

Date of submission: 29.06.2016
Word count: 13.093

University of Twente
School of Management and Governance
European Public Administration
1st Supervisor: Prof. Dr. Ramses A. Wessel
2nd Supervisor: Dr. Shawn Donnelly
Daily Supervisor: Dr. Luisa Marin

| Bachelor Thesis |

**Disposed to take action? An assessment of the EU as a global security actor
in the combat of regional conflicts**

*Daria Sutter**

**Daria Sutter (s1409468)*

is student at the Centre for European Studies, University of Twente, the Netherlands. Her research interests include European external relations law and legislation on asylum.

Table of Contents

ABSTRACT 2

ABBREVIATIONS..... 3

1. INTRODUCTION..... 4

 1.1 Academic State of the Art 5

 1.2 Research Question..... 6

 1.3 Conceptualisation and Theory..... 8

 1.4 Methodology 12

2. LEGAL COMPETENCES OF THE EU IN FOREIGN AND SECURITY POLICY 14

3. THE EU-NATO RELATIONSHIP 18

4. EVALUATION OF PAST MISSIONS 23

 4.1 Operation Althea 24

 4.2 Operation Atalanta 27

5. OBSTACLES THAT HAMPER EU ACTING IN GLOBAL SECURITY 30

 5.1 Obstacles in the legal framework of the CFSP 31

 5.2 Obstacles in the EU-NATO cooperation and EU-led missions 34

6. CONCLUSION AND OUTLOOK 36

LITERATURE 39

ABSTRACT

This paper aims to determine the EU's ability to successfully contribute to global security and more specifically to the combat of regional conflicts. In this context, the relevant legal framework is discussed as well as the EU's relationship with NATO and past conflict resolution missions. Moreover, obstacles in the existing provisions, the cooperation mechanisms with NATO and launched missions are evaluated. As the foreign and security policy of the EU is and has been subject to constant change, there is still little research about the current dynamics, problems and possibilities.

The paper reveals that the EU can only contribute to regional conflict resolution to a medium extent, which is caused by structural problems originating from the intergovernmental construction of the CFSP and impediments in the cooperation with NATO. The latter arises from a doubtful legal nature of the formal EU-NATO cooperation and the ongoing dispute between EU Member State Cyprus and NATO Member State Turkey.

ABBREVIATIONS

BiH	Bosnia and Herzegovina
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CSDP	Common Security and Defence Policy
DSACEUR	Deputy Supreme Allied Commander Europe
EU	European Union
ESDP	European Security and Defence Policy
HR	High Representative of the Union for Foreign Affairs and Security Policy
NATO	North Atlantic Treaty Organisation
SHAPE	Supreme Headquarters Allied Powers Europe
UN	United Nations
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
WEU	Western European Union
WMD	Weapons of Mass Destruction

1. INTRODUCTION

The world is rapidly changing and new challenges with a global dimension are emerging in the 21st century. Through the development of technology and infrastructure, that is changes due to processes of globalization, security threats like war and terror have developed a dimension exceeding the borders of nation states. Therefore, the need for collective international action was never as important as today.

The European Union (EU) as an important international political body needs to adapt to this change in order to be able to face global challenges in a successful manner. Starting as an economic and political Union, the EU has been constantly developing its institutional setting and broadening its scope. With the formulation of the Petersberg tasks in 1992, the EU has entered into the field of security and defence which climaxed in the coming into force of the Lisbon treaty in 2009.

As aforementioned, the domain of the EU security and defence policy has been subject to constant changes during the last 20 years. Starting with the Western European Union (WEU) and the European Security and Defence Identity (ESDI) as a European pillar within the North Atlantic Treaty Organization (NATO), it was decided to transfer this role to the jurisdiction of the EU in 1999, creating the European Security and Defence Policy (ESDP). This incorporation within the EU enabled European countries to decide and act in matters of security, even though they had no ties to NATO. Finally, the treaty of Lisbon signed in 2007 renamed the ESDP into Common Security and Defence Policy (CSDP), which remains as the status quo. In this historical context, the crucial and perpetual relationship with NATO becomes an issue of continuous relevance.

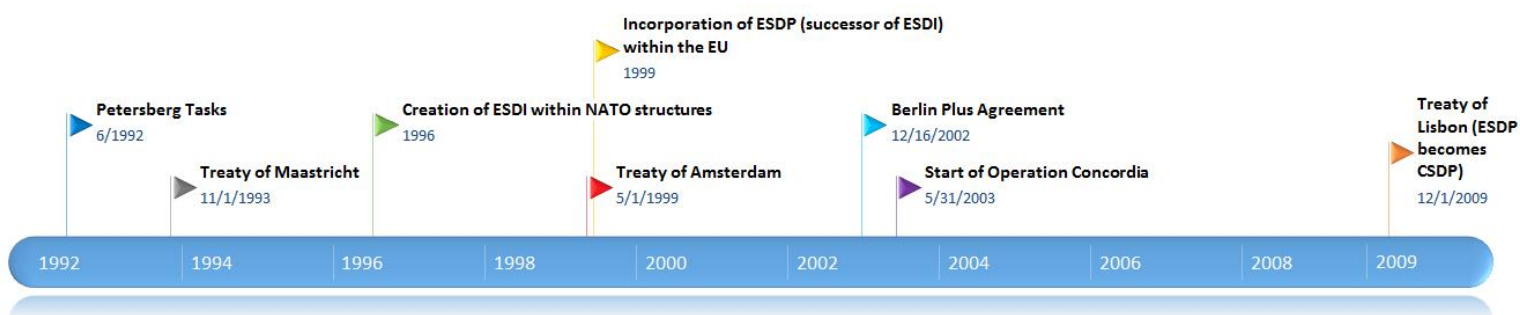
In practice, the EU started its first military operation in 2003 with the use of NATO assets and capabilities. This operation, named EUFOR Concordia, was started as to secure peace in the former Yugoslav Republic of Macedonia. With this military operation the EU entered into the combat of regional conflicts. As of today, it has launched 30 operations in several countries in three continents. The reason behind those military operations is communicated clearly:

‘These conflicts hamper our partner’s development, curtail trade flows and limit political cooperation. They foster extremism and create breeding ground for terrorist and criminal activity of all kinds. They can give rise to unmanageable migratory flows

and disrupt energy supplies. These conflicts are a constant threat to the EU's security.¹

Seven years later in the event of the current refugee crises and the recent terrorist attacks these interactions become even more apparent. This demonstrates that the combat of regional conflicts is of great importance today as they are triggering many other hazards concerning global security. Hence regional conflicts denote a serious threat to global security.

Timeline of EU history in the area of foreign and security policy



1.1 Academic State of the Art

The fact that the line of action of European security policy is constantly developing also triggers the constant need for new research. Still little is known about the EU's dynamic and capabilities to tackle global security problems. Therefore, research conducted in that area has a high scientific relevance as it adds to a field of research which was explored to a lesser extent than other domains of the EU's fields of operation. However, several scientific contributions have been made concerning the EU's role in global security and in this connection in the field of conflict resolution. N. Tocci addresses the EU's objectives, strengths and weaknesses in its actions of conflict resolution. Hereby, she argues that those actions are determined by the EU's self-awareness as a 'peace through integration project' within its borders.² Other authors, to name a few R. Ginsberg and S. Penksa³ and A. Staggl⁴, focus on the emerging and changing development of the EU-NATO relationship. Whereas

¹ B. Ferrero-Waldner, European Commission, 'European Neighborhood Policy – Making Europe more secure', SPEECH/08/285, 28 May 2008, available at <http://europa.eu/rapid/press-release_SPEECH-08-285_en.htm>

² Nathalie Tocci. Conflict Resolution: Theories and Practice. London and New York: Routledge, 2011.

³ R. Ginsberg and S. Penksa, *The European Union in global security: the politics of impact* (Houndmills: Palgrave Macmillan 2012)

⁴ A. Staggl, *Das Verhältnis zwischen EU und NATO* (Norderstedt: GRIN Verlag 2009)

Staggl concentrates on the idea that the EU might become a competitor for NATO, Ginsberg and Penksa emphasize the impact which the EU might have on NATO since its deployment of military operations. Some scholars, on the other hand, solely focus on the EU's institutional settings and its past development towards the CSDP. T. Dyson and T. Konstadinides⁵ engage themselves with analysing the limitations the CSDP has with regard to the intergovernmental forces, emphasizing national bias instead of joined EU action.

This paper aims at combining previous approaches in that the EU and its actions are in focus. It suggests that the aforementioned aspects function in interplay and that the EU's role in global security cannot be analysed from one perspective only. History shows that the relationship to NATO is inevitable and cannot be disregarded in that context. Consequently, the EU's legal framework, its launched missions and the operating dynamics with NATO in this connection as well as the weaknesses and obstacles emerging in that context need to be examined altogether. By doing so, this research adds a valuable and scientific relevant piece to the topic of EU action in global security.

1.2 Research Question

As discussed in the last sections, questions about the EU's abilities to tackle global security problems arise. This paper therefore aims at analysing the EU's current legal framework and its actions in global security matters, more specifically regional conflict resolution. At this juncture it has to be examined whether the EU is prepared or what it is lacking in order to successfully function as a global actor in the field of regional conflict resolution. The research question of this paper therefore will be formulated as follows:

To what extent can the EU successfully contribute to regional conflict resolution?

In order to answer the research question stepwise and to its full potential, four sub-questions will be formulated. To begin with, the EU's competences in the area of security need to be discussed. Considering the principle of conferral, it is regulated specifically, where the EU is allowed to act on behalf of its Member States and where not. In order to assess the EU's successful acting in global security, it has to be checked first what the EU legally is able to do

⁵ T. Dyson and T. Konstadinides, (2013, September 26). 'Understanding the Limitations of the EU's Common Security and Defence Policy', *E-International Relations*, 25 March 2016 available at <<http://www.e-ir.info/2013/09/26/understanding-the-limitations-of-the-eus-common-security-and-defence-policy-a-legal-perspective/>>

in the realm of foreign and security policy. Thus, the first sub-question is formulated as follows:

1. *Which legal competences does the EU have that allow it to contribute to solving global security problems?*

Following to that, in the operating context of the international system, the EU's relationships to other organizations and third states needs be evaluated. As the EU is not able to tackle threats to global security on its own, the character of such relationships is crucial when determining the EU's success in that respect. Here, the emphasis is put on the dynamics between the EU and NATO due to its intertwined history which was discussed earlier. In 2002, when the Berlin Plus Agreement was introduced, the EU and NATO created a legal framework for their cooperation. These agreements influence the EU's work in security matters, which is why the dynamics of this relationship needs to be discussed in this paper. Consequently, the second sub-question is:

2. *What is the EU's relationship with NATO?*

Furthermore, when assessing the EU's overall success in regional conflict resolution, it is necessary to consider and evaluate actions that the EU already has taken in the past. For that, past missions aiming at regional conflict resolution will be analysed in order to see whether they have reached their set goals and thus have been successful. Hence, a third sub-question will be formulated as follows:

