Book Reviews


The European Security and Defence Policy (ESDP), based on the Treaties of Maastricht (1992), Amsterdam (1997), Nice (2001), and Lisbon (2009), has been progressively developing in the past two decades. The EU’s European Security Strategy, adopted in 2003, remains work in progress as an effort to support non-proliferation of weapons of mass destruction, to combat terrorism in full respect for human rights and international law, to improve cyber security and energy security, to meet implications of climate change, and to present the EU as a powerful driver for stability, peace and reform. Frederik Naert’s very welcome book combines two virtues: a comprehensive and carefully referenced legal research which is based on the author’s doctoral thesis and likewise a sound practical orientation benefitting from his experience of three years membership of the Legal Services of the Belgian Ministry of Defence and, since November 2007, the General Secretariat of the Council of the European Union.

Part I starts with an assessment of the history of the ESDP, its present state and interrelation with the OSCE, NATO, AU, ASEAN, and the United Nations. Legal evaluations are given for each of the 22 military and civilian crisis management operations launched by the EU up to 31 August 2009. Part II focuses on general issues of legal status and personality of international organizations and the obligations incumbent upon them under international law both internally and externally. In Part III human rights and law of armed conflict implications of ESDP operations are discussed.

Such systematic assessment is highly useful at a time when regional organizations are more and more involved in peace operations of both supportive and coercive nature, while there is still certain ignorance, in the public at large and often even within the relevant organizations internally, as to problems and processes pertaining to legal rules in this respect. For each of the eight military EU operations conducted so far an unequivocal legal qualification is rather difficult, as often their nature, security environment and mandate was progressively developing due to current challenges. A recent effort to more specifically distinguish between enforcement operations, peace enforcement operations and peace (support) operations, which also addresses the legal

1) EU operations in the Former Yugoslav Republic of Macedonia (CONCORDIA 2003), Bosnia and Herzegovina (ALTHEA, since 2004), the Democratic Republic of the Congo (ARTEMIS 2003, EUSEC 2005, EUFOR 2006), Sudan (EU SUPPORT AMIS II 2005), Tchad (EUFOR 2007), and off the coast of Somalia (ATALANTA, since 2008).
issues of self-defence, humanitarian intervention, and intervention on invitation, fully recognizes that there may be mixed elements coming together and further developing in the course of one single operation. The EU experience assessed by Naert is a case in point. While each EU operation was based on the consent of the receiving State, and Security Council authorization or endorsement was given in each case, the principle of impartiality was often challenged by local actors impeding the EU mandate. Forcible military action was required several times. Naert is aware of these difficulties for making a scholarly distinction. He goes even further in stating that ‘there is not really a common terminology in the field of security’ (p. 198), pinpointing to different usages that are apparent in constitutive instruments and daily practice of the UN, NATO, CSCE, and other relevant organizations. The EU as a relatively new player in the field of security and defence will take time and further experience to arrive at strict specifications. It cannot easily be expected to be more liberal in defining doctrine for and developing practice during its operations. The more important is a review of applicable norms of *jus in bello* and *jus post bellum*, with a view to inform this practice and doctrine and to ensure the rule of law when it is most challenged.

It is for this purpose that Naert raises a question which for a union formed by like-minded States with highly developed legal systems may sound rather theoretical: to what extent and, if so, how are international organizations bound by norms of international law? The author convincingly characterises the EU as an international legal person of its own right, ‘sheltering within it a variety of other entities, including the EU agencies and the Communities’, with capacities, privileges and immunities acknowledged in the Amsterdam Treaty, and with treaty-making powers confirmed in the Treaty of Nice. He correctly concludes that the EU has to observe not only obligations undertaken by itself or imposed by its Member States, but also those obligations resulting from general international law, in particular ‘customary international law on matters within its competences subject to any necessary modifications’.

Recognizing that the law applicable to crisis management operations abroad is a complex combination of domestic and international law, Naert focuses on the two branches that are most widely discussed so far in the context of international peace operations: the law of armed conflict and human rights. While the former exclusively applies to armed conflicts, Naert convincingly suggests that part of its rules, in particular its prohibitions, may well serve as guidance even when they are not applicable *de jure*. He also underlines the great significance of human rights obligations for the conduct of any peace operation, even in situations where the law of armed conflict does apply as *lex specialis*. Naert offers a sound assessment of the issue of extraterritorial application of human rights, explains their relevance for a successful military performance, and submits that unique aspects of robust peace operations should be considered in the interpretation of existing obligations rather than denying those obligations altogether. His declared opinion, based on the text of Articles 25 and 103 of the UN Charter, is that the Security Council may authorise a derogation from those rules that have not achieved the status of *jus cogens*. This theoretical opinion, however, is not supported by Security Council practice so far and in the light of the meaning and purpose of peace operations it remains open to questions. When the Council authorises ‘all necessary measures’ in the performance of a mandate one should not interpret this as authorising even unlawful action and exempting States and the United Nations themselves from their responsibility under international law. The Security Council, indeed, has never

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