre (EU TMCC);*
- *European Training Certification Centre for European Armies;*
- *Energy Operational Function (EOF);*
- *Deployable Military Disaster Relief Capability Package;*
- *Maritime (semi-) Autonomous Systems for Mine Countermeasures (MAS MCM);*
- *Harbour & Maritime Surveillance and Protection (HARMSPRO);*
- *Upgrade of Maritime Surveillance;*
- *Cyber Threats and Incident Response Information Sharing Platform;*
- *Cyber Rapid Response Teams and Mutual Assistance in Cyber Security;*
- *Strategic Command and Control (C2) System for CSDP Missions and Operations;*

¹⁰¹ 'Capability Development Plan' (European Defence Agency) <<https://www.eda.europa.eu/what-we-do/our-current-priorities/capability-development-plan>> accessed 4 March 2018.

¹⁰² Council Decision (CFSP) 2017 of establishing Permanent Structured Cooperation (PESCO) and Determining the list of Participating Member States (14866/17).

¹⁰³ Article 1 states that "Permanent Structured Cooperation (PESCO) within the Union framework is hereby established between those Member States whose military capabilities fulfil higher criteria as referred to in Article 1 of Protocol No 1".

- *Armoured Infantry Fighting Vehicle / Amphibious Assault Vehicle / Light Armoured Vehicle;*
- *Indirect Fire Support (EuroArtillery);*
- *EUFOR Crisis Response Operation Core (EUFOR CROC).*¹⁰⁴

As outlined within the *Permanent Structured Cooperation (PESCO) first collaborative PESCO Projects - Overview*¹⁰⁵ document, as provided by the Council, it is envisaged how the PESCO Projects will create standardised operating facilities and procedures which can be used in support of European Union military action within the foreseeable future. It is further envisaged how the creation of European systems, equipment, and facilities, will reduce the European dependence on NATO systems of support for collective regional defence and will usher a bold new era of European Union politics onto the global stage.

Section III. Future Relations

The United Kingdom, the European Union, and individual Member States are currently engaging within detailed negotiations regarding what possible forms and structures a future Anglo-European relationship shall take. Within the negotiations, all parties have expressed explicit interest in securing agreements for defence and security purposes.¹⁰⁶ However, in-keeping with the narrative of disagreement and with numerous competing approaches to European defence, no substantive agreement has yet been concluded. In evaluating the current progress of negotiations and acknowledging the political realities of the prevailing situation, any agreement between the United Kingdom and the European Union will not be abundantly obvious until a period of time closer towards actual the departure day.¹⁰⁷

POSSIBLE ANGLO-EUROPEAN UNION DEFENCE AGREEMENT

When considering how the impending British departure from the European Union has not dramatically influenced the formation of prevailing integration policies, but has rather influenced the how current Common Policies shall operate, it is prudent to identify the immediate consequences arising from the British withdrawal, and whether or not such consequences may limit British and European cooperative efforts within any future agreements. As outlined by the Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 Treaty on the European Union, from the European Commission, Third states are prohibited from providing Operational Headquarters and Operational Commanders for external or internal operations or missions as proscribed by the Council pursuant to the aims and objectives of the Common Security and Defence Policy. Accordingly, the European Union is now required to locate a new Operational Headquarters for Operation Atalanta, and approve a new Operational Commander for operation Althea before the 29th of March 2019 when the United Kingdom is due to depart the European Union. Additionally, the Council has identified incompatibilities between the legal framework governing the Union Battlegroups initiative and the scheduled British participation as the lead-framework nation for the July-December 2019 Battlegroup Standby period. The immediate shortfall in access to established command and control facilities and infrastructures alongside access to experienced operational commanders may inhibit the successful discharge of external and internal actions conducted under the Common Security and Defence Policy. Consequently, the Union may seek access to British facilities and commanders

¹⁰⁴ Declaration on PESCO Projects, available at: <<http://www.consilium.europa.eu/media/32020/draft-pesco-declaration-clean-10122017.pdf>> accessed 2 March 2018.

¹⁰⁵ Permanent Structured Cooperation (PESCO) first collaborative PESCO projects - Overview; available at:<<https://www.consilium.europa.eu/media/32082/pesco-overview-of-first-collaborative-of-projects-for-press.pdf?>>Accessed 10 March 2018.

¹⁰⁶ Alex Baker, 'EU and UK seek speedy Brexit Deal on Defence and Security' (Financial Times Online, 3 February 2018) <<https://www.ft.com/content/cdf96d34-066f-11e8-9650-9c0ad2d7c5b5?>> accessed 3 March 2018.

