
CONTENTS

<i>Preface</i>	<i>v</i>
<i>List of Abbreviations</i>	<i>xi</i>
<i>Table of Cases</i>	<i>xv</i>
1. The Constitutionalised Regime of the Common Foreign and Security Policy	1
1.1. Introduction	2
1.1.1. The Legal Nature of EU Foreign Policy	3
1.1.2. External Relations and International Agreements.....	5
1.1.3. A Gravitational Attraction	7
1.2. Approach	8
1.2.1. The Question of Discipline	8
1.2.2. The Legal Approach	10
1.2.3. The Institutional Catch.....	11
1.2.4. Delimitation	12
1.2.5. Research Questions.....	13
1.2.6. Outline.....	14
1.3. Conclusion	16
2. The History of the Common Foreign and Security Policy.....	17
2.1. Introduction	17
2.2. Formative Days, Pillarisation, and Modern Times	20
2.2.1. Earliest Days.....	21
2.2.2. 1980s	23
2.2.3. 1990s	25
2.2.4. Turn of the Millennium.....	27
2.2.5. The State of Play.....	30
2.3. The Divide between CFSP Matters and Non-CFSP Matters.....	31
2.3.1. The Pillars.....	31
2.3.2. Beyond Economic Integration.....	34
2.3.3. Legal Instruments and Procedures	35
2.4. Conclusion	38
3. The EU Legal Order and the Common Foreign and Security Policy	39
3.1. Introduction	39
3.1.1. Competence	40
3.1.2. Retention of CFSP Matters.....	42

3.1.3.	Rules and Content	44
3.1.4.	Decision-making and Legal Acts	47
3.2.	Non-parliamentary and Judicial Actors	50
3.2.1.	The High Representative	51
3.2.2.	Diplomatic and Military Actors	52
3.2.3.	The Absence of the Commission.....	55
3.3.	Choice of Legal Basis and the Centre of Gravity.....	56
3.3.1.	International Agreements	57
3.3.2.	Objectives	58
3.3.3.	The Legal Basis.....	61
3.3.4.	International Agreements	63
3.4.	Contestation	64
3.4.1.	The Flexibility Clause.....	66
3.4.2.	The Legal Nature of CFSP Matters	68
3.4.3.	Longevity	69
3.5.	Conclusion	70
4.	The European Parliament and the Common Foreign and Security Policy	73
4.1.	Introduction	74
4.2.	A Tale of History.....	77
4.2.1.	The Parliament as an Institution	78
4.2.2.	Direct Elections and its Impact	80
4.2.3.	The Right to Sue and be Sued	81
4.2.4.	Towards the Modern Era.....	85
4.3.	Soft Legal Powers in CFSP Matters	87
4.3.1.	Parliamentary Committees	88
4.3.2.	Report Writing.....	89
4.3.3.	Parliamentary Debate	91
4.4.	Stronger Legal Powers in CFSP Matters.....	94
4.4.1.	Consent and Information Powers	96
4.4.2.	Interinstitutional and Framework Agreements.....	99
4.4.3.	Budgetary Matters	101
4.5.	Taking CFSP Matters to the Court.....	105
4.5.1.	Explaining Litigation	106
4.5.2.	Pre-Lisbon Litigation on CFSP Matters	108
4.5.3.	Post-Lisbon Litigation on CFSP Matters.....	111
4.6.	The Parliament in Context	121
4.6.1.	Institutional Prerogatives	121
4.6.2.	Scope of EU External Action	124
4.6.3.	Legal Basis	125
4.6.4.	Dual Legal Bases.....	126
4.6.5.	Formality and Informality.....	129

4.7.	The Future of the Parliament in CFSP Matters.....	131
4.7.1.	The Role of the Court	132
4.7.2.	The Push of Parliament and Resistance of the Council.....	134
4.7.3.	Growing Parliamentary Powers.....	137
4.7.4.	Further Contestation	139
4.8.	Conclusion	141
5.	The Court of Justice and the Common Foreign and Security Policy	145
5.1.	Introduction	146
5.2.	Situating CFSP Matters.....	148
5.2.1.	The Judiciary and Foreign Policy	149
5.2.2.	Judicial Exclusion	151
5.2.3.	The (Limited) Judicial Inclusion	153
5.3.	A Constrained Court?.....	154
5.3.1.	Handling Exclusion.....	155
5.3.2.	Finding a Balance	157
5.3.3.	National Courts	157
5.3.4.	Judicial Engagement	158
5.4.	Questioning Jurisdiction	160
5.4.1.	A Question of Jurisdiction	161
5.4.2.	Post-Lisbon	163
5.4.3.	The Hurdle to ECHR Accession	164
5.4.4.	Further Litigation	168
5.4.5.	A Preliminary Reference	171
5.4.6.	Continued Questioning.....	179
5.5.	Lingering Questions.....	181
5.5.1.	Primacy.....	181
5.5.2.	Scope of the Opinion Procedure	184
5.5.3.	Damages	185
5.5.4.	Staffing	188
5.5.5.	Infringements	191
5.5.6.	Forum Non Conveniens.....	192
5.5.7.	The Role of National Courts	196
5.6.	Political Questions.....	202
5.6.1.	Political Questions and CFSP Matters.....	206
5.6.2.	Dividing the Legal and the Political.....	208
5.6.3.	A Need for a Political Question Doctrine	212
5.7.	A Changing Border	213
5.7.1.	A Time for Reflection	215
5.7.2.	The Reasoning in Cases on CFSP Matters	217
5.7.3.	The Existence of the Border	219
5.7.4.	Jurisdiction in Perspective	220
5.8.	Conclusion	221

6.	Other Issues and the Common Foreign and Security Policy	223
6.1.	Introduction	224
6.2.	Governance, Values, and the Rule of Law	225
6.2.1.	Governance	226
6.2.2.	Values	228
6.2.3.	Rule of Law	229
6.3.	Democracy and Participatory Parliaments	231
6.3.1.	Democratic Credentials	233
6.3.2.	Bringing about Democracy	236
6.3.3.	Subsidiarity	238
6.3.4.	Interparliamentary Democracy	239
6.4.	Legitimacy	240
6.4.1.	Institutional Legitimacy	241
6.4.2.	Constitutional Location	242
6.5.	Accountability	243
6.5.1.	Transparency	246
6.5.2.	Access to Information and Documents	247
6.5.3.	Individual Challenges	249
6.5.4.	Ongoing Debate	251
6.6.	Conclusion	252
7.	The Future of the Common Foreign and Security Policy	255
7.1.	Introduction	256
7.2.	Reform of EU Foreign Policy Law	258
7.2.1.	Moving Towards QMV	258
7.2.2.	Political or Judicial Reform	260
7.2.3.	The Difficulty of Reform	261
7.2.4.	The Commission's Push	262
7.2.5.	The Passerelle Clause	265
7.2.6.	Handling Withdrawal	268
7.3.	Abandoning the CFSP Legal Basis	271
7.3.1.	Justifying the Status Quo	273
7.3.2.	Parliamentarisation and Institutional Balance	276
7.3.3.	Loyalty	278
7.3.4.	EU Foreign Policy as Legal Acts	280
7.3.5.	Treaty Amendment	281
7.4.	The Steps Forward	283
7.4.1.	Pace of Progress	284
7.4.2.	The Way of EU Foreign Policy Law	285
7.4.3.	An Objectionable Status Quo	287
7.4.4.	Adaptation	289
7.5.	Conclusion	290
	<i>Bibliography</i>	291
	<i>Index</i>	333