3. *Have regional conflict resolution missions in the past been successful?*

Finally, and before being able to draw conclusions on the main research question, the discovered hurdles and weak aspects need to be analysed. Only after that one can move on to assess the EU's successfulness in regional conflict resolution. Thus, the fourth and final sub-question will be:

4. *Which legal obstacles does the EU face in its ambition to act in the area of global security?*

1.3 Conceptualisation and Theory

In order to proceed with the study of EU action in the field of regional conflict resolution and to answer the above formulated research questions, the used concepts must be defined carefully. First of all, a definition of “global security” needs to be discussed. The concept is not easily defined and academics’ definitions vary greatly in that respect. However, it can be said that the global scale is the crucial factor for defining that term. In this connection, ‘global security [...] evolved from the necessity that nature and many other activities, particularly globalization, have placed on states.’⁶ This means that external events that are not in control by states, especially events caused by globalisation, trigger threats that are exceeding the borders of nation states and hence force states to acknowledge the phenomenon global security. Consequently, the interconnection and interdependence among states demands cooperation and a joint approach in order to tackle threats that concern a global scale. Here, ‘it is in the interest of all that no national security challenge be allowed to escalate into a global problem.’⁷ This notion is important when dealing with regional conflicts, as those must be curbed in order to prevent them from expanding to a greater scale and therefore threatening global security. Furthermore, it is useful to see how the EU itself perceives its security environment as to understand the dimensions of global security problems. The EEAS defines five key security challenges that are used in this paper in order to define “global security problems”.⁸ The threats determined are:

- Terrorism
- Proliferation of weapons of mass destruction (WMD)
- Regional conflicts
- State failure
- Organized crime

As stated earlier, regional conflicts pose a serious threat to global security by enabling other threats like terrorism and extremism to develop.⁹ In this connection, the resultant state failure can also feed the need for WMD. Consequently, ‘the most practical way to tackle the often

⁶ S. Osisanya, ‘National Security versus Global Security’, *UN Chronicle* (May 2015).

⁷ S. Osisanya, *supra* note 6 on 8

⁸ This is available, as well as other information on the CSDP, at <<http://www.eeas.europa.eu/csdp/about-csdp/european-security-strategy/>>

⁹ B. Ferrero-Waldner, *supra* note 1 on 5

elusive new threats will sometimes be to deal with the older problems of regional conflict' and hence making regional conflict resolution a crucial topic in global security.¹⁰

Regional conflicts are difficult to define and the term is used rather broadly in the scientific world. The EU itself does not define the concept. For this paper, the definition by Barbara Conry will be used:

'[Regional conflict] will mean an armed up-heaval, either cross-border or internecine, that affects a limited area but has little direct impact on the security of the rest of the world. The definition is necessarily broad, applicable to wars between established sovereign states, such as the Iran-Iraq conflict in the 1980s; internal strife in the absence of a functioning government, as in Somalia; a dispute between a sovereign government and an armed group within its borders, as in Sudan; or a conflict that involves both sovereign states and external nonstate parties, as in the former Yugoslavia.'¹¹

In this connection, it is crucial to mention that the impact on the security of the rest of the world is not expected to be direct. This, however, does not exclude indirect effects as mentioned by Ferrero-Waldner.¹² In the combat of regional conflicts, experts and politicians talk about conflict resolution. In his paper, Kamov¹³ identifies three dimensions for this term: conflict prevention (ex ante), conflict management (ex durante) and conflict resolution (ex post). All three aspects are concerned when responding to a conflict. These processes involve amongst other things preventive strategies, crisis management, post crisis-rehabilitation, reconstruction and peace-building programmes.¹⁴ At this juncture, the term crisis management is sometimes used as a synonym for conflict resolution comprising the aforementioned elements. However, for the objective of this paper, it can be said that crisis management rather is an instrument used by for instance the EU and NATO to tackle regional conflicts. More specifically, operations launched by the EU in case of regional conflicts are usually

¹⁰ European Security Strategy, 'A Secure Europe In A Better World' (Brussels, 12 December 2003) available at <<https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>>

¹¹ B. Conry, 'The Futility of U.S. Intervention in Regional Conflicts', *Cato Institute*, 19 May 1994, available at <<http://www.cato.org/publications/policy-analysis/futility-us-intervention-regional-conflicts>>

¹² B. Ferrero-Waldner, *supra* note 1, at 5

¹³ G. Kamov, 'EU's role in conflict resolution: the case of the Eastern enlargement and neighbourhood policy areas', *Institut Européen des Hautes Études Internationales*, 2006, available at <<http://www.ie-ei.eu/IE-EI/Ressources/file/memoires/2006/KAMOV.pdf>>

¹⁴ European Commission, 'Conflict prevention, crisis management and peace building: a busy year for the EU Instrument for Stability', 24 July 2012, available at <http://europa.eu/rapid/press-release_IP-12-832_en.htm?locale=en> For other information on crisis management see also <http://ec.europa.eu/cfsp/crisis_management/index_en.htm>

called “crisis management operations” which is why they are considered to be an instrument. In this context, one can distinguish between crisis management operations, which usually feature a military content, and crisis management missions, which have a civilian component. These two types of crisis management actions are often combined to civilian-military crisis management, a field in which the EU is specialised in.¹⁵

Another concept that needs a clear definition is “successfully”. In order to evaluate the EU missions, their objectives for which they were launched need to be compared to the actual outcome. Here, a distinction will be made between internal success and external success. An operation will be assessed as internally successful when by way of example the following administrative criteria are fulfilled:

- The implementation process was going as planned
- The implementation was cost and time efficient
- The planning was coherent within the involved EU institutions

The external success on the other hand is determined by the overall goal attainment. This involves the operational fulfilling of the mission’s main objective and its contribution to the overall security in the concerned region. The cooperation with international actors, especially NATO, can be found somewhere in between these two dimensions by sometimes even building the link from one to another. Consequently, an operation is considered to be successful when the internal and external success criteria were achieved to a greater extent.

Applying an appropriate theoretical framework for answering the third sub-question, the theory of intergovernmentalism will be utilised. Intergovernmentalism is one of two theories which rival in the debate of European integration with the other one being supranationalism. The one can only be explained by distinguishing it from the other. The main difference between the two theories is about which actor is the driving force in the European integration process. Whereas ‘supranationalism refers to a large amount of power given to an authority which in theory is placed higher than the state [...], intergovernmentalism focuses on the importance of Member States in the process of creating EU-wide regulations.’¹⁶ In practice, intergovernmentalism refers to ‘arrangements whereby

¹⁵ M. Kuhn , ‘The system of EU crisis management – From bringing peace to establishing democracy?’ 13 *Max Planck Yearbook of United Nations Law* 2009, 247 – 266

¹⁶ P. Colletaz, (2013, November 04). ‘Introducing the European Union: Between Supranationalism and Intergovernmentalism’, *The Euroculturer*, 24 November 2013, available at <https://euroculturer.eu/2013/11/04/introducing-the-european-union-between-supranationalism-and-intergovernmentalism/>

nation states, in situations and conditions they can control, cooperate with one another on matters of common interest.’¹⁷ This involves the retaining of their sovereignty.

In the EU, the European Council and the Council of the European Union are intergovernmental institutions representing the heads of state or government and the executive governments’ of the Member States. Both institutions have a crucial role in defining and adopting the CFSP. Plainly put, the European Council provides political direction to the EU and represents it externally, whereas the Council of the European Union implements policies. In the field of common foreign and security policy (CFSP), the Council has to vote unanimously meaning that everyone has to agree or abstain from voting. Having in mind the intergovernmental character of the Council, this voting system becomes crucial for actions regarding the CFSP. This means that decisions taken in that field of action are determined by nations’ interest and depend on the Member States’ perception of security issues. Motivations of a Member State braking EU commitment in regional conflict resolution can vary greatly. It is suggested that Member States sometimes prefer to contribute to operations exercised by other organizations such as the United Nations (UN) or NATO or they lack a particular interest in the region at hand.¹⁸ Moreover, Member States could lack the military capacity themselves and therefore not be able to contribute to an EU mission.

The formation of such national preferences is at the core of the theory of liberal intergovernmentalism. Liberal intergovernmentalism is an integration theory built on the classical intergovernmentalism theory which was originally proposed by Stanley Hoffmann¹⁹; the famous author Andrew Moravcsik refined this theory and suggested that national governments control the stage and tempo of European integration.²⁰ In his theory, state interests are shaped by domestic politicians in power who are in turn influenced by the civil society. As the politicians at the head of the national governments want to stay in office, they include the interests of the civil society. The same mechanisms take place when the Member States represent their nation in the Council. According to Moravcsik’s theory, the outcomes of the domestic preference formation will then determine the governments’ positions in interstate bargaining on the international level. Here, the outcomes depend on the relative bargaining power of the actors. More specifically, a state that is not in urgent need for an agreement or

¹⁷ N. Nugent, *The Government and Politics of the European Union* (Houndmills: Palgrave Macmillan 1999) 48 – 58

¹⁸ K. Soder, ‘EU crisis management: an assessment of member states’ contributions and positions’, April 2010, available at <<http://www.ics.be/files/Soder-D1-NOT4WEB.pdf>>

¹⁹ For more information on the classical intergovernmentalism theory see S. Hoffmann, *State of war: Essays on the Theory and Practice on International Politics* (Praeger 1965)

²⁰ A. Moravcsik, ‘Preferences and Power in the European Community: A liberal Intergovernmentalist Approach’ 31(4) *JCMS: Journal of Common Market Studies* *JCMS: J Common Market Studies* 1993, 473-524

one that has more information than the others has a higher relative bargaining power and thus can crucially influence the outcome. Consequently, the decision-making in the EU and specifically with regard to the CFSP is influenced by the national civil society and its specific interests which in turn determine the state's relative bargaining power. If the interests of those differ across Member States and certain states have a high relative bargaining power, the heads of governments in the Council – due to the unanimous decision-making - do not find common ground to decide on an EU matter, hence limiting the EU's involvement in regional conflict resolution and thus global security matters.

1.4 Methodology

After discussing the research in terms of its content, concepts and theoretical framework, this section will address the applied methodology. In order to answer the stated sub-questions and ultimately the overall research question, several legal documents will be approached.

For the first sub-question, the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) will be used in order to explain, what the treaties enable the EU to do in the field of security policy. At this juncture, also its predecessors will be studied in order to understand its development and take that into account when considering prospective changes.

Following to that, when turning to the second sub-question, the Berlin Plus Agreement will be used in order to evaluate the NATO-EU relationship in-depth. The Berlin Plus Agreement consists of a package of arrangements between the EU and the NATO that allows the EU to make use of NATO assets and capabilities for crises management operations that are solely led by the EU. These arrangements were set up in order to improve the partnership between the EU and NATO by 'ensuring effective consultation, cooperation and transparency in crisis management and peace-building operations.'²¹ Two missions already were launched within the framework of the Berlin Plus Agreement, namely Operation Concordia in 2003 and EUFOR Althea in 2004. In practice, the use of NATO assets and capabilities by the EU is subject to a right of refusal, meaning NATO has to refuse to intervene in the crisis at hand and it has to be approved unanimously by the NATO Member States. This is crucial for the practical functioning of the Berlin Plus Agreement. As an example, when Turkey declined Operation Concordia, it was blocked for more than five months.