¹⁰⁷ 'Brexit: At-a-glance guide to the UK-EU negotiations' (*BBC World News*, 11 August 2017) <<http://www.bbc.com/news/uk-politics-40788669>> accessed 3 March 2018.

through a special agreement. However in the 2018 strategy document, the Council rejected such a possibility citing the shortfall as an opportunity to conduct further integration of command and control policies by the remaining Member States.¹⁰⁸ In addressing the substantive matter of British participation within European external operations and missions, the Council has cited significant involvement by Third states as beneficial towards assisting European Union forces achieve predetermined aims and objectives. Whilst the United Kingdom will be classified as a Third state, the Union may pursue enhanced channels for cooperation and joint-participation concerning external actions. A point of contention may arise when considering how operational command will be implemented over Union and British forces when collaborating on joint-external operations. A fundamental concern that must be addressed is whether or not British forces will act independently whilst on joint-operations, or the extent to which Union authority will impact the sovereign control exercised over British forces by the Defence Council; whilst noting how the current Union interpretation of Third states prohibits the United Kingdom from leading operations involving Union equipment and personnel.

In a policy statement by Her Majesty's Government, the United Kingdom intends to draw upon economic, technical, and military advantages in ensuring continuing peace and security within Europe.

The UK's defence capabilities and current cooperation with EU partners make an essential contribution to European security. In 2016 the UK spent 2.17 per cent of GDP on defence, raising the EU22 average to 1.35 per cent. British Armed Forces are deployed in Estonia and Poland to deliver NATO's enhanced Forward Presence, and UK Typhoon aircraft have been deployed to Romania to police the skies over the Black Sea.

The UK is – and will remain – a major global diplomatic, defence, development and trade policy actor. The UK has the largest defence budget in Europe and the second largest in NATO (after the US). The UK is the only European country that meets both the NATO target of spending 2 per cent of GDP on defence, with 20 per cent of this on equipment, and the UN target of spending 0.7 per cent of gross national income (GNI) on international development.¹⁰⁹

¹⁰⁸ 'Internal EU27 preparatory discussions on the framework for the future relationship: "Security, Defence and Foreign Policy' (European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU).

¹⁰⁹ HM Government, 'Foreign Policy, Defence, and Development: A Future Partnership Paper' (September 2017) para 36.

Political statements made by the Secretary of State for Exiting the European Union, the Secretary of State of Foreign and Commonwealth Affairs, and the Secretary of State for Defence underpins British intent to engage with the European Union to secure a prosperous and peaceful future.¹¹⁰

When addressing the European Defence Agency, the United Kingdom has, historically, remained unconvinced about the directional effectiveness possessed by the Agency when attempting to amend identified shortfalls as highlighted by the British Government.¹¹¹ Within the strategic framework document produced by the Commission, British participation within the Agency shall cease after the 29th of March 2019. The document outlines how the United Kingdom will be prevented from participating with the management and *ad hoc* activities of the Agency, whilst highlighting how administrative arrangements between the Agency and the United Kingdom would be beneficial to advance technical developments. The participation of Third states is addressed under Article 23 of the Council Decision 2105/1835 on defining the statute, seat, and operational rule of the European Defence Agency, which states that

Article 23 (1)

Third parties may contribute, as contributing members, to a particular ad hoc project or programme, established in accordance with Article 19 or 20, and to the budget associated with it. The Steering Board shall, acting by qualified majority, approve as necessary ad hoc arrangements between the Agency and third parties for each particular project or programme.

Article 23 (2)

For ad hoc projects or programmes established under Article 19, the contributing Member States meeting within the Steering Board shall approve any necessary modalities with the relevant third parties relating to their contribution.

Article 23 (3)

¹¹⁰ David Davis stated in September 2017, “After we leave the European Union we will continue to face shared threats to our security, our shared values and our way of life. It’s in our mutual interest to work closely with the EU and its member states to challenge terrorism and extremism, illegal migration, cyber-crime, and conventional state-based military aggression; Foreign Secretary Boris Johnson stated in September 2017: “As we leave the EU, the UK’s commitment to European security is undiminished. We will pursue a global foreign policy, and continue to work in partnership with our neighbours to promote peace, democracy and security in our continent and across the world. In recent years, the European Union has helped achieve crucial foreign policy goals – from bringing Iran to the negotiating table, to uniting in response to Russian aggression in Ukraine. We want this EU role to continue after we leave. This is why, in addition to stronger relations with EU member states, we also envisage a strong UK-EU partnership on foreign and defence policy following our departure. This will allow us to continue our work in tackling the shared challenges we face worldwide” and; Defence Secretary Sir Michael Fallon said: “At a time of increased threats and international instability the UK remains unwavering in its commitment to uphold European security. With the largest defence budget in Europe, the largest Navy British troops and planes deployed across land, air and sea in Europe, our role in the continent’s defence has never been more vital. As we leave the EU, the UK and our European allies will ensure a close partnership that meets these shared challenges head-on.” ‘UK Offers Deep Security Partnership with EU post-Brexit in the Face of Growing Global Threats’ (gov.uk, 12 September 2017) <<https://www.gov.uk/government/news/uk-offers-deep-security-partnership-with-eu-post-brexit-in-the-face-of-growing-global-threats>> Access 1 March 2018.

