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The European Union and the Use of Force, by Julia Schmidt

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Julia Schmidt, *The European Union and the Use of Force*. Leiden: Brill | Nijhoff, 2020. xvi + 342 pages. ISBN: 9789004356061. EUR 160.

The emergence of the EU as a military actor is something that happened in ways that were largely invisible to the public at large. And, even some experts in EU and international law continue to be surprised when they find out about the many military and civilian missions the Union has established since the famous statement by the European Council in 1999 that “the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so ...”. This statement not only led to the first military mission to be deployed in 2003, but also to a gradual building-up of an institutional infrastructure in Brussels. Indeed, it is no longer shocking to see people in military uniforms frequenting the buildings of the Council or the European External Action Service at the Rondpoint Schuman.

The fact that that the EU is still not perceived as a military actor obviously has to do with the original (mostly economic) objectives of the Union and the fact that anything military has for decades been a taboo and was even excluded from the European Political Cooperation that developed through the 1970s and 80s. Yet, it also has to do with the somewhat ambiguous

manner in which the Treaty on European Union presents the Union's objectives and competences in this area. Article 24(1) TEU provides that the Union's competence (contrary to popular belief, CFSP is a Union rather than a Member State competence) covers "all questions relating to the Union's security, including the progressive *framing* of a common defence policy that *might* lead to a common defence" (emphasis added). Indeed, the compromise is clearly visible in this text. And despite the fact that a "common defence" is presented as a mere possibility, Article 42(7) TEU (admittedly somewhat hidden) lays down a clear "obligation of aid and assistance by all the means in their power" for Member States in case one of them is the victim of armed aggression on its territory. And, Articles 42(1) and 43(1) TEU provide quite a comprehensive list of possible military and civilian operations, despite the otherwise careful wording of the Treaty and the usual sentence in decisions that all of this "does not lead to the creation of a European army".

In short, it was about time that the Union's legal competences and obligations in this area were analysed in a comprehensive manner. This is all the more so since any military activities of the EU should be in conformity with international law. And this latter aspect is in fact the main focus of the book under review here. While the book has a somewhat broader substantive scope and could perhaps also have been titled something like *Legal Aspects of Military Operations of the European Union* or *EU Military Operations in the Framework of the UN Charter*, it chose a specific focus on the use of force by the EU. One could argue that this, on the one hand, limits the scope to "tasks of combat forces in crisis management, including peace-making and post-conflict stabilization" (to use the wording of Art. 43(1) TEU), but at the same time it allows for an analysis of the relationship between the EU and the UN in this area. Luckily, the book goes a bit beyond its title and is also valuable to understand EU military missions that are not *per se* mandated to use force in terms of the UN Charter, but relate to "joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks" (again to use Art. 43(1) TEU). After all, the question raised by the book ("what is the EU's legal relationship with the UN and UN Security Council resolutions?"; p. 26) is not just relevant in relation to the use of force, but also in other situations where military missions are employed. Yet, the use of force by the EU raises a number of specific questions that include to what extent the EU is bound by existing UN resolutions regarding the use of force, to what extent it is bound by a UNSC resolution when accepting a UN mandate, and how UNSC resolutions affect the EU if the EU does not conduct a military operation (pp. 26–27). These questions obviously flow from the fact that the EU is a not a State (and not a party to the UN Charter) and that it has a tendency to highlight its special status and autonomy *vis-à-vis* both the international legal order and its own Member States.

The author, Julia Schmidt, has thus made a deliberate choice to analyse the military activities of the EU in the light of the overarching international (UN) legal framework. In doing so, however, she cannot escape going a bit beyond questions of the use of force in the strict Article 2(4) UN Charter sense, and also addresses the overall competences and decision-making procedures of the EU in the area of the Common Security and Defence Policy (in fact, covering the first 134 pages), EU-UN cooperation in peacekeeping, as well as questions of responsibility and accountability for violations of human rights and international humanitarian law. In some of the chapters, the "use of force" focus may strike the reader as somewhat artificial, despite the clear relevance of the topics that are addressed.

So, what does the book teach us? First of all, it clearly shows and underlines that it is indeed, and increasingly, the EU itself that is in charge; not just by offering a "clearing house mechanism" and acting as a facilitator of military initiatives of its Member States, but also as a military actor in its own right. The *EU Global Strategy* was helpful in giving a new impetus, and the use of the PESCO provisions in the Treaty on permanent structured cooperation really seem to have triggered a closer cooperation between groups of Member States in various areas of military and defence cooperation. These are indeed "signs of European integration in defence matters" (p. 133) and come with a number of legal restraints for EU Member States cooperating in the missions. And, as often in EU external relations law, it is the complex division of

competences that raises the main questions in relation to not only EU law itself, but also with regard to the application of international law.

The relevance of international law is first of all visible in the prohibition of the use of force. The argument is made that this seriously limits the autonomy of the Union as an emerging military actor. Yet, the argument seems to go both ways. Rather than the EU just being restrained, it could perhaps also be authorized to contribute to, for instance, Responsibility to Protect (R2P) operations. Overall, the book's analyses show that EU military activities cannot escape the UN rules and initiatives, which has resulted in an ever-evolving partnership with the UN, not just in the area of peacekeeping, but also as a contributor to training projects in other global regions. Obviously, when accepting to conduct a military mission, the EU is fully bound by the relevant Security Council resolutions. In this regard the book also points to the possible tension with EU claims to autonomy. The latter problem may, for instance, emerge in relation to the application of fundamental rights. Indeed, given the fact that established missions are indeed EU-missions that are based on an EU decision, there are good arguments to attribute the actions to the EU. Yet, procedures and mechanisms to actually hold the EU accountable are largely missing.

In short, while the book to the tastes of some may not be fully accurate in legally distinguishing the various tasks and activities of EU military missions, and perhaps uses the concept of "the use of force" in too broad a manner, this at the same time results in a comprehensive analysis of the way in which the EU has developed as a military actor. And, despite the fact that the book is written as a legal study, the style reveals the author's interest in political questions as well. Again, black letter lawyers may find these observations less interesting, but they also make the book quite accessible to non-legal scholars. To the still quite limited range of legal studies on CSDP, the book certainly is a welcome addition.

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