²¹ This is available, as well as other information on the Berlin Plus Agreement, at http://www.ecas.europa.eu/csdp/about-csdp/berlin/index_en.htm

Furthermore, when answering the third sub-question, two EU military operations will be analysed exhaustively in order to assess their successfulness. The analysis of those operations also will be used as to draw conclusions on the EU-NATO relationship. First, the EU operation EUFOR Althea will be discussed, which is an example of cooperation between the EU and NATO, since the EU took over NATO's SFOR²² operation in Bosnia and Herzegovina in 2004. EUFOR Althea was the second operation to be launched in the framework of the Berlin Plus Agreement and aims at maintaining a secure and safe environment in Bosnia and Herzegovina. Second, a closer look at the EU operation NAVFOR Atalanta will be taken. Operation Atalanta is a mission contributing to the fight against piracy at the horn of Africa by. This might be an example, where EU and NATO lack communication, as the NATO is leading the same operation autonomously in the same area. Both operations are an example of civilian-military crisis management in the field of regional conflict resolution.

In order to evaluate the missions in terms of their successfulness, two different kind of sources will be used. First, statements from the EU and the mission's officials will be studied as well as papers evaluating on the lessons learned. Second, legal scholarship will be approached which is critically assessing the operations' success. The latter type of documents is crucial when evaluating an operation, as documents solely published by the EU and its institutions might be biased in terms of their success.

For the fourth sub-question, the very provisions mentioned in the context of the first sub-question will be analysed. Furthermore, also the conclusions drawn from the other two parts will be used in order to answer this last question. More specifically, legal scholarship that discuss and explain the provisions elaborated in the first part and how they function in practice, the relationship with NATO and the outcome of the evaluated missions are concerned when looking for weak aspects and obstacles in the EU's security policy. Furthermore, literature concerning the mechanisms of intergovernmentalism in the EU will be studied in order to understand limitations due to the Member States' prevalence.

²² The NATO-led Stabilisation Force (SFOR) in BiH was launched in January 1996 and ended in December 2005 when the EU took over by launching EUFOR Althea.

2. LEGAL COMPETENCES OF THE EU IN FOREIGN AND SECURITY POLICY

The previous sections introduced the topic of regional conflicts and its importance in international security matters. In the theory section, the relevant theories were explained as well as the used concepts clarified. Moreover, the methods needed for answering the formulated four sub-questions were discussed. The focus of this section will now be on the first sub-question, which is: *Which legal competences does the EU have that allow it to contribute to solving global security problems?* As aforesaid, the principle of conferral is a fundamental principle in EU law. It connotes that the EU has no competences by right and that therefore all competences exercised by the EU explicitly need to be conferred to it by the Member States on a voluntary basis. Every competence which is not agreed to be Union competence by the Member States remains with them. Thus it is specifically regulated where the EU is allowed to act representatively for its Member States and where not. This means that treaties and its provisions have to be analysed in order to examine the Union's competences in terms of security policies. For this purpose, the TFEU and TEU will be used in particular, as they result from the Treaty of Lisbon. This section is aiming to provide some building blocks for the further course of the paper and hence is of a more descriptive nature. This is important in order to understand the following sections which engage in analysing different aspects of the working dynamics of the CFSP and CSDP.

To start with, the EU needs to be considered as a global actor on the international landscape. It was discussed before how crucial it is to have an international approach to tackle regional conflicts. At this juncture, the legal ability to conclude international agreements is of great importance since such cooperation is essential to achieve collective goals. In order to do so, the EU can rely on Article 37 TEU, which enables it to 'conclude agreements with one or more States or international organisations in areas covered by this Chapter.' The areas covered by this chapter refer to the provisions on the common foreign and security policy. In addition to that, Article 21 of the TEU pays specific attention to the Union's action on the international scene which shall be guided by its own principles, namely democracy, rules 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. The article further promotes partnerships with third countries and international organisations who share the aforementioned principles in order to advance them in other parts of the world by finding multilateral solutions to

prevailing shared problems. The promoting of partnerships with third countries and international organisations is an essential part of collectively taking steps towards regional conflict resolution. Furthermore, to know the intentions of the Unions external actions is important for understanding its actual moves in the combat of regional conflicts. Lastly, Article 28 (1) TEU takes the international scene into consideration as well by urging the Union to respond to potential necessary operational action. This is important when considering the Union competences in the context of regional conflict resolution as the treaty urges the Union to act if needed. In this connection, ‘the Council shall adopt the necessary decisions.’

The treaty provision that indirectly grants the EU competences in matters of common foreign and security can be found in the TFEU under the heading “Categories and Areas of Union Competence”. Article 2 (4) empowers the EU to ‘define and implement a common foreign and security policy, including the progressive framing of a common defence policy.’ This, although indirect, allocation of competence to perform a common foreign and security policy is a necessary precondition for the Union for any further action in security matters. The second part of this article enables the EU to frame a common defence policy in the context of the formulated common foreign and security policy. This is crucial as it allows the actual formation of missions and operations to implement formulated CFSP goals. Although the competence of common foreign and security policy is mentioned under the heading of “Categories and Areas of Union Competence”, the treaty fails to categorise it in either exclusive, shared or supplementary competences. Thus, ‘the division of competences between the Union and its Member States in this area remains unclear.’²³ This could be due to the fact that the treaty only states that the competence exists; in contrast to all other policy areas, it does not give a basis to the CFSP and CSDP.²⁴ For other policy areas, the competences are explicitly mentioned in Article 3 – 6 TFEU. The basis of the CFSP, however, is to be found in the TEU.

This basis, to which Article 2 (4) TFEU refers, can be found in Title 5 of the TEU under “Specific Provisions on the Common Foreign and Security Policy”. Article 24 concerns the competences and procedures of the CFSP. Here, paragraph 1 provides the content of the common foreign and security policy that is ‘all areas of foreign policy and all questions related to the security of the Union, including the progressive framing of a common defence policy, which might in time lead to a common defence.’ The article further specifies the

²³ R.A. Wessel and L. d. Hertog, ‘EU Foreign, Security and Defence Policy: A Competence Responsibility Gap?’ *International Responsibility: EU and International Perspectives* (Oxford: Hart Publishing 2012)

²⁴ R.A. Wessel and L. d. Hertog, *supra* note 23 on 15

relevant actors of the CFSP, which are the European Council and the Council. In this connection, decisions taken by the Council require unanimity among the Member States thus maintaining crucial power. After a decision is reached, following decisions can be voted on by qualified majority voting. Furthermore, there shall be no adoption of legislative acts as this would require an ordinary legislative procedure which in turn requires the participation of the European Parliament and the Commission. The role of the European Parliament and the Commission is defined by the treaties and rather limited. The Court of Justice of the European Union (CJEU) even has no jurisdiction over the provisions of Article 24 except to monitor its compliance with Article 40. The limitation of those three actors underlines the intergovernmental character of the CFSP. Paragraph 2 of Article 24 states the moral foundation of the CFSP, which is based on ‘the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States’ actions.’

Article 25 of the TEU defines how the EU shall conduct the CFSP without going into detail about the specific implementations. Article 26 (1 & 2) then specifically deals with the exertion of the common foreign and security policy. It is the European Council that ‘shall identify the Union’s strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications. It shall adopt the necessary decisions.’ The Council on the other hand representing the executive governments of the Member States ‘shall frame the common foreign and security policy and take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines adopted by the European Council.’ Together with the High Representative of the Union for Foreign Affairs and Security Policy (HR) it ‘shall ensure the unity, consistency and effectiveness of action by the Union.’ The HR is the representative of the CFSP and therefore represents the EU in international security matters and is the chief co-ordinator of the CFSP and CSDP. Article 26 (3) clarifies the enforcement of the common foreign and security policy, which shall be done by the HR and the Member States together. For this, both national and Union resources shall be used underlining the cooperation in this area.

As mentioned before, Article 2 (4) in the TFEU allows the EU to develop a common security and defence policy in order to use such missions to achieve the goals formulated in the CFSP. This is crucial for the EU acting in global security as it gives it the possibility to not only make theoretical decisions but to actually take action in situations that are threatening the security of the international scene. Without the practical framing of such

missions, the combat of regional conflicts would not be possible. The provisions on common security and defence policy can be found in the TEU in Chapter 1 of Title 5. Article 42 (1) states that the CSDP is an integral part of the CFSP and that it 'shall provide the Union with an operational capacity drawing on civilian and military assets.' Those assets may be used outside the borders of the EU in order to engage in peace-keeping, conflict prevention and strengthening international security. For that, as it is specified in Article 42 (3), 'Member States shall make civilian and military capabilities available to the Union.' The second part of Article 42 (2) TEU sets limits to the common security and defence policy by stating that the Council, when seeing the need to act, shall recommend the adoption of a decision to the Member States. This wording suggests an entirely voluntary basis to engage in a CSDP mission. Furthermore, the CSDP may not impair with the national security and defence policy of the Member States and has to comply with their obligations under NATO. Article 43 (1) goes on and specifies the tasks of the Union, that is 'joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilization.' Hereby, the treaty enables the Union specifically to act in regional conflict resolution which contains and requires the listed tasks as already evaluated in the theory section. This again is executed by the Council and the HR, which illustrates the intergovernmental character also of this area as the jurisdiction is with the Member States.

The area of common foreign and security policy has been subject to constant change over the last decade which is mainly due to the Treaty of Lisbon. In 2007, it has amended the TEU especially in the concerned policies of this paper. The specific changes made illustrate how the CFSP and its components gained importance for the EU and its actions on the international scene. In practice, the Treaty of Lisbon advanced the provision in Article 24 (1) by changing it from an 'eventual' to a 'progressive framing of a common defence policy.' This amendment suggests a strong move forward towards a Union that is actively engaged in the realm of foreign and security policy. Furthermore, it amends and specifies parts of aforementioned provisions like Article 24 and 26 in the TEU and aggrandizes the role of the HR, which was first introduced in the Treaty of Amsterdam in 1999 and now gained more importance by being provided with a seat on the Commission and being its vice-president as well as the chair of the Foreign Affairs Council. All in all, the Treaty of Lisbon aims to create a stronger European voice in the world by clarifying its objectives and providing new tools to

facilitate change.²⁵ While the focus of the treaty is on strengthening the EU's voice on the international scene, the Member States ability to conduct an independent foreign policy remains untouched.