¹¹¹ HL Deb 28 October 2010 Col WA305 (European Defence Agency) Question asked by Lord Anderson of Swansea, response by the Parliamentary Under-Secretary of State, Minister of Defence (Lord Astor of Hever); HL Deb 6 March 2013 WA405, WA407 (European Defence Agency) Question asked by Lord Stoddart of Swindon, response by Parliamentary Under-Secretary of State, Minister of Defence (Lord Astor of Hever).

For ad hoc projects or programmes established under Article 20, the contributing Member States shall decide all necessary arrangements with the relevant third parties relating to their contribution.

Accordingly, administrative arrangements between the Defence Agency and the United Kingdom for the collaboration on specific projects is permissible.

In acknowledging Protocol 10 of the Treaty on the Functioning of the European Union, and the composite Articles addressing Permanent Structured Defence within the Treaty on the European Union, the Commission intends to limit British involvement to instances by invitation by the remaining Member States for collaboration on PESCO Projects. As outlined within the strategic framework document produced by the Commission, the United Kingdom will be required to conform with all general expectations and conditions required for Third state participation which is subjective to final approval by the Council. Under the proposals, the United Kingdom will not receive advantageous treatment whilst the Union attempts to strengthen the Common Security and Defence policy through effective implementation of the PESCO legal framework. Given the political climate towards the PESCO Agreement,¹¹² the United Kingdom may wish to expediently pursue other agreements by expanding the scope and remit of the UK-French Lancaster House Treaties, the interoperability of contributing forces to the Joint Expeditionary Force, or other bilateral or multilateral agreements in which High Contracting parties retain sovereign control over contributed forces.

As outlined by Her Majesty's Government in the 2017 policy statement, the "United Kingdom would like to offer a future relationship that is deeper than any current third country partnership [which] should be unprecedented in its breadth, taking in cooperation on foreign policy, defence and security, and development [...]".¹¹³ Correspondingly, the United Kingdom seeks an extraordinary agreement which should surpass the security and defence cooperation and integration principles created between the European Union and Ukraine in 2005.¹¹⁴ Again, as outlined within the 2017 policy statement, the United Kingdom is prepared to offer reciprocal exchanges of foreign and security policy experts and military personnel to contribute towards Union external action; classified information exchange to support additional external actions as jointly identified by the United Kingdom and the Council, and for the mutual provision of consular services in Third states (to the Anglo-European Agreement) which lack either a European Union or British diplomatic station.

In comparing both the Commissions guidelines for negotiation and the strategic documentation with the British policy statement of 2017, it is abundantly clear how both parties propose to maintain the current coordination relationship to the great extent possible. It would appear how the United Kingdom's impending Third state status is the greatest inhibiting factor preventing the furtherance of European integrated defence under a unity legal regime.

Concluding Remarks

The United Kingdom is expected to depart the European Union on the 29th of March 2019. Given a prolonged period of integration for the purposes of ensuring regional collective security, interoperability of armed forces, and collaboration in research and development for advancing European defence technologies and initiatives, the impending British departure creates a potential for a shortfall in defence capabilities within the remaining twenty-seven Member States. Given the expansive and comprehensive nature of British defence and foreign policy influence; maintaining a position within the United Nations Security Council as a permanent member, maintaining a nuclear weapons programme, maintaining diverse and global military facilities and an expansive

¹¹² Kieran Corcoran, 'Almost the Entire EU has Signed Up to a Major Joint Military Plan (but not Britain)' (Business Insider, 13 November 2017) <<http://www.businessinsider.com/eu-nations-sign-pesco-joint-military-plan-but-not-britain-2017-11>> accessed 27 February 2018.

¹¹³ HM Government, 'Foreign Policy, Defence, and Development: A Future Partnership Paper' (September 2017) para 64.

¹¹⁴ Agreement between the European Union and Ukraine Establishing a Framework for the Participation of Ukraine in the European Union Crisis Management Operations [2005].

diplomatic service, alongside the maintenance of a full spectrum¹¹⁵ military, both the United Kingdom and the European Union actively seek a new relationship that encompasses the pre-Brexit paradigm to the greatest extent possible whilst acknowledging and responding to the inhibiting legal factors arising from the Treaty on the European Union, Treaty on the Functioning of the European Union, associated Protocols, and Council Decisions. Whilst recognising long-standing and extensive British participation within external operations and missions in support of both the Common Foreign and Security Policy and the Common Security and Defence Policy, alongside crucial leadership in coordinating European defence since 1947, and comprehensive bilateral and multilateral defence agreements, it is reasonable to conclude how the United Kingdom will remain a critical defence partner for European states in the post-Brexit era.

¹¹⁵ 'UK-EU Defence and Security Cooperation' (Institute For Government, 16 February 2018) <<https://www.instituteforgovernment.org.uk/explainers/uk-eu-defence-and-security-cooperation>> accessed 4 March 2018.