When considering the research question '*Which legal competences does the EU have that allow it to contribute to solving global security problems?*' and revisiting the insights of this section, the following crucial competences of the EU can be concluded. Firstly, the treaties pay attention to the international scene and the possible need to act by equipping the Union with the legal ability to conclude agreements in order to cooperate with third countries and international organizations. Moreover, Article 2(4) of the TFEU specifically allows the EU to conduct the CFSP and within that framework the CSDP. However, it fails to categorise the competences of the Union and therefore gives rise to some responsibility questions. The relevant provisions are stated in Article 24 in the TEU explaining that the CFSP includes all areas of foreign policy and questions concerning the security of the EU. Furthermore, it specifies the role allocation in which the Council takes all relevant decisions unanimously. Since the Council is representing the executive governments of the Member States, it is mostly their area of responsibility. Thus, the CFSP can be assessed as a rather intergovernmental policy field, which was neither hardly changed by the Treaty of Lisbon.²⁶

3. THE EU-NATO RELATIONSHIP

In the previous part the EU's competences regarding a foreign and security policy have been introduced. In this connection, Article 37 TEU on concluding agreements with international organisations is the legal basis for the EU to cooperate with NATO. Moreover, Article 42 (2) TEU on the CSDP already pays attention to the Member States' obligations under NATO. By acknowledging the Member States' commitment to NATO in its provisions, the EU gives precedence to NATO and its important role in crisis management. This is expressed in the EU-NATO Declaration on ESDP as well, where both organizations 'reaffirm that NATO remains the foundation of the collective defence of its members.'²⁷ The fact that the EU now

²⁵ This is available, as well as other information on the Treaty of Lisbon, at <http://europa.eu/rapid/press-release_MEMO-09-531_en.htm?locale=en>

²⁶ In a parallel academic debate, the intergovernmental idea has increasingly been challenged. For more information on that see for instance R.A. Wessel, 'Lex imperfecta: Law and Integration in European Foreign and Security Policy', 2 *European Papers: A Journal on Law and Integration* 2016

²⁷ This is available, as well as other information on the EU-NATO declaration, at <http://www.nato.int/cps/en/natolive/official_texts_19544.htm>

features its own defence policy but nevertheless respects NATO's role suggests a complex relationship which needs to be considered and analysed when examining the EU's role in international security matters and specifically regional conflict resolution. This section further analyses this relationship as to answer the second sub-question: *What is the EU's relationship with NATO?*

In the introduction it was already explained how the CSDP evolved to its today's status quo. To recapitulate, the ESDP, as the predecessor of the CSDP, created a European security pillar which withdrew NATO the jurisdiction over this area and transferred it to the EU. At this juncture it became necessary to establish a formal agreement between the EU and NATO as to prevent a decline in the importance of NATO. Furthermore, the overlapping of Member States – currently they share 22 members – and a possible duplication of assets and capabilities triggered the necessity to cooperate in the field of crisis management. In March 2003, the Berlin Plus Agreement was concluded, which is based on the NATO Washington Summit from 1999²⁸ and the EU-NATO declaration on ESDP from 2002²⁹. The agreement consists of a comprehensive package of agreements made between NATO and the EU. Unfortunately, the actual agreement is not accessible for the public as it is a classified formal decision of the North Atlantic Council. However, some documents published by both organisations are available that explain the content of the Berlin Plus.³⁰

The agreement comprises seven major elements that serve as a foundation for practical cooperation between the EU and NATO specifically in crisis management. First, it contains a NATO-EU security agreement that covers the exchange of classified information under reciprocal security protection rules. Second, the agreement grants the EU access to NATO planning capabilities for solely EU-led operations. Before it is even decided if an operation will take place, the EU Military Staff needs to evaluate the definition of options. This may involve NATO by providing the necessary operational planning. The third element of the package makes NATO assets and capabilities accessible to EU-led civil-military operations. This may involve inter alia communication units and headquarters. NATO has set up a list containing its assets and capabilities that they will most likely make available to the EU if

²⁸ NATO Summits are meetings at its highest level by being held with the Heads of State and Government. They do not take place regularly but only when key moments are happening. In the case of the Washington Summit, the meeting was due to the NATO bombing of Yugoslavia during the Kosovo war. In this context, amongst other things the (at that time) ESDI was enhanced, which established a fundamental basis for further cooperation and thus the Berlin Plus Agreement.

²⁹ The declaration reiterated the fundamental and mutual political principles of the strategic partnership and by that firstly formulated the strategic partnership. It therefore enabled the two organizations to further build on that cooperation, which was done with the Berlin Plus Agreement. For further information see:

<http://www.nato.int/cps/en/natolive/official_texts_19544.htm>

³⁰ EEAS, *supra* note 21 at 12

necessary. Furthermore, an explicit EU-NATO agreement was concluded in order to define the conditions for an EU use of NATO assets and capabilities. Hereby, a defined set of principles and financial and legal deliberations for the release of assets and capabilities was stipulated by contract. This also allows for an eventual recall of assets in case of an emergence, such as an attack against a NATO member. The fourth part of the package comprises procedures for release, monitoring, return and recall of NATO assets and capabilities. As a fifth element, terms of reference for using NATO's Deputy Supreme Allied Commander Europe (DSACEUR) for commanding EU-led operations are included. The DSACEUR is – as deputy – supporting the SACEUR who 'is one of two strategic commanders for NATO and the commanding officer of Allied Command Operations. [He] leads all NATO military operations and is dual-hatted as Commander US European Command.'³¹ By that, the DSACEUR is at the top of the leadership structure in NATO. The EU may request that command option for its military operations. The DSACEUR will then stay at the Supreme Headquarters Allied Powers Europe (SHAPE) where he establishes the EU Operational Headquarters. Thus, the Berlin Plus Agreement gives the EU access to a highly skilled commander that will lead its missions. The sixth part of the agreement contains EU-NATO consultation arrangements that allow the EU to use NATO assets and capabilities for EU-led operations. The final and seventh element of the Berlin Plus Agreement contains arrangements for coherent and mutually reinforcing capability requirements. This means that the EU and NATO together with their Member States should jointly strengthened their development and deliver the military capabilities they need for crisis management. By that, the arrangement focuses on how the EU and NATO could use those capabilities in situations where both parties have the same requirements and similar deficits.

To sum up, the Berlin the Plus Agreement is comprised of seven main elements in which three major aspects can be named that are most important for EU-NATO cooperation. These fundamental aspects are combinable and directly linked to EU-led operations: the EU is granted access to NATO planning as well as NATO Europe command options and it is allowed to use NATO assets and capabilities. In this connection, a specific EU-NATO agreement regulates the conditions for the use of NATO assets and capabilities. In practice, the EU depends on two factors that are conditioning the aforesaid use: first, NATO must decline to intervene in the relevant crisis and second, the Member States of NATO have to give a unanimous approval.

³¹ This is available, as well as other information on the SACEUR, at <<https://www.shape.nato.int/saceur>>

The theoretical insights gained about the Berlin Plus Agreement suggest a close cooperation between the EU and NATO in the field of crisis management. The public relations of both organizations also point to a side by side working and close cooperation due to common strategic interests. But how does it look in practice? Is the cooperation going as well as theoretically suggested and promoted?

Not much scientific work has been done on the working of the Berlin Plus which might be due to the fact that information on it is hardly accessible. The academic debate is rather engaged in a broader evaluation of the dynamics between the EU and NATO. However, the author M. Reichard³² deals with the legal nature of the Berlin Plus Agreement and comes to crucial results about its validity. At the time of the conclusion of the agreement, the changes by the Lisbon Treaty have not been made yet, which means that international agreements needed to be signed by the President of the Council at that time.³³ The Berlin Plus Agreement, however, was signed by the HR who technically was not entitled to do so. M. Reichard concludes that the EU therefore ‘did not have treaty-making capacity’.³⁴ This together with its ‘half-secret nature, strongly [indicates] NATO’s lack of consent to be bound.’³⁵ This means that the doubtful legal nature of the Berlin Plus and the fact that it cannot be accessed by the public suggests a cooperation that does not have a level of parity. Consequently, the Berlin Plus agreement - according to this argumentation - can rather be identified as a non-binding agreement leaving the EU as the underprivileged party.

Besides that, when taking a closer look at reality, one perseverative dispute can be observed which hampers the practical cooperation of the EU and NATO. That is the conflict between NATO member Turkey and EU member Cyprus, whose distinct and incongruent memberships constitute an asymmetry in the framework of EU-NATO cooperation. Since Cyprus is not a member of NATO’s Partnership for Peace and Turkey, despite lengthy accession negotiation, is still not a member of the EU, the quarrel between the two countries causes serious barriers in the cooperation of the two organisations. This is also due to the countries’ history.³⁶ Furthermore, the institutionalised background triggers even more arguments and deadlocks in the practical coordination of NATO and EU. More specifically,

³² M. Reichard, ‘Some Legal Issues Concerning the EU-NATO Berlin Plus Agreement’, 73 *Nordic Journal of International Law* 2004, 37 – 67

³³ For more detailed information on the wording of the past Article 24 see: R. A. Wessel, Chapter Six: The EU as a party to international agreements: shared competences, mixed responsibilities 152-187 in: A. Dashwood & M. Maresceau (Eds.), *Law and Practice of EU External Relations: Salient Features of a Changing Landscape*. Cambridge University Press, Cambridge, 145-180

³⁴ M. Reichard, *supra* note 32 on 21

³⁵ M. Reichard, *supra* note 32 on 21

³⁶ For further information see: Turkish invasion of Cyprus

Turkey was allowed to participate actively under the WEU arrangements, which lapsed once the ESDP was created under the jurisdiction of the EU. Due to the special and unique legal character of the EU, Turkey's role could not be reproduced in the same manner.³⁷ In addition to that, Turkey perceived two promises as neglected: first, in the Washington Summit 1999 Turkey was assured to have similar rights and privileges as before in the WEU³⁸ and second, the EU committed to have 'permanent and continuing consultations with the non EU European allies, covering the full range of security, defence and crisis management issues.'³⁹ The frustration about its limited role combined with the tense political relationship to Cyprus had the consequence of the actual implementation of the Berlin Plus Agreement being delayed for three years due to blocking moves by Turkey.⁴⁰ Furthermore, after the Berlin Plus Agreement was implemented after all, Turkey blocks the sharing of NATO security information and Cyprus' attendance to discussions in the context of strategic cooperation.⁴¹ In fact, the EU-NATO declaration on which the Berlin Plus Agreement was built on, allows NATO to refuse to share classified information with non-NATO EU members, such as Cyprus.⁴² Moreover, the unanimously decision-making which is required on the part of NATO also gives Turkey the power to hinder further cooperative steps. Cyprus reacted to that blockage by refusing to participate in any discussions beyond the Berlin Plus. The result is that 'formal discussions are limited to joint EU-NATO missions, of which there is currently only one, operation Althea.'⁴³ Every matter that is exceeding the realm of this mission is not discussible. This together brakes and partly blocks up processes of cooperation. The dispute between Turkey and Cyprus illustrates that the agreements between the EU and NATO do not perfectly work in practice, but that conflict within that framework can arise and not be prevented by it.

Nevertheless, despite all obstacles emerging from the dispute and its consequences, two missions were launched in the framework of Berlin Plus. The first military operation that was launched within that framework was Operation Concordia in the former Yugoslav Republic of Macedonia. The agreement enabled an EU-led operation in which NATO assets

³⁷ S. Duke, "The Future of EU–NATO Relations: a Case of Mutual Irrelevance Through Competition?" 30 (1) *Journal of European Integration* 2008, 27 - 43

³⁸ This is available, as well as other decisions of the Washington Summit, at <http://www.nato.int/docu/comm/1999/9904-wsh/9904-wsh.htm>

³⁹ Council of the European Union. 'Presidency –Conclusions' Polgen 67, 26 November 2002, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/72968.pdf

⁴⁰ M. Merlingen and R. Ostrauskaite (eds), *European Security and Defence Policy: An Implementation Perspective* (New York: Routledge 2008)

⁴¹ For approaches to solving the problem see: S. Duke, *supra* note 37 at 22

⁴² S. Duke, *supra* note 37, at 22

⁴³ N. Koenig, 'The EU and NATO: Towards a Joint Future in Crisis Management?', *EU Diplomacy Papers* 11/2010

and capabilities as well as the DSACEUR were used. EUFOR Althea followed as the second military operation within the framework of Berlin Plus, maintaining peace in Bosnia and Herzegovina. EUFOR Althea is still ongoing and therefore the one current operation within the cooperation framework of EU and NATO. Together with the EU operation NAVFOR Atalanta, it will be analysed in the subsequent section when assessing the EU's successfulness in global security matters. Before finally concluding on the EU-NATO relationship the respective missions need to be examined. So far, only an intermediary result can be determined. Theoretically, the Berlin Plus Agreement indicates a sophisticated coordination between EU and NATO, in which the EU is equipped with all the relevant assets and capabilities by NATO. Likewise, the two organisations publicly take a position that suggests a close and promising cooperation. However, the insights given about the legal nature of the Berlin Plus Agreement point to a rather fragile agreement, which in practice has an unsolid legal ground. Moreover, the ongoing quarrel between Turkey and Cyprus constitutes an unresolved obstacle for the relationship of the EU and NATO. Hence, the type of coordination between the EU and NATO is still controversial: from coordination over complementing to competition, the academic debate features very diverse thoughts on the character of this relationship. Nonetheless, it is safe to say that the core aspects that hamper the cooperation between the two organisations are still unsolved with finding no solution in the near future.

4. EVALUATION OF PAST MISSIONS

The previous section discussed the relationship between the EU and NATO and how in practice the agreements do not work perfectly. However, in the context of the Berlin Plus Agreement two missions were launched, namely Operation Concordia in the former Yugoslav Republic of Macedonia and EUFOR Althea in Bosnia and Herzegovina (BiH). Those missions are just two of 30 operations which the EU has launched over the last years to tackle regional conflicts. In order to answer the third sub-question, which is '*Have regional conflict resolution missions in the past been successful?*', two of those EU missions will be analysed. Both mission concentrate on two distinct regions which face conflicts that threaten or threatened its overall security. First, Operation Althea will be assessed. Since the operation is the second one that was launched within the framework of the Berlin Plus Agreement, crucial insights can be made about the practical cooperation between the EU and NATO. Moreover, Operation Althea is hitherto the largest EU military mission. The second operation to be

examined is Operation Atalanta. As Operation Atalanta is running outside the Berlin Plus framework and NATO is leading its very own operation in the concerned area, an analysis of the Operation Atalanta might point to a lack of cooperation between the two organisations. In addition to that, Operation Atalanta is the EU's first naval operation. The fact that both missions concentrate on different regional conflicts together with the insights that can be gained on the EU-NATO cooperation justify the selection of these two missions.

For the evaluation of the missions, the conceptualisation of the term “successful” needs to be recalled. The term is divided into two parts, namely internal success and external success. A mission is considered to be successful when both its administrative implementation and its operational purposive objective were achieved to a greater extent. Before starting with the evaluation of the missions it is important to mention that not all documents are accessible to the public since most of them are classified. Hence, the data available is limited to some extent. This also restricts the comparison of the two operations in terms of congruent success criteria.

4.1 Operation Althea

The first mission that will be examined is EUFOR Althea. This operation was launched in 2004 and is the largest CSDP mission so far. It was set up as to maintain the safe and secure environment in BiH after NATO closed its SFOR operation.⁴⁴ In this context, EUFOR Althea is the second operation that was launched within the framework of the Berlin Plus Agreement by using NATO assets and capabilities. Moreover, the mission was authorised by the UN Security Council and is in compliance with the Dayton/ Paris Agreement.⁴⁵ In this context, the operation's mandate is derived from the UN Security Council and finds its legal basis in the Council Joint Action 2004/570/CFSP of 12 July 2004..⁴⁶ With initially deploying 7000 troops, the mission was restructured two times after the European Council assessed the situation in BiH as improved. After decreasing the number of troops to 1600 in 2007, it now features about 600 troops since the last restructuring in 2012.⁴⁷

⁴⁴ Council of the European Union, ‘European Union security and defence policy: EU military operation in Bosnia and Herzegovina’, Factsheet Operation EUFOR Althea (January 2015), available at <http://www.europarl.europa.eu/meetdocs/2014_2019/documents/sede/dv/sede210915factsheeteuforalthea/_sede210915factsheeteuforalthea_en.pdf>

⁴⁵ The Dayton/ Paris Agreement is an international agreement which was concluded in Dayton, Ohio and was reached by the presidents of Bosnia, Croatia and Serbia as to put the 3 ½ -long Bosnian war to an end.

⁴⁶ This is available, as well as other information on Operation Althea, at <<http://www.euforbih.org/eufor/index.php/about-eufor>>

⁴⁷ Council of the European Union, *supra* note 44 on 24

The current setup involves 21 nations⁴⁸, 16 EU as well as five non EU Member States. At this juncture, the common costs of the operation are paid through contributions by the participating nations following the procedure of the “ATHENA”⁴⁹ mechanism.⁵⁰ The main purpose of Operation Althea is to maintain a safe and secure environment in BiH by ensuring continued compliance with the Dayton/ Paris Agreement.⁵¹ This is crucial for determining the mission’s successfulness.

Since operation Althea is still ongoing, no final conclusion on its successfulness can be drawn yet. However, as it is running for 12 years now, one can determine a provisional result. As shortly stated earlier, the EU perceives the mission as successful so far, since it decreased the number of troops due to an improvement of the security situation. But is this really the case?

To begin with, it is important to mention that the EU took over the mission in BiH from NATO, which means that the mission started at a point in time when the heavy conflict was already resolved. This is why the main objective of the mission is to maintain that attained moment of peace that was achieved under NATO. The implementation or rather taking over of the mission was, due to the Berlin Plus Agreement, very easy for the EU in terms of expenditure of time and expenses.⁵² According to the Council, the agreement ‘provides an efficient cost-effective model option for ESDP operations.’⁵³ Contextually, the force generation for EUFOR Althea turned out to be rather uncomplicated since 80 percent of the SFOR peacekeepers were European, who just stayed in Bosnia as part of the EUFOR force.⁵⁴ Due to joint planning and preparation, the EU and NATO were able to “avoid misunderstandings and overlap at the practical level and facilitated an internally successful implementation of Althea so far.”⁵⁵ This was also ensured by the EU having access to NATO assets and capabilities during the whole planning and execution phases of the operation.⁵⁶

⁴⁸ EU: Austria, Bulgaria, Czech Republic, Finland, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, non-EU: Albania, Chile, Former Yugoslav Republic of Macedonia, Switzerland, Turkey

⁴⁹ Athena is a mechanism which regulates the financing of common costs for EU military operations under the CSDP. Its rules are set out in Article 41 (2) TEU, which states that Member States contribute an annual share which is based on their GDP.

⁵⁰ EEAS, *supra* note 46 on 24

⁵¹ EEAS, *supra* note 46 on 24 & Council of the European Union, *supra* 44 on 24

⁵² A.P. Rodt, ‘Taking Stock of EU Military Conflict Management’, 7 (1) *Journal of Contemporary European Research*. 2011, 41-60, available at < <http://www.jcer.net/ojs/index.php/jcer/article/view/184/262>>

⁵³ Council of the European Union, Op ALTHEA – Consolidated Report on "Historical Lessons Identified" from the Execution of Operation ALTHEA – DECLASSIFIED (11 March 2013) available at <https://www.parlament.gv.at/PAKT/EU/XXIV/EU/10/84/EU_108489/imfname_10395831.pdf>

⁵⁴ D. Helly *et al*, *European Security and Defence Policy: the first ten years (1999-2009)* (Condé-sur-Noireau, France: EU Institute for Security Studies 2009), 391 - 403

⁵⁵ A. P. Rodt, *supra* note 52 on 25

⁵⁶ Council of the European Union, *supra* note 52 on 25

Furthermore, the location of the Operational Headquarter at SHAPE enabled the EU to benefit from an experienced strategic headquarters with collective experience of planning and conducting operations. ‘This was of undoubted advantage during the initial transfer of the operation from SFOR to EUFOR.’⁵⁷ Another positive factor for the successful implementation of the operation in which the EU profited from the experience on the part of NATO was the appointment of the DSACEUR as the EU Operation Commander. This choice of command provided the appropriate level of authority for the mission and helped to achieve the military benchmarks that were needed for the successful planning and conduction of the operation.⁵⁸ The successful transformation from the NATO-led SFOR to the EU-led EUFOR Althea indicates a successful cooperation on the part of EU and NATO in the framework of Berlin Plus as well.

Although the transfer from SFOR to EUFOR proved to be successful with regard to the EU-NATO cooperation, two obstacles in the administrative processes could be determined. One difficulty that could be identified is the overlap in the mandates of different EU missions. As the EU also has launched the civilian EU Police Mission in BiH, coordination and coherence among the different actors is required. In this case, a resolution was found by for instance establishing monthly meetings of the different actors and clarifying the mandates of the different missions.⁵⁹ Another obstacle for which no solution has been found so far is the decision-making structures within the EU. The required consensus among the EU Member States impedes adaptive actions with regard to developing circumstances.⁶⁰ However, as this seems to be the only obstacle to which no solution has been found so far the mission can be assessed as being internally successful.

With regard to the external dimension, the operation can also be rated as successful. The conflict in BiH was steadily oppressed and the peace maintained by successfully deploying, employing and sustaining considerable military force.⁶¹ Due to this, the EU terminated some of its tasks and decreased the number of troops.⁶² At this juncture, one might be cautious when considering the mission’s future, as the decreased number of troops could be assessed as critical in case of a re-emerging conflict.⁶³ In such a scenario, the forces on

⁵⁷ Council of the European Union, *supra* note 53 on 25

⁵⁸ Council of the European Union, *supra* note 53 on 25

⁵⁹ European Parliament, ‘CSDP missions and operations: lessons learned processes’, Directorate General for External Policies of the Union, April 2012.

⁶⁰ J. Dobbins *et al*, Chapter Seven: Bosnia in *Europe’s Role in Nation-Building: from the Europe’s Role in Nation-Building: from the Balkans to the Congo* (Santa Monica, CA: RAND 2008).

⁶¹ J. Dobbins *et al*, *supra* not 60 on 26

⁶² J. Knauer, ‘EUFOR Althea: Appraisal and Future Perspectives of the EU’s Former Flagship Operation in Bosnia and Herzegovina’, EU Diplomacy Papers 7/2011

⁶³ A. P. Rodt, *supra* note 52 on 25

ground would not be able to tackle the recurring conflict. However, when concluding until now, EUFOR Althea can be rated as ‘a very successful peacekeeping operation.’⁶⁴ In addition to that, the EU-NATO cooperation also proved to be successful for this operation.

4.2 Operation Atalanta

The second operation which will be assessed in terms of its successfulness is NAVFOR Atalanta. As a counter-piracy military operation at sea off the Horn of Africa and in the Western Indian Ocean, it was launched in December 2008 and is the EU’s first naval operation. In November 2014, NAVFOR Atalanta’s mandate was extended until December 2016. On average, it is comprised of about 1200 personnel, 4 – 6 Surface Combat Vessels and 2 – 3 Maritime Patrol and Reconnaissance Aircrafts.⁶⁵ These contributions are provided by the participating nations, those are 23 EU Member States and 6 non EU Member States.⁶⁶ The financing mechanism which regulates these contributions is the same as for Operation Althea, which is the Athena Mechanism. The mission’s legal basis can be found in the Council Joint Action 2008/851/CFSP of 10 November 2008.⁶⁷ Its main objective is to tackle piracy and armed robbery at the coast of Somalia by discouraging and preventing acts of piracy. In this connection, it also focuses on providing protection for vessels of the World Food Programme and of several merchants passing the concerned area. The mandate also includes international judicial cooperation in order to guarantee the prosecution of indicted pirates.⁶⁸ The objectives which aim at securing parts of the conflicted region at the horn of Africa reflect the EU’s ambition to act in regional conflict resolution.

When evaluating Operation Atalanta, the same limitations as for Operation Althea apply, as it is still ongoing. However, the mission’s extension and its running period of eight years allow for a provisional assessment. In contrast to Operation Althea, the evaluation of Operation Atalanta can be labelled as rather ‘random’.⁶⁹ This means that the in Operation Atalanta involved institutions did not draw on lessons learned as much. Consequently, less detailed information is available that can be used to examine the mission’s success. In order to

⁶⁴ D. Helly, *supra* note 54 on 25

⁶⁵ This is available, as well as other information on Operation Atalanta, at <<http://eunavfor.eu/mission/>>

⁶⁶ EU: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Spain, Sweden,, United Kingdom, non-EU: Chile, Columbia, Montenegro, Norway, Serbia, Ukraine

⁶⁷ EEAS, *supra* note 65 on 27

⁶⁸ EEAS, *supra* note 65 on 27

⁶⁹ European Parliament, *supra* note 59 on 26, 95

start with the evaluation of the mission's internal success, a closer look needs to be taken at the implementation strategy. When launching NAVFOR Atalanta, the first 12 months were divided into three phases each lasting for four months. The first phase was implemented by France, Greece and the UK. In the second phase, Italy, Germany and Spain joined the operation. Phase three then comprised the participation of Belgium and the Netherlands.⁷⁰ Afterwards, third countries were expected to join. Overall, the phases were implemented as planned with several third countries adding to the operation. Moreover, the planning was realised 'by a relatively small but efficient team, contradicting the thesis that large planning structures are better.'⁷¹ However, one difficulty arose in the planning phase, which concerned the assets which were needed. The operation had fewer assets available than planned; this became even more challenging when the area of operation was extended up to 1.4 million square nautical miles. After a while, this could be addressed by expanding the operation's capabilities in terms of vessels and Maritime Patrol and Reconnaissance Aircrafts.⁷² Therefore, Operation Atalanta can be assessed as internally successful with regard to its administration and implementation. However, when taking a closer look at the international cooperation in the concerned area, some major impediments can be identified. First of all, one part of the mission's mandate, which is judicial cooperation with other international actors in order to ensure the prosecution of indicted pirates, turns out to be problematic. This is due to the fact that no binding arrangements exist, which regulate criminal procedures on piracy on the part of the EU.⁷³ 'As a result, ad hoc arrangements had to be made for dealing with captured pirates, which has not proven to be easy.'⁷⁴ Furthermore, the central coordination of efforts taken by the various actors at the horn of Africa – inter alia NATO's Operation Ocean Shield - is a prime concern for the success of the operation.⁷⁵

The two problematic aspects just mentioned could lead to problems concerning the external success of Operation Atalanta. For more insights on the external success of the operation, the exact nature of the coordination with NATO must be concerned. Here, no definite conclusion can be made. Instead of tackling piracy in a joint operation, NATO is leading its very own and autonomous "Ocean Shield" Operation in the concerned area with having no formal link to the efforts of the EU.⁷⁶ However, it is argued that despite the political

⁷⁰ D. Helly, *supra* note 54 on 25

⁷¹ European Parliament, *supra* note 59 on 26

⁷² D. Helly, *supra* note 54 on 25

⁷³ European Parliament, *supra* note 59 on 26

⁷⁴ European Parliament, *supra* note 59 on 26

⁷⁵ European Parliament, *supra* note 59 on 26

⁷⁶ C. Gebhard and S.J. Smith, 'The two faces of EU-NATO cooperation: Counter-piracy operations off the Somali coast', 50 (1) Cooperation and Conflict 2014, 107 - 127

deadlock emerging from for instance the Turkey-Cyprus dispute, an informal cooperation and information exchange is taking place on the ground of the Somalian coast. The authors C. Gebhard and S. Smith even go so far to state that:

‘There is even a sense of Berlin Plus being applied ‘in essence’ but not ‘in form’, since many of these informal processes take very similar channels and build on the liaison arrangements installed in the context of Berlin Plus.’⁷⁷

Notwithstanding, Gebhard and Smith concede that the possible positive influence of informal cooperation is questionable:

‘It seems unlikely, however, that the links established informally will translate into substantial reforms of the Berlin Plus agreements that would render them a more functional tool for current and future scenarios of EU–NATO cooperation.’⁷⁸

In this connection, the cause for the unlikelihood of an overcoming of the merely informal cooperation can be found in the discussed dispute between Turkey and Cyprus. Because of the mentioned membership asymmetry and the resultant blocking moves, formal cooperation cannot take place for Operation Atalanta as it is not running under Berlin Plus. According to other authors, the engagement of the various international actors at the horn of Africa has indeed not proven to be successful, as the ‘piracy attacks stayed steady at just over 200 attacks a year.’⁷⁹ To sum up, no definite conclusion can be drawn for the cooperation of the EU and NATO in the fight against piracy at the horn of Africa although it can be stated, that the missing formal cooperation is clearly impeding a successful tackling of the conflict in some way. Consequently, the missing formal cooperation between the EU and NATO is suspected to have a negative effect on the external success of Operation Atalanta.

As for the external success of Operation Atalanta, several aspects can be considered. On the part of the EU itself, the mission has been rated as successful so far.⁸⁰ It is stated that the number of hostages being held by pirates has been reduced from 736 in 2011 to 706 in 2014. Moreover, 32 ships that were held captive were freed during that time period leaving

⁷⁷ C. Gebhard and S.J. Smith, *supra* note 76 on 28, 121

⁷⁸ C. Gebhard and S.J. Smith, *supra* note 76 on 28, 121

⁷⁹ B.D. Jones, *Still Ours to Lead: America, Rising Powers, and the Tension between Rivalry and Restraint* (Washington D.C.: The Brookings Institution 2014)

⁸⁰ EEAS, *supra* note 60 on 25

zero ships in the hand of pirates. Furthermore, the mission has had a 100% success rate in providing protection to vessels of the World Food Programme and aid shipments for Somalia.⁸¹ In addition to that, by the middle of August 2009, ‘68 pirates had been transferred to the Kenyan judicial authorities. This proved to be a real added value.’⁸² Atalanta’s presence was perceived to have a positive effect, also due to an increasing number of attacks being resisted. However, as mentioned earlier, the overall number of attacks maintained at a high number.⁸³ Furthermore, as several other international actors are engaged at the maritime region at the Horn of Africa, the specific success of Operation Atalanta is hardly determinable. This is also due to the mission’s mandate, which is not set out to terminate piracy and tackle the problem at its roots but to prevent and fight immediate threats of piracy. In this connection, the lack of international cooperation in the concerned area impedes the successful working of the EU operation to a certain extent. All in all, the mission can be rated as a partial external success, as some observable positive achievements were reached nevertheless.

Table: Summary of the missions’ evaluations

	Internal success	External success	Cooperation with NATO
EUFOR Althea	✓	✓	✓
NAVFOR Atalanta	✓	✓	?

5. OBSTACLES THAT HAMPER EU ACTING IN GLOBAL SECURITY

The previous section gave insights about two missions that were launched by the EU in order to tackle regional conflicts. In case of EUFOR Althea, the mission aimed at maintaining the peace in the region of BiH after years of war, whereas NAVFOR Atalanta targeted the conflict emerging from acts of piracy at the horn of Africa. When determining the missions’ successfulness, some weak aspects already were identified. Such aspects could also be observed in the previous sections, namely when analysing the EU-NATO relationship and when elaborating on the legal competence of the EU in foreign and security policy. In order to

⁸¹ EEAS, *supra* note 65 on 27

⁸² D. Helly, *supra* note 54 on 25, 398

⁸³ B.D. Jones, *supra* note 79 on 29

answer to the fourth sub-question, which is ‘*Which legal obstacles does the EU face in its ambition to act in the area of global security?*’ all of the aforementioned weak aspects need to be analysed and further elaborated.

5.1 Obstacles in the legal framework of the CFSP

To begin with, the provisions introduced in the part on legal competences will be analysed in terms of their weak points. Here, four shortcomings will be identified. First of all and as the major obstacle identified, the working dynamics of intergovernmentalism will be reviewed. As discussed when introducing Article 24 (1) TEU, the almost exclusive acting of the Council and European Council indicates limitations due to mechanisms of intergovernmentalism. The theoretical foundation of those mechanisms was introduced in the theory section. Indeed, the classical intergovernmental theory by Hoffmann further suggests that especially in the realm of high policies the role of Member States is of great importance.⁸⁴ High policies, in the context of the EU, usually refer to matters that are at the core of a nation’s survival such as foreign policy, national security and the use of force. Low policies on the other hand typically contain topics such as agriculture and trade, where the giving up of their sovereignty does not affect the Member States to a great extent. Thus, the willingness of Member States to engage in closer cooperation mostly concerns the latter, which restrict possible actions in the framework of the CFSP. The structural obstacles which find their basis in the intergovernmental character also have consequences for the operational dimension of the CFSP. As described in Article 42 (3) TEU, operations rely on the Member States providing civilian and military capabilities. Since the establishment of an operation is thus dependent on the ‘political will’ of the Member States, their support is central to its success. ‘Many of the CSDP operations suffer from insufficient political support from a majority of EU Member States, in both the military and the civilian spheres.’⁸⁵ This has a negative impact on the actual number of launched operations as well as on the provision of capabilities and financial resources for those.⁸⁶ The EU itself realises that:

⁸⁴ S. Hoffmann, ‘Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe’, 95 (3) *Daedalus* 1966, 862 - 915

⁸⁵ T. Tardy, *CSDP in action: What contribution to international security?* (Condé-sur-Noireau, France: EU Institute for Security Studies 2009), 43 – 48

⁸⁶ T. Tardy, *supra* note 86 on 31

‘Almost all operations established since 2010 have encountered difficulties in finding the required resources. [...] Those shortcomings have largely constrained CSDP operations and projected a negative image of the EU and of its aspiration to play a central role in security governance.’⁸⁷

In this respect it is open to question, if the lack of political will on the part of the Member States is observable to a lesser extent in other areas of EU external action. This could for instance concern topics like counterterrorism, where threats have a more direct effect than in the area of regional conflict resolution.⁸⁸

However, there have been some attempts on the part of the EU to cope with the intergovernmental constraints of the CFSP. As an example, the creation of the HR can be named, as this person is not only equipped with important powers in the realm of the CFSP but also the acting vice president of the European Commission. Another example is the establishment of the European External Actions Service, which is ‘a major innovation in the field of diplomacy as the first supranational diplomatic service of its kind.’⁸⁹ Nevertheless, these steps may not be well-grounded and powerful enough to hinder the mechanisms of intergovernmentalism in the CFSP. In his paper, L. Corduneanu concludes:

‘Despite these supranational institutional innovations, the strong institutional intergovernmental dimension of the CFSP will not be cast into doubt at least for the near future. The EU is still not in the position to overlook the standpoint of the member states in foreign and security issues. The recent interference of supranational elements in the intergovernmental nature of the CFSP process could only be perceived as an answer to those member states who believe in an ever closer EU. At least for the time being, the Union does not seem to accept greater institutional alteration. However, a coherent approach towards external challenges may not be possible without a deepening of its supranational character.’⁹⁰

Second, it was already mentioned that the TFEU fails to categorise the competences of the EU, in contrast to other areas, for both the CFSP and CSDP into either exclusive, shared

⁸⁷ T. Tardy, *supra* note 86 on 31

⁸⁸ See for instance L. Kiwit, ‘Joining the War on Terror – the EU and its Role in Global Counterterrorism’

⁸⁹ Dr. M. K. Davis Cross, ‘The European External Action Service and Smart Power’, *USC Center on Public Diplomacy* (3 November 2011) available at

<http://uscpublicdiplomacy.org/blog/the_european_external_action_service_and_smart_power>

⁹⁰ L. Corduneanu, ‘cfsp — vacillating between supranationalism and intergovernmentalism?’, 6 (1) *Centre for European Studies (CES) Working Papers* 2014, 55 - 61

or supplementary competences. This lack of a clear allocation of competences might possibly lead to confusion about who is responsible which in turn might hamper the working of the CFSP at the expense of its effectiveness. The unique legal character of the CFSP with regard to its treaty background is indeed subject of an academic debate. In this context, authors are discussing the possible categorisation of the competence and try to disentangle the responsibility struggle.⁹¹ The differing thoughts appearing in this debate illustrate that the treaties leave a lot unclear on the CFSP.

Third, the content of Article 24 (2) TEU proves to be problematic since the solidarity and degree of convergence among the Member States decreased lately and interests differ strongly. Several incidents over the last years triggered such disunity. To begin with, there is the constant enlargement of the EU, in which the eastern enlargement admitted ten and hence the most new states so far. Their accrual to the EU meant a challenge to the common interests, as the Eastern European countries are assumed to have other interests than the Western ones. Also, they have the position of “New Member States” in the EU, whereas the other countries are working side-by-side and on an agreed basis for many years already. Next to the new-old or even East-West disparities, the financial crisis mainly emerging in the Southern European countries caused internal trouble to the EU. As only certain parts of the EU were affected in a heavy manner, other Member States had to financially support the concerned states. This caused great divergence among the Member States and solidarity was a rare asset. Lastly, the current refugee crisis creates great disunity across the EU. In this debate, Member states’ opinions and their perceptions of political matters differ greatly. Hence, the overwhelmed states see themselves confronted with disrupted relations and blocked communication channels among each other.⁹² These obstacles can be suspected to have a spillover effect to other areas of the EU as there was no incident that had a positive or even reversing effect on the contemporary disunity. Consequently, the status quo can be assumed to be persisting. Since actions within the CFSP are built on solidarity, convergence and shared interests in the treaty provision, the absence of this foundation connotes a serious threat to the EU and its external action. At this juncture, the underlying causes for the decrease in unity among the Member States can be found in the intergovernmental dimension of the CFSP as well.⁹³ Only

⁹¹ For more information on this see for instance M. Brkan, ‘Exploring EU Competence in CFSP: Logic or Contradiction?’, 2 *Croatian Yearbook of European Law and Policy* 2006, 137 – 172 and R.A. Wessel and L. d. Hertog, *supra* note 23 on 15

⁹² Heinrich Böll Stiftung, ‘The Refugee Crisis and its Impact on the European Union – More Disunity, Ultimate Failure or Pragmatic Emergency Solution?’, *Böll Lunch Debate on Reconnecting Europe* (16 March 2016), available at <https://eu.boell.org/sites/default/files/boll_event_report_refugee_crisis_1.pdf>

⁹³ L. Corduneanu, *supra* note 90 on 32

because the Member States count that much at the institutional level, their lack of unity can have such serious causes. Summing up, the resulting ‘lack of strategic coherence weakens not only the CFSP framework but also the international actorness of the EU.’⁹⁴

The problem of a lacking coherence among the EU Member States is closely connected to the fourth weak point identified in the treaties. As shortly mentioned when introducing Article 42 (2) TEU, the wording of this article suggests a rather voluntary basis for actions on the part of the Member States. This is further supported by the fact that the CJEU has very limited jurisdiction under the CFSP meaning the Member States do not face sanctions when not complying with CFSP or CSDP decisions. Due to prevalence of the nations’ interests in the CFSP, its voluntary basis is rather problematic. In this context, the mechanisms of intergovernmentalism play a crucial role as well.

In summary, the above discussed obstacles in the legal framework of the CFSP are all linked to another. The prevalence of the Member States and their interests in the Council, the voluntary basis on which they are working on, the confusion about the competences as well as the increasing disunity across the EU, all find their underlying cause in the intergovernmental construction of the CFSP. Consequently, due to the dominance of the Member States and their reservation concerning high policies such as foreign and security policy, the CFSP cannot flower out.

5.2 Obstacles in the EU-NATO cooperation and EU-led missions

The second and third sub-questions analysed the EU-NATO cooperation and examined two EU-led missions that aim to tackle two distinct regional conflicts. Here, several weaknesses were already identified and discussed. In the following section it will be shown that those two aspects – EU-NATO cooperation and a successful operation on the part of the EU – are strongly intertwined. As described in the previous section, Operation Althea is more successful than Operation Atalanta. It can be assumed that this is mainly due to the Berlin Plus Agreement. Other authors conclude that ‘The Berlin Plus agreement greatly aids in both planning and execution phases as “the EU is still not in a position to run a long-term and complex military operation, such as Althea, on its own without recourse to NATO’s capabilities”’⁹⁵ Difficulties that the less successful Operation Atalanta faced in terms of

⁹⁴ L. Corduneanu, *supra* note 90 on 32

⁹⁵ P. Bhathal, ‘CSDP and NATO: Rethinking the Transatlantic Security Relationship’, 2013 *Claremont-UC Undergraduate Research Conference on the European Union* 2014, Article 3

administrative tasks were the lack of an adequate number of assets at the beginning of the operation. In this connection, a formal cooperation between the EU and NATO at the horn of Africa by means of the Berlin Plus framework would be supporting for the EU-led operation. In this case, the EU could make use of NATO assets and therefore overcome its shortcomings. For its operational dimension, on the other hand, uncertainties remain with regard to the prosecution of indicted pirates. This is mainly due to the fact that the operation lacks coordination with NATO and other international actors, who are also leading autonomous operations in the concerned region. In this respect, a formal agreement regulating the prosecution of suspects would clearly facilitate the operational aim of Operation Atalanta. Another advantage of a formal cooperation in the concerned region would be the possibility, to better examine the mission's external success. At the moment, this is, due to at least two autonomous operating missions, hardly assessable.

Due to the weaknesses of the CFSP and CSDP explained in the first part of this section, that were the dominance of the Member States and the therefore crucial impact of their reservations concerning high policies, and in the section right above, more formal cooperation between the EU and NATO in the form of Berlin Plus is needed. This has the reason of the cooperation positively influencing the external action of the EU by overcoming structural obstacles and the consequent restrictions with regard to its capabilities. 'Therefore, if the EU hopes to retain its standing as a promoter of international security through the use of force, it should attempt to utilize the Berlin Plus arrangement whenever launching a complex and intense military operation.'⁹⁶

Now that it has been worked out that formal and coherent cooperation with NATO is required as for the EU to successfully act in the combat of regional conflicts, a closer look needs to be taken at the weaknesses of the Berlin Plus again. It was already stated that it does not perfectly work in practice – the fact that only two operations has been launched within that framework is a major indication. In the section on EU-NATO cooperation, obstacles of proper side-by-side working were already elaborated. To recapitulate, the membership asymmetry and in that connection the dispute between Turkey and Cyprus which hinders the cooperation seriously as well as the doubtful legal nature of the Berlin Plus Agreement were named as the main weak points. Since the dispute between Turkey and Cyprus can be expected to find no solution in the near future, and much less on the part of third states or international organisations, more focus should be on the legal nature of the Berlin Plus Agreement. Since the Treaty of Lisbon changed the conditions for the concluding of

⁹⁶ P. Bhathal, *supra* note 95 on 34

international agreements, amendments regarding the legality of the signing by the HR can be made. In addition to that, changes that aim at a more balanced relationship would be of help. More specifically, the right of refusal by NATO creates uncertainty on the part of the EU which hinders cooperation free of doubt and one, on which the EU can rely on. Changes concerning that would create a cooperation that indicates a higher level of parity than it is the case now. In the end, fruitful improvements can only be reached by amending the agreement - possibly even turning it into a binding agreement.

6. CONCLUSION AND OUTLOOK

Due to the emergence of the EU as a global security actor and the contextual constant changes of the CFSP, the need to examine the EU's actual ability to contribute to global security was never as relevant as today. At this juncture, the EU's special relationship with NATO and their shared history triggered the need to examine this relationship in that context. The aim of the paper was therefore to determine the EU's ability to successfully act as a global security actor in the combat of regional conflicts. In order to analyse the EU's power to act in the realm of the CFSP and CSDP, its competences had to be revisited first. It could be observed that the EU is equipped with crucial competences that enable it to act in the area of foreign and security policy. However, limitations could be identified which leave a lot unclear and hinder proper action on the part of the EU. This is mainly due to a rather voluntary basis on which the Member States can take action within the CFSP, a lack of comprehensible allocation of competences which results in a confusion of responsibility and increasing disunity among the Member States. All obstacles can be traced back to the intergovernmental character of the CFSP and thus the prevailing dominance of the Member States. Some of the limitations identified in the legal framework of the CFSP could also be observed in the practical work of the EU. In this connection, the decision-making structure within the EU, in which a consensus among the Member States is required, hinders adaptive actions concerning newly emerging situations.

The assessment of the two missions showed that Operation Althea is successful on both the internal and external dimension, whereas Operation Atalanta faces difficulties in both, especially the external one. It could be determined that this difference is mainly due to the lack of cooperation between NATO and the EU at the horn of Africa. Consequently, the success of a mission is strongly intertwined with the successful coordination between NATO

and the EU. When examining the relationship between the EU and NATO and in that respect the Berlin Plus Agreement, the theoretical insights suggested a sophisticated coordination between EU and NATO, in which the EU is equipped with all the relevant assets and capabilities by NATO. However, when consulting legal scholarship and taking a closer look at reality, several obstacles could be identified. Literature point to a rather fragile legal nature of the Berlin Plus Agreement with no solid legal ground. Furthermore, the ongoing dispute between Turkey and Cyprus constitutes an unresolved obstacle for the relationship of the EU and NATO. In the end, it has been installed that a formal and coherent cooperation with NATO has a positive effect on the successfulness of EU missions.

Taking all the obtained insights into account, one can conclude on the main research question, which is '*To what extent can the EU successfully contribute to regional conflict resolution?*'. Although the EU has made considerable progress in the realm of common foreign and security policy through advancing both its legal framework and its relationship with NATO by means of the Berlin Plus Agreement, certain obstacles could be identified that hamper its action in the combat of regional conflicts. Major weak points were determined in the intergovernmental construction of the CFSP which affects several other aspects. Due to the internal limitations that the EU therefore faces, it must heavily rely on the cooperation with NATO in order to successfully act in conflicted regions. Here, other obstacles such as the doubtful legal nature of the agreement as well as an asymmetry of memberships impede a successful cooperation of the two organisations. Consequently, the EU can only contribute to regional conflict resolution to a medium extent. Even though there have been successful contributions on the part of the EU, they are moderate in terms of quantity. In order to increase that amount of success, either the obstacles regarding the internal structural problems or the cooperation with NATO need to be overcome.

Hence, as it was already considered when concluding sub-question four, questions for the future perspectives arise. Since the EU heavily relies on its Member States and on NATO, the impediments in this connection need to be worked out in order for the EU to successfully act in regional conflict resolution. As long as the EU lacks the required experience and capacity to successfully tackle regional conflicts due to the Member States' reservation, solutions has to be looked for in the cooperation with NATO.⁹⁷ It remains to be seen in the future, if the EU and NATO are able to improve their formal cooperation concerning a joint

⁹⁷ This paper was written before the referendum on the Brexit was taken. The withdrawal of the UK from the EU is suspected to have an impact on both the NATO-EU relationship (in terms of a membership asymmetry) and the CFSP (in terms of voting behaviour and resources). More information on that can be found for instance here: <http://www.europeangeostrategy.org/2014/06/brexit-european-union-without-united-kingdom/>>

and therefore successful approach on behalf of the EU for regional conflict resolution. ‘In the end, the only thing that is sure is that, due to their shared membership, the EU and NATO will still be forced to collaborate for many years still.’⁹⁸

⁹⁸ M. Ricci, ‘The CSDP and NATO: friends, competitors or both?’ *Nouvelle Europe*, 17 January 2014, available at < <http://www.nouvelle-europe.eu/en/csdp-and-nato-friends-competitors-or-both>>

Literature

A. Moravcsik, 'Preferences and Power in the European Community: A liberal Intergovernmentalist Approach' 31(4) *JCMS: Journal of Common Market Studies* *JCMS: J Common Market Studies* 1993, 473-524

A. Staggl, *Das Verhältnis zwischen EU und NATO* (Norderstedt: GRIN Verlag 2009)

A.P. Rodt, 'Taking Stock of EU Military Conflict Management', 7 (1) *Journal of Contemporary European Research*. 2011, 41-60, available at <<http://www.jcer.net/ojs/index.php/jcer/article/view/184/262>>

B. Conry, 'The Futility of U.S. Intervention in Regional Conflicts', *Cato Institute*, 19 May 1994, available at <<http://www.cato.org/publications/policy-analysis/futility-us-intervention-regional-conflicts>>

B. Ferrero-Waldner, European Commission, 'European Neighborhood Policy – Making Europe more secure', SPEECH/08/285, 28 May 2008, available at <http://europa.eu/rapid/press-release_SPEECH-08-285_en.htm>

B.D. Jones, *Still Ours to Lead: America, Rising Powers, and the Tension between Rivalry and Restraint* (Washington D.C.: The Brookings Institution 2014)

C. Gebhard and S.J. Smith, 'The two faces of EU–NATO cooperation: Counter-piracy operations off the Somali coast', 50 (1) *Cooperation and Conflict* 2014, 107 - 127

Council of the European Union, 'European Union security and defence policy: EU military operation in Bosnia and Herzegovina', Factsheet Operation EUFOR Althea (January 2015), available at <http://www.europarl.europa.eu/meetdocs/2014_2019/documents/sede/dv/sede210915factsheeteuforalthea/sede210915factsheeteuforalthea_en.pdf>

Council of the European Union, Op ALTHEA – Consolidated Report on "Historical Lessons Identified" from the Execution of Operation ALTHEA – DECLASSIFIED (11 March 2013) available at <https://www.parlament.gv.at/PAKT/EU/XXIV/EU/10/84/EU_108489/imfname_10395831.pdf>

Council of the European Union. 'Presidency –Conclusions' Polgen 67, 26 November 2002, available at <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/72968.pdf>

D. Helly *et al*, *European Security and Defence Policy: the first ten years (1999-2009)* (Condé-sur-Noireau, France: EU Institute for Security Studies 2009), 391 - 403

Dr. M. K. Davis Cross, 'The European External Action Service and Smart Power', *USC Center on Public Diplomacy* (3 November 2011) available at <http://uscpublicdiplomacy.org/blog/the_european_external_action_service_and_smart_power>

European Commission, 'Conflict prevention, crisis management and peace building: a busy year for the EU Instrument for Stability', 24 July 2012, available at <http://europa.eu/rapid/press-release_IP-12-832_en.htm?locale=en>

European Parliament, 'CSDP missions and operations: lessons learned processes', Directorate General for External Policies of the Union, April 2012

European Security Strategy, 'A Secure Europe In A Better World' (Brussels, 12 December 2003) available at <<https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>>

G. Kamov, 'EU's role in conflict resolution: the case of the Eastern enlargement and neighbourhood policy areas', *Institut Européen des Hautes Études Internationales*, 2006, available at <<http://www.ie-ei.eu/IE-EI/Ressources/file/memoires/2006/KAMOV.pdf>>

Heinrich Böll Stiftung, 'The Refugee Crisis and its Impact on the European Union – More Disunity, Ultimate Failure or Pragmatic Emergency Solution?', *Böll Lunch Debate on Reconnecting Europe* (16 March 2016), available at <https://eu.boell.org/sites/default/files/boll_event_report_refugee_crisis_1.pdf>

J. Dobbins *et al*, Chapter Seven: Bosnia in *Europe's Role in Nation-Building: from the Europe's Role in Nation-Building: from the Balkans to the Congo* (Santa Monica, CA: RAND 2008).

J. Knauer, 'EUFOR Althea: Appraisal and Future Perspectives of the EU's Former Flagship Operation in Bosnia and Herzegovina', *EU Diplomacy Papers* 7/2011

K. Soder, 'EU crisis management: an assessment of member states' contributions and positions', April 2010, available at <<http://www.ies.be/files/Soder-D1-NOT4WEB.pdf>>

L. Corduneanu, 'cfsp — vacillating between supranationalism and intergovernmentalism?', 6 (1) *Centre for European Studies (CES) Working Papers* 2014, 55 - 61

L. Kiwit, 'Joining the War on Terror – the EU and its Role in Global Counterterrorism'

M. Brkan, 'Exploring EU Competence in CFSP: Logic or Contradiction?', 2 *Croatian Yearbook of European Law and Policy* 2006, 137 – 172

M. Kuhn, 'The system of EU crisis management – From bringing peace to establishing democracy?' 13 *Max Planck Yearbook of United Nations Law* 2009, 247 – 266

M. Merlingen and R. Ostrauskaite (eds), *European Security and Defence Policy: An Implementation Perspective* (New York: Routledge 2008)

M. Reichard, 'Some Legal Issues Concerning the EU-NATO Berlin Plus Agreement', 73 *Nordic Journal of International Law* 2004, 37 – 67

M. Ricci, 'The CSDP and NATO: friends, competitors or both?' *Nouvelle Europe*, 17 January 2014, available at <<http://www.nouvelle-europe.eu/en/csdp-and-nato-friends-competitors-or-both>>

N. Koenig, 'The EU and NATO: Towards a Joint Future in Crisis Management?', *EU Diplomacy Papers* 11/2010

N. Nugent, *The Government and Politics of the European Union* (Houndmills: Palgrave Macmillan 1999) 48 – 58.

Nathalie Tocci. *Conflict Resolution: Theories and Practice*. London and New York: Routledge, 2011.

P. Bhathal, 'CSDP and NATO: Rethinking the Transatlantic Security Relationship', 2013 *Claremont-UC Undergraduate Research Conference on the European Union* 2014, Article 3

P. Colletaz, (2013, November 04). 'Introducing the European Union: Between Supranationalism and Intergovernmentalism', *The Euroculturer*, 24 November 2013, available at <<https://euroculturer.eu/2013/11/04/introducing-the-european-union-between-supranationalism-and-intergovernmentalism/>>

R.A. Wessel: Chapter Six: The EU as a party to international agreements: shared competences, mixed responsibilities 152-187 in: A. Dashwood & M. Maresceau (Eds.), *Law and Practice of EU External Relations: Salient Features of a Changing Landscape*. Cambridge University Press, Cambridge, 145-180

R.A. Wessel and L. d. Hertog, 'EU Foreign, Security and Defence Policy: A Competence Responsibility Gap?' *International Responsibility: EU and International Perspectives* (Oxford: Hart Publishing 2012)

R.A. Wessel, 'Lex imperfecta: Law and Integration in European Foreign and Security Policy', 2 *European Papers: A Journal on Law and Integration* 2016

R. Ginsberg and S. Penksa, *The European Union in global security: the politics of impact* (Houndmills: Palgrave Macmillan 2012)

S. Duke, "The Future of EU–NATO Relations: a Case of Mutual Irrelevance Through Competition?" 30 (1) *Journal of European Integration* 2008, 27 - 43

S. Hoffmann, 'Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe', 95 (3) *Daedalus* 1966, 862 - 915

S. Hoffmann, *State of war: Essays on the Theory and Practice on International Politics* (Praeger 1965)

S. Osisanya, 'National Security versus Global Security', *UN Chronicle* (May 2015).

T. Dyson and T. Konstadinides, (2013, September 26). 'Understanding the Limitations of the EU's Common Security and Defence Policy', *E-International Relations*, 25 March 2016 available at <http://www.e-ir.info/2013/09/26/understanding-the-limitations-of-the-eus-common-security-and-defence-policy-a-legal-perspective/>

T. Tardy, *CSDP in action: What contribution to international security?* (Condé-sur-Noireau, France: EU Institute for Security Studies 2009), 43 